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Our reference
2023-0000227391

Your letter (reference)

Date October 11th 2023
Re Monitoring the effects of the approach to tax avoidance

Dear chairman,

Tackling tax avoidance is an important priority of this government. The Netherlands has taken a strict approach to tax avoidance by implementing various measures. The government has promised the House to send an annual monitoring letter to map the effectiveness of tackling tax avoidance.[1] This is the annual monitoring letter.

The first edition of the monitoring letter indicates that the conditional withholding tax on interest and royalties to low-tax jurisdictions and in abusive situations (the withholding tax) specifically addresses interest and royalty payments (and from 2024 also dividends) from the Netherlands to low-tax jurisdictions. The effect of this tax can therefore be properly monitored. The monitoring of these financial flows is therefore central to this letter (paragraph 1). The observed decline in interest, royalty and dividend flows from the Netherlands to low-tax countries appears to be perpetuating. These flows have decreased significantly from €38.5 billion in 2019 to €6 billion in 2022.

In paragraphs 2 and 3, the government describes the monitoring of the effects of other measures against tax avoidance. Section 4 describes why it is complex to measure tax avoidance and the effectiveness of tackling it, and discusses the use of specific data sources. In paragraph 5, the government describes developments in national, European and international legislation and regulations in the field of tax avoidance, thus complying with the Dassen motion.[2] In paragraph 6, I will provide you with an overview of the ongoing investigations into tax avoidance. Finally, I conclude with a brief conclusion in paragraph 7.

1. Withholding tax on interest, royalties and dividends

The Withholding Tax Act 2021 came into effect on 1 January 2021. Under this law, withholding tax is withheld by a Dutch-based entity on interest and royalty payments to an affiliated entity established in a low-tax jurisdiction (LTJ) and in abusive situations. The withholding tax rate is equal to the highest corporate tax rate (currently 25.8%). The aim of the withholding tax is to make the Netherlands

[1] Parliamentary Papers II 2019/20, 25087, no. 259.
[2] Parliamentary Papers II 2022/23, 36273, no. 7.

less attractive for conduit structures to LTJs and to reduce the risk of tax avoidance by shifting the (Dutch) tax base to LTJs. From 2024, the scope of the withholding tax will be expanded in the sense that withholding tax will also be levied on (certain) dividend payments.

To monitor the effect of the withholding tax, it was announced at the time that the income flows from the Netherlands to LTJs will be monitored using statistics from DNB (De Nederlandsche Bank).[3] Initially, only flows through the so-called special financial institutions (SFIs) were examined, but last year, on the advice of the Conduit Companies Committee,[4] it was decided to look at the total income flows, to prevent potentially important flows from being excluded.[5] Table 1 shows the total Dutch incoming and outgoing income flows by geography. Table 2 shows a further breakdown of the income flows into interest, royalties and dividends for the LTJs.

Table 1: Incoming and outgoing income flows by geography (billion €, source: DNB)[6]

Incoming	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Conduit jurisdictions	88	97	81	81	92	53	49	56
EMU (excl. IE, LU)	49	40	44	49	51	42	56	64
Low-Tax Jurisdictions (LTJs)	12	14	12	13	13	10	9	10
Developing countries	8	9	12	12	9	8	12	9
Emerging markets	22	25	27	33	24	18	21	25
United States	23	17	26	28	23	16	30	35
United Kingdom	23	14	20	23	27	15	28	45
Rest of the world	37	41	45	68	46	37	39	40
Total	**264**	**256**	**266**	**309**	**286**	**199**	**243**	**285**
Outgoing								
Conduit jurisdictions	52	75	57	68	55	51	50	46
EMU (excl. IE, LU)	50	41	51	54	57	41	49	49

