

Substance Dutch International Tax Structures

In international tax structures with Dutch companies contained within, the substance of these Dutch companies is very important. For an effective use of the juridical structure (lowering the international tax burden by using the Dutch tax treaties), it is important to ensure that the Dutch company in the Netherlands is actually taxable in the Netherlands and, therefore, can make use of the Dutch Tax treaties.

According to the Dutch tax law, the place where a Dutch company is established, is determined according to the actual circumstances. The decisive factor here is the place where the company is actually managed. The formal establishment is, therefore, not the decisive factor.

'Actual management' in this context usually means the daily management. Supervisors or consultants are not meant here. However, if the daily management is not exercised by the directors of the company, but effectively through an unofficial agent, the place where the agent resides and manages the company would be considered as the actual point of management and, therefore, the place from where the company is managed.

This could be a different location from the place where the actual activities of the company are carried out. To determine the location of companies, the following facts are normally decisive:

- the places where the directors / managers of the company live and where the actual management meetings take place;
- the place where the company records are kept and the financial statements are prepared;
- the currency in which the financial records are maintained;
- the law under which the company is set up.

These circumstances are directly relevant to the place of actual management.

Less important for determining the location of companies are the following conditions:

- the places where shareholders live and / or shareholders' meetings take place
- the registered office of the company
- the place of registration in the commercial register

As outlined above, for the optimum effect regarding the tax result of an international tax structure with the Netherlands in it, it is very important that Dutch legal entities are used, that the directors of the Dutch company live in the Netherlands, that the actual management is performed in the Netherlands and that the financial administration of the company is in the Dutch language.

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News

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