

# Newsalert

## EU Direct Tax Group

NA 2006 – 018



7 July 2006

### EU Direct Tax Group

*The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.*

### Dutch Ministry of Finance: Dividend withholding tax should be refunded as of 2007 to EU pension funds and to EU companies participating for at least 5% in a Dutch company

On July 6, 2006 the Dutch Ministry of Finance issued a press release announcing a supplement to proposed legislation now pending before the Dutch parliament. This pending legislation is designed to strengthen the Dutch investment climate in order to attract more foreign investors (modernization of the Corporate Income Tax). An important element of the modernization is the proposed reduction of the dividend withholding tax rate from 25% to 15% with effect from 1 January 2007.

The now announced supplement further reduces the Dutch dividend tax burden for foreign investors. In the first place, pension funds resident in EU Member States will be granted the right to claim a refund of Dutch dividend withholding tax on dividends distributed to these funds by companies resident in the Netherlands. In the second place, no Dutch dividend tax will have to be withheld in case of a distribution to an EU resident company which holds 5% or more of the shares in the Dutch distributing company.

The proposed refund procedure for EU pension funds follow 26 complaints lodged with the European Commission against 18 Member States by PricewaterhouseCoopers' EU Direct Tax Group and the European Federation for Retirement Provision (EFRP). The complaints established that in those Member States non-resident pension funds are discriminated against as they are subject to a higher (withholding) tax on dividends and interest than domestic pension funds. PwC and EFRP claim that such legislation breaches EU Law, in particular the free movement of capital of Article 56 of the EC Treaty. The Netherlands government has decided not to await the outcome of the procedure against the Netherlands by putting EU and Dutch pension funds on the same footing with respect to the taxation of dividends paid to them by a company resident in the Netherlands.

The proposed dividend withholding tax exemption for EU resident companies receiving dividends from a company resident in the Netherlands in which they hold 5% or more of the shares, follows the referral to the ECJ of the *Amurta* case (Case C-379/05; Newsalert 2005-012), the pending *Denkavit* case (Case C-170/05, Newsalert 2006-011) and the recent opinion of the Advocate General Wattel in the appeal against the decision of Gerechtshof 's-Hertogenbosch (Newsalert 2005-11).

The position of the Dutch government can be regarded as a next step towards non-discrimination of EU pension funds and companies receiving dividends from the Netherlands.

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