[3] Parliamentary Papers II 2019/2020, 25087, no. 259.
[4] See p. 59 of the report of the Conduit Companies Committee (Parliamentary Papers II 2021/22, 25087, no. 286, Annex 1007733).
[5] For a further explanation, see the previous monitoring letter (Parliamentary Papers II, 2021/2022, 25087, no. 294.
[6] Income according to the definition of the DNB, consisting of total profit (dividend paid and retained earnings), costs charged for IP (royalties), interest and other income.
Classification into categories also according to the DNB:
Conduit jurisdictions: Hong Kong, Ireland, Luxembourg, Singapore and Switzerland.
EMU (excl. IE, LU): Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Italy, Lithuania, Latvia, Malta, Austria, Portugal, Slovenia, Slovakia and Spain.
LTJs: American Samoa, US Virgin Islands, Anguilla, Bahamas, Bahrain, Barbados, British Virgin Islands, Bermuda, Fiji, Guam, Guernsey, Jersey, Cayman Islands, Man Island, Palau, Panama, Samoa, Trinidad and Tobago, Turkmenistan, Turks and Caicos Islands, Vanuatu and the United Arab Emirates.
Developing countries: Countries on the *OECD DAC List of ODA Recipients*, the first three categories (least developed, low income and lower middle income), excluding the countries on the LBJ list, see also https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/daclist.htm.
Emerging markets: Brazil, China, Equatorial Guinea, Kazakhstan, Mexico, Malaysia and Turkey.

Low-Tax Jurisdictions (LTJs)	27	34	39	37	38	6	12	6
Developing countries	2	1	1	1	1	1	0	1
Emerging markets	8	2	8	8	6	5	5	8
United States	53	29	41	46	64	45	38	58
United Kingdom	28	40	27	43	22	24	25	76
Rest of the world	53	27	26	27	25	25	24	22
Total	**274**	**249**	**249**	**285**	**268**	**199**	**202**	**266**

Table 2: Income flows to and from low-tax jurisdictions (billion €, source: DNB)

Incoming	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Dividend (incl. retained earnings)	11.1	13.1	8.8	10.1	10.1	6.9	8.7	8.9
Royalty	0.3	0.3	2.0	1.4	1.0	2.1	0.3	0.4
Interest	1.0	0.9	1.0	1.1	1.7	1.1	0.4	0.7
Other income	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	**12.5**	**14.3**	**11.8**	**12.6**	**12.8**	**10.1**	**9.4**	**10.1**
Outgoing								
Dividend (incl. retained earnings)	6.2	13.3	8.1	3.9	2.1	2.3	10.0	4.8
Royalty	16.9	17.0	27.0	28.6	32.5	1.3	0.5	0.5
Interest	4.3	3.7	3.4	4.8	3.9	2.4	1.0	1.2
Other income	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	**27.5**	**34.0**	**38.5**	**37.3**	**38.5**	**6.1**	**11.5**	**6.5**

Tables 1 and 2 show that the sharp decline in the total income flow to LTJs since 2019, which could already be reported last year, appears to be perpetuating. Whereas the outgoing income flow to LTJs still amounted to more than €38 billion in 2019, since the introduction of the withholding tax, this has fallen sharply to an amount of €6 billion in 2022. The remaining income flow largely concerns dividends/retained earnings. Dividends will fall within the scope of the withholding tax from 2024. Furthermore, there appears to be no (observable) "waterbed" effect, whereby income flows are diverted via other conduit jurisdictions: this outgoing flow has fallen as well, from €55 billion in 2019 to €46 billion in 2022.

The development of income flows can also be determined by looking at data from withholding tax returns to the tax authorities. In 2021, this involved 517 tax returns with a basis of approximately €0.22 billion in interest and royalty payments and withholding tax revenue of €55.6 million. In 2022, this involved 317 returns with approximately the same total basis and a revenue of €56.2 million. These data for 2022 are still partly provisional, as for some of the returns, it is still possible to object to the submitted return.

These amounts from the tax returns differ from the DNB statistics in the tables above. Last year, the monitoring letter indicated that if a significant discrepancy with the tax authorities' tax return data remained after the definitive DNB statistics had been determined, further investigations would be conducted. The figures for 2021 are now final. After consultation with DNB, it appears that the

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difference is probably due to the following causes. Firstly, at the level of reported income flows to low-tax jurisdictions, there is uncertainty in DNB's statistics to the order of hundreds of millions. These margins of uncertainty are inherent in the way macroeconomic data is compiled. The DNB and Statistics Netherlands (CBS) jointly prepare the National Accounts and the balance of payments and implement plausibility and continuity corrections to ensure coherence between the various systems and to correct reporting errors. Secondly, the data reported to CBS and DNB may be less accurate than the returns to the tax authorities. Companies are probably more careful in their reporting to the tax authorities because of the financial consequences of an incorrect return. Thirdly, part of the income flows appears to go to countries among low-tax jurisdictions where the Netherlands cannot yet levy withholding tax due to the tax treaty. It is also possible that the entity paying from the Netherlands, or the receiving entity in the low-tax jurisdiction, is tax transparent, so withholding tax does not apply. Further investigating the differences at micro level is not possible due to the confidentiality of the data reported to DNB on the one hand and the tax authorities' tax return data on the other.

For the time being, the withholding tax provides a budgetary revenue, while no revenue was expected at its introduction due to the prohibitive nature of the withholding tax. This may have various reasons, such as the complexity and costs associated with restructuring and the coincidence with new tax developments such as the introduction of the Minimum Tax Act 2024. This means that structurally still no revenue is expected from the withholding tax.

2. The Combating Mismatches Act when applying the arm's-length principle

On 1 January 2022, the Combating Mismatches Act when applying the arm's length principle came into effect for financial years starting on or after 1 January 2022.[7] This legislative bill is aimed at preventing mismatches that, in mainly international situations, arise through the application of the arm's-length principle and that lead to double non-taxation. To achieve this objective, this law limits the possibility for taxpayers to process a downward adjustment of profits on the basis of the arm's-length principle, insofar as another affiliated entity involved in the transaction does not incorporate a corresponding upward adjustment in the tax base or makes too low a corresponding upward adjustment. The measures therefore ensure that in those cases, the profit is taxed somewhere, at least once.

In the explanatory memorandum to the Combating Mismatches Act when applying the arm's-length principle, the government announced that it will monitor the effect of this Act.[8] The tax return forms have been adjusted in such a way that a taxpayer must check whether he takes the position that the burden of proof has been met, in that a corresponding upward adjustment is incorporated in tax levied on the profits of the affiliated entity. In those cases, double non-taxation does not (or no longer) occur, because there is a corresponding upward adjustment that is incorporated in tax levied on the profits of the affiliated entity. Based on this, the government will monitor the operation of the legislative bill. Given the recent entry into force of the Act, there is currently no data available

[7] wetten.nl - Regulation - The combating mismatches Act when applying the arm's-length principle - BWBR0046092 (overheid.nl)
[8] Parliamentary Papers II 2021/22, 35933, no. 3. 20

on the basis of which monitoring can take place. It is expected that it will be possible to report on this from 2025.

3. ATAD 1 and ATAD 2

In the letter to the House of Representatives of 29 May 2020, my predecessor in office announced that the government will monitor the effects of the first and second EU anti-tax avoidance directives (ATAD1 and ATAD2), where possible. This concerns in particular the earnings stripping measure and the additional CFC measure from ATAD1 and the mapping of remaining limited partnerships/private limited company structures to measure the effects of ATAD2. Reliable effect measurement is possible as soon as sufficient tax return data is available for the starting year and subsequent years. Currently insufficient data is available to make an effect measurement. As indicated previously by the government, reporting on the monitoring of these measures will take place no later than 2024.[9] I refer to the aforesaid letter to the House of Representatives for a description of the methodology used to perform this monitoring.

4. Other indicators of tax avoidance

Extent of tax avoidance
In practice, measuring the effects of measures against tax avoidance is not easy and sometimes even virtually impossible without making assumptions that are difficult to verify. First of all, there is no clear definition of tax avoidance. Furthermore, reliable data is often lacking, as acknowledged by the Organisation for Economic Co-operation and Development (OECD).[10] In addition, a causal relationship between the measure of tax avoidance and policy in practice is difficult to establish. The extent of tax avoidance can also be influenced by external factors, such as foreign legislation or economic developments. In short, what would have happened without the government's policy is not measurable (a counterfactual is missing). The government will therefore continue to monitor the effects on specific measures in a targeted manner, where possible, , as described in the previous paragraphs of this letter.

Sometimes, data from multinationals' country reports (country-by-country reporting) or statistics on direct foreign investments are used to provide estimates of the extent of tax avoidance. Below, I briefly explain why this data in its current form cannot be used as a measure of tax avoidance (yet). The government emphasises that it is very important to involve various organisations in international tax avoidance, identifying bottlenecks and proposing policy options. I would therefore like to maintain the dialogue with these organisations. With the current package of national measures and the extensive international agreements we have made, I am convinced that the possibilities for tax avoidance have decreased in recent years and will continue to decrease further in the coming years. However, given the methodological limitations when measuring tax avoidance, I do not necessarily expect this to be revealed in existing studies of international tax avoidance. In the coming years, I will continue to work to improve the quality of the available data, for example, in an OECD context, so tax avoidance can be measured reliably.

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[9] Parliamentary Papers II 2019/20, 25087, no. 259.
[10] OECD – Corporate Tax Statistics 2021 https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-third-edition.pdf

Country reports (country-by-country reporting)
The OECD is working on various indicators of tax avoidance, including by collecting (anonymised) data from country reports in the context of country-by-country reporting. As the OECD itself indicates, country reports are especially useful for assessing (substantial) transfer pricing and tax avoidance risks in multinationals. A sum of country reports does not necessarily provide results from which a measure of tax avoidance follows. This data often contains double counting of profits taxed elsewhere. This can lead to an overestimation of profits by as much as 75%.[11] In addition, when calculating the effective rate, losses made in previous years are often not taken into account. This leads to lower taxes in later years. If this is not properly corrected, this data could suggest that profits of multinationals are taxed at a low rate. In recent years, the effective Dutch rate for 2016, 2017 and 2018 without corrections would have been 10.6%, 10.5% and 10% respectively. After corrections, these percentages are 21%, 20% and 20% respectively.[12] This partly explains why some studies conclude that the Netherlands is responsible for a large part of international tax avoidance.

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In a report from Tax Justice Network[13] for example, it is concluded that the Netherlands is responsible for almost 51 billion dollars in lost tax revenues in other countries due to tax avoidance by multinationals (16.2% of the total). This amount is very high and Tax Justice Network fails to provide an underlying explanation as to why companies would want to shift profits to the Netherlands despite a corporation tax rate of 25.8%. An important reason for these high results in the Tax Justice report is that only partial corrections are made for double counting in profits as reported in the country reports. Nor are corrections made for loss compensation. In addition, the report assumes that all profits that are higher than expected based on number of employees and wage bill should be regarded as tax avoidance.[14] This assumption fails to recognise that profits can also be achieved with tangible or intangible assets. Finally, this report is also based on data from 2018. Since then, important measures against tax avoidance have come into effect, such as the withholding tax, ATAD1 and ATAD2 referred to above. Any effects of those measures and the policy and legislation of recent years are therefore not reflected in the results of this Tax Justice report, which is based on information from 2018.

Foreign direct investments
Reference is often made to the relatively high level of foreign direct investments (FDI) in the Netherlands and from the Netherlands abroad.[15] However, the total amount of FDI in the Netherlands is not a reliable indicator to measure or monitor

[11] "Under reasonable assumptions, these biases lead to an estimated profit of 21.0 billion euros, instead of 36.8 billion euros for the companies with positive profits, meaning that profit is overstated by almost 75%." (OECD - Country-specific analysis from the Netherlands 2017 https://www.oecd.org/tax/tax-policy/netherlands-cbcr-country-specific-analysis.pdf.)
[12] The difference with the statutory rate can be explained by tax regulations that reduce the tax base compared to the profit reported in annual figures, such as the part of the base that falls into the innovation box and deductible items, including the liquidation loss scheme. The Advisory Committee on Taxation of Multinationals reaches similar conclusions.
[13] State of Tax Justice 2023 (https://taxjustice.net/reports/the-state-of-tax-justice-2023/).
[14] Tax Justice Network does make an exception for this if the effective tax burden exceeds 15%. Due to the incomplete correction of profits, this does not apply to the Netherlands.
[15] See, for example: Statistics Netherlands Policy Letter, *Doorsluisland NL doorgelicht*, January 2019 and Statistics Netherlands, Internationalisation Monitor 2018-IV, Financial Globalisation.

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tax avoidance,[16] as also concluded by the Conduit Companies Committee.[17] The reason for this is that the amount of FDI also includes real investments. Because the Netherlands has attracted a relatively large number of international companies, part of the FDI consists, for example, of investments from abroad in a real head office in the Netherlands that subsequently invests in foreign subsidiaries. Even if investments take place in special financial institutions (SFIs) in the Netherlands, it does not necessarily need to involve tax avoidance, because their use can also be prompted by non-tax motives. In addition, by tackling tax avoidance, some of the structures that previously led to tax savings no longer provide a tax advantage. Foreign tax authorities now also have more options to tackle tax avoidance structures via the Netherlands thanks to the tightening of tax treaties and the exchange of information. According to the Conduit Companies Committee, the part of the FDI that can be traced to low-tax jurisdictions *is* an indication of tax avoidance. This is because there seem to be few other (real) explanations for these flows.

5. European, international and national developments

With the adoption of the Dassen motion,[18] the House of Representatives has requested to add developments in European and international legislation and regulations to this monitoring letter. In this paragraph, I comply with this request. For the sake of completeness, I will also discuss developments at a national level. This is also in line with the promise made by my predecessor in office to Member Vendrik during the discussion of the 2022 Tax Plan in the Senate.[19]

General: commitment of the government

The government considers tax avoidance undesirable. The Netherlands has therefore taken many measures against tax avoidance in recent years. The Netherlands has strictly implemented international agreements against tax avoidance and taken additional (unilateral) national measures to tackle tax avoidance. Furthermore, the Netherlands has actively and constructively contributed to international agreements regarding a revision of the international tax system. This year, the European Commission indicated that the Netherlands has made progress in tackling tax avoidance in recent years. In contrast to previous editions, the European Commission has no longer made country-specific recommendations to the Netherlands in this area since 2022.[20] The IMF also indicates that the Netherlands has taken the right measures to tackle tax avoidance.[21]

Although major steps have been taken, the government is not yet fully satisfied. The government continues its fight against tax avoidance unabated. The government naturally considers it important that the approach is effective.

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[16] See, for example, the Tax Justice Network's Corporate Tax Haven Index. This investigation uses FDI data in combination with qualitative indicators to arrive at an international ranking of countries.
[17] See p. 58 of the report of the Conduit Companies Committee (Parliamentary Papers II 2021/22, 25087, no. 286, Annex 1007733).
[18] Parliamentary Papers II 2022/23, 36273, no. 7.
[19] Proceedings I 2020-21, no. 11, item 8, p. 29.
[20] See COMM (2023) 619 final and COMM(2022) 621 final.
[21] Kingdom of the Netherlands—the Netherlands: 2021 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for the Kingdom of the Netherlands—the Netherlands (imf.org), Country Report No. 2021/243, November 2021.

International tax avoidance can be tackled most effectively in the form of a coordinated international approach. This is because national measures harbour the risk that tax avoidance will simply move along and take root elsewhere