New tax treaty China

The Netherlands and China have concluded a new tax treaty. If you are doing business in China, this treaty may have an impact on your business.

"There are many Chinese companies active in the Netherlands and I hope that this new treaty is an additional incentive for even more investments in the Netherlands"
Frans Weekers – State Secretary of the Dutch Ministry of Finance

The Netherlands and China have concluded a new tax treaty. The current tax treaty, from 1987, is now amended on certain points. It is expected that the new tax treaty will enter into force soonest on January 1, 2014. The most significant changes are listed below:

- **Lower withholding taxes**
Under the new tax treaty the withholding tax on intercompany dividends in shareholder structures of at least 25% goes down from 10% to 5%. In addition, a new provision is included, which states that 0% withholding tax on dividends is available for companies wholly owned by one of the contracting states. Furthermore, the new tax treaty no longer contains a tax sparing credit (an additional tax credit) for royalties and interest.

- **Tie-breaker**
The provision in the new treaty relating to the determination of tax treaty residency of a company which is regarded as a resident of both Contracting states – the so-called tie-breaker rule- is brought in line with the provisions of the OECD Model Tax Convention. Consequently, no mutual agreement procedure is required anymore in situations where the two states both consider a company to be a tax treaty resident of their state.

- **Construction activities**
The minimum period to determine whether construction activities are taxable in one of the contracting states has been increased from six to twelve months.

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- **International employment**

The remuneration derived in respect of employment exercised aboard a ship or aircraft operated in international traffic has so far been taxed in the state of residency of the employee. Under the new treaty abovementioned remuneration may be taxed in the contracting state in which the place of effective management of the enterprise is located.

- **Pensions**

Under the new tax treaty, pensions are no longer exclusively taxable in the residence state, but may be taxed in the source state insofar as the contributions associated with the pensions have qualified for tax relief in that state. This is in line with the Dutch treaty policy as published in 2011 as also included in other recent Dutch tax treaties.

- **Directors remuneration**

As method for the avoidance of double taxation, the Netherlands shall under the new treaty apply the credit method for directors fees. Under the current treaty, the exemption method is applied.

- **Anti-abuse provisions**

The new treaty contains state of the art anti-abuse provisions and a provision covering the exchange of information between both states. Furthermore, the treaty holds a provision on the assistance between both states in the collection of taxes.

Want to know more?
Are you active in China? Then this new tax treaty may provide new opportunities for you. For more detailed information regarding the changes and consequences, contact your Baker Tilly Berk adviser.