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Dutch State Secretary of Finance shares his view on BEPS

On June 2, 2015 the Dutch State Secretary of Finance sent a letter to Dutch Parliament in which he shares his view on BEPS, similar tax initiatives within the EU, and the Dutch investment climate.

Highlights

In his letter, the Dutch State Secretary of Finance explains that the Netherlands:

1. embraces a neutral tax system to avoid tax distortion and to create a level playing field for foreign and domestic taxpayers;
2. supports the idea that abusive behavior should not be allowed.

Based on these principles he identifies the following key elements of the Dutch international investment climate:

1. certainty in advance on tax matters (tax ruling practice) is an important instrument that should be continued;
2. the idea of enhanced relationship between tax authority and taxpayer continues to be an important tool for effective fiscal supervision;
3. the tax treaty network continues to be a key instrument for the avoidance of double taxation; and
4. unequal tax treatment of national and multinational enterprises must be avoided.

The State Secretary embraces the idea that tax abuse should be tackled through:

1. Transparency, exchange of information (including tax rulings)
2. Creating an active global network for effective and efficient exchange information; as an example he mentions the bilateral agreement on automatic exchange of tax rulings, which the Netherlands and Germany are close to signing.

However, he also expresses the view that states should be careful not to introduce unsophisticated measures that impede genuine business activity or that create an unlevel playing field. As an example he mentions that preferable tax regimes for innovation should remain available to qualifying innovative activities (innovative activities for which “R&D certificates” were obtained), and not just to patented inventions. Although he appears to (at least implicitly) embrace the modified nexus approach[1] (“MNA”, we refer to our website publication dated 20 February 2015), he makes it clear that the current Dutch system of R&D certificates as entry ticket to the innovation box regime will not be surrendered. Furthermore, the State Secretary of Finance is not in favor of an overall harmonized tax base (global tax base). Instead he favors specific measures and coordination to counter abusive situations.

In his letter, the State Secretary of Finance also shares his view on some of the discussions which are held in multinational forums like the OECD and the EU:

1. Discussions regarding specific anti-abusive measures:

- How to deal with hybrid mismatches specifically is apparently still subject to debate;
- Measures against abusive interest deduction are still subject to debate. It appears that the OECD will embrace an earnings stripping-like rule as “best practice”. The OECD views specific interest deduction limitation rules such as the ones in place in the Netherlands as supplemental to a general earnings stripping-rule;
- Possible CFC-rules are still unclear.

2. Discussions regarding transfer pricing:

- The State Secretary of Finance leaves no doubt that transfer pricing principles and the arm’s length concept continue to be the most important instruments for proper profit allocation. In his view, economic substance and functions performed continue to be key elements;
- The difference between contractual framing and economic reality should be solved by following functions performed.

With regard to treaty abuse, he qualifies treaty shopping as abusive, and agrees with:

1. Limitation on benefits and main purpose tests (focus on substance)
2. Measures against artificial avoidance of permanent establishments structures (commissionaire structures). He again embraces the transfer pricing principle that the economic reality should be leading, not the contractual form.

[1] The modified nexus approach requires a stronger link between the place where R&D expenses are incurred, and the place where R&D profit is allocated.

Finally he raises two very important global policy issues:

1. With regard to the multilateral instrument (treaty) intended to implement measures adopted, which should be signed by the end of next year, he emphasized that a level playing field is crucial;
2. With regard to the plans for introducing a Consolidated Corporate Tax Base within the EU he stresses that considering added value is key; therefore global apportionment rules should be avoided.

Conclusions:

It is clear the Netherlands embraces the idea of combating tax evasion and harmful tax competition. However, the Dutch State Secretary of Finance takes the view that each state must have the possibility to develop instruments to stimulate its investment climate as long as it is transparent and creates a level playing field.

Therefore the Netherlands is prepared to exchange information in a transparent manner and cooperate with other countries in Europe and outside Europe. However, unsophisticated measures, that are too general and could distort or impede genuine economic activity, should be avoided.