



Accountants, Tax & Legal Advisers

TRUST ALERT

“Everything you always wanted to know about ‘tax and audit’, but were afraid to ask.”

(inspired by Woody Allen)

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Filing requirements regarding Dutch corporate income tax returns

We have noticed that Dutch corporate income tax returns of clients are not always filed on time. The Dutch tax authorities have also noticed this and for this reason, the Dutch tax authorities wish to encourage trust companies and their clients to improve their “filing discipline”. To achieve this, they have introduced stricter filing requirements, so extensions for filing the return may be rejected based on previous filing behaviour. In addition, they are also investigating a best practice together with some trust companies. Ahead of this being published we would like to inform you about the current filing requirements for Dutch corporate income tax returns of your clients.

Basic extension of five months

Dutch tax law provides that Dutch corporate income tax returns have to be filed within five months of the end of the financial year. As most financial years are calendar years, the vast majority of Dutch corporate tax returns have to be filed prior to the first of June of the year following the calendar year.

Extension regulation for tax consultants ('Becon regeling')

In practice five months is not enough to have the annual accounts for a company prepared, approved and to have the tax return filed, as the company may depend on financial information from abroad. For this reason, most of the companies have filed for an additional extension by means of the extension regulation for tax consultants, the so-called “Becon Regeling”.

This regulation can provide for an additional extension to a maximum of eleven months. A 2008 tax return should therefore be filed up to May 1, 2010, if the company can benefit from the maximum period. Companies with financial years that are not the same as calendar year have less beneficial maximum periods.

Under this extension regulation, tax advisory firms are allowed to file the tax returns of their clients equally divided over the year. A tax advisory firm that prepares for instance 1200 returns, may file 100 returns a month under the regulation and still benefit from the maximum extension period for part of their clients. However, if the advisory firm does not meet its monthly goals, it can be forced by the tax authorities to increase the number of returns to be filed. For example by filing 250 returns instead

of 100 returns per month. This increase in mandatory returns to be filed will have the effect that the maximum extension will be less than the maximum 11 months.

Stricter rules issued by the Dutch tax authorities

To improve filing discipline, new rules have been issued recently. To determine whether a client will be eligible for the additional extension under the extension regulation, the Dutch tax authorities will review the filing behavior of the client over the previous 3 years. If in the previous 3 years the client has filed the corporate income tax return too late twice, it will be denied an additional extension. Although, there is one exception – if the 2008 return is filed in time then the additional extension will be granted for the 2009 financial year.

Clients that have filed their returns four or five times too late can not benefit from the additional extension, not even for the 2008 return.

It goes without saying that HLB is more than willing to assist your clients in filing their (2008) tax returns for a fixed fee. You can find our new fee schedule in this edition of HLB Trust Alert. In a following edition, we will explain the negative tax consequences of filing returns too late.

Dividends and taxation in the Netherlands

The Dutch holding company has become a favoured instrument for international tax planning because of the participation exemption. If a subsidiary of a Dutch resident company qualifies for the Dutch participation exemption, then capital gains and dividends arising from this subsidiary are exempt from Dutch corporate income tax. However, there are exceptions that we have come across in practice.

Actual practice

A Dutch BV company has a qualifying subsidiary for the Dutch participation exemption resident in the United States. The United States resident company declares that it will distribute a dividend on 31 December 2007 for the amount \$ 10,000,000. Due to various reasons the dividend is transferred on 31 December 2008. The Dutch BV received the dividend, which represented an amount of € 7,185,456 on 31 December 2008. Is this amount exempt under the Dutch participation exemption?

The answer is that it is to a partial extent. On 31 December 2007 the amount, which was declared by the US company, represented a value in Euros of € 6,793,016. As the dividend was not transferred to the Dutch BV on the same day it was declared, the Dutch BV had a (dividend) receivable on the US Company as of that day. Currency exchange profits on a dividend receivable do not fall under the scope of the Dutch participation exemption, thus the Dutch BV had to report a currency exchange profit of € 392,440. The dividend amount of € 6,793,016 was exempt.

