

## *Tax News Bulletin*

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# Dutch State Secretary of Finance: New decrees published regarding the APA/ATR practice

*On 12 June 2014, the Dutch State Secretary of Finance has published several decrees which replace the former decrees of 11 August 2004 which concern the Dutch APA/ATR practice related to finance companies.*

## *Background*

The Netherlands is in favor of Advance Pricing Agreements (“APA”) and Advance Tax Rulings (“ATR”). APAs and ATRs are binding agreements made with the Dutch Tax Authorities in order to obtain certainty in advance regarding the application of tax laws to international groups of companies. The Dutch State Secretary of Finance has published on 11 August 2004 several decrees in which the ruling policy has been formalized. This results in a distinction between on the one hand the APAs and on the other hand the ATRs.

The new decrees of 12 June 2014 replace the decrees of 11 August 2004. The new decrees describe the competences of the APA/ATR practice, the procedures regarding obtaining an APA for cross-border transactions, obtaining ATRs for the corporate income tax and dividend withholding tax and obtaining ATRs for intermediary companies. Although it is mainly an actualization of the former decrees, it also contains some new attention points. We refer to our Tax News Bulletins of 20 January 2014 and 3 September 2013 on our website ([www.ohp.nl](http://www.ohp.nl)) for more information on the Dutch substance requirements.

## *Highlights of the new APA/ATR decrees*

- ✓ One of the conditions in order to meet the Dutch substance requirements for companies is the adequate amount of equity requirement. This contains that companies should have an adequate amount of equity with respect to their risks. For royalty intermediaries, it is hard to apply the adequate amount of equity requirement given the large diversity of royalty situations. Therefore, the Dutch State Secretary has outlined in the new decree how to interpret this adequate amount of equity requirement for royalty intermediaries. As a rule of thumb, the equity which is held by

the intermediary to bear the risk has to be 50% of the amount of royalties received on an annual basis, or an amount of € 2 million. At least half of the risks have to be market risks;

- ✓ In case intermediaries (finance service companies) have obtained certainty in advance by means of an APA, the information of the APA will be exchanged automatically with the relevant country, in case the intermediate company does not meet the minimum substance requirements as mentioned in article 3a, paragraph 7 of the Dutch Executive Decree to the Act on International Assistance of the Levy of Tax (Uitvoeringsbesluit Wet Internationale Bijstandsverlening bij de heffing van belastingen, "WIB") or does not have the intention to meet these minimum requirements. Further, part of the APA will be a declaration of the tax payer that it will not rely on the exemption of article 14, second paragraph, part e of the Dutch International Assistance Act. In this provision, an exemption is made that the Dutch authorities should not exchange information in case a commercial, industrial or other professional secrecy will be revealed. This automatically exchange of information clause may be a real discouragement for the finance service companies to apply for an APA.