Please note that the reverse is also true. If a declared dividend by a qualifying non-resident subsidiary decreases in value, than the currency exchange loss on the dividend receivable is deductible.

To help you service your clients in the best way possible we have created an action/step plan. The purpose of this plan is to expose possible risks or opportunities for your clients.

Action/Step plan

The deduction of interest may be denied under this restriction if:

- 1) Does your client have non-Dutch resident subsidiaries which qualify for the Dutch participation exemption? If yes:
- 2) Does the non-Dutch resident subsidiary use a different currency than the Dutch company? If yes:
- 3) Has the non-Dutch resident subsidiary declared a dividend in the previous years (or do you expect that a dividend will be distributed shortly)? If yes:
- 4) Contact your (HLB) tax advisor.

If you have a situation described above we are, naturally, more than willing to help in creating new opportunities for your client and/or to find a practical solution to mitigate the risks.

Law on the prevention of money laundering and terrorist financing (Wet ter voorkoming van witwassen en financieren van terrorisme- Wwft)

Under this law on the prevention of money laundering and terrorist financing (Wwft) financial service providers such as accountants and tax advisers must carry out a customer due diligence before they can accept a commission. Furthermore, the Wwft law obliges them to report unusual transactions carried out or intended at or by a client, insofar as this is encountered as part of normal procedures, to the Financial Intelligence Unit Nederland in Zoetermeer. The Wwft law also applies to lawyers, notaries and other legal advisers.

Customer due diligence procedures

- Carry out a customer due diligence (including the identification of the ultimate beneficial owner) at the start of an commission in or from the Netherlands or with an incidental transaction above € 15,000.
- Carry out an additional customer due diligence when there are indications of doubt about the involvement of the client with money laundering or terrorist financing. Carry out an additional customer due diligence in case of a politically exposed person (PEP) or when identification cannot be done in person.
- Continued monitoring of the commission in the light of a possible increased risk profile.
- Termination of the commission when a customer due diligence has not been carried out or the client did not provide the required information.
- There should be internal guidelines, procedures and controls on the customer due diligence procedures and risk profiles of clients.
- Personnel should be educated appropriately about the Wwft requirements and recognising unusual transactions.

Reporting unusual transactions

- Timely reporting (within 14 days) of unusual transactions carried out or intended at or by a client to the Financial Intelligence Unit Nederland.
- The considerations and decision regarding the reporting or not reporting of an unusual transaction should be documented.
- It is not permitted to inform the client of the reporting of an unusual transaction to the Financial Intelligence Unit Nederland.

The Wwft requirements are strictly adhered to by HLB Schippers. Completion of these requirements is required before we can start new engagements.

In case you have any questions about the Wwft law or about other financial compliance regulations, please do not hesitate to contact us.

Fee Schedule HLB Schippers 2010

For easy reference we include our fee schedule for 2010.

Service	Fixed fee (€)	Rate (€ per hour)
<i>Tax services</i>		
Dutch Corporate Income Tax (CIT) return	1,850	-
Proposal input	free of charge	-
Quick scan tax / review tax structure	first hour free of charge	-
Tax advisory services	-	80-250
Review VAT return	525	-
VAT scan by (former) tax inspector	1000	-
<i>Audit and audit-related services</i>		
Audit of financial statements	-	80-230
Compilation of financial statements	-	80-230
Contribution in kind report	-	80-230
Nachgründing report	-	80-230
Report regarding conversion from NV to BV	-	80-230
<i>Audit advisory services</i>		
Preparation of valuation reports	-	230
Review of valuation reports	-	230
Desk-top review of un-audited Dutch GAAP financial statements (small sized company)	775	-
<i>Training/education of your employees</i>		
In-house tax training	-	160-250
In-house IFRS training	-	160-230
In-house training on Dutch accounting principles	-	160-230

For other services we can provide you with a fee estimate on a case by case basis.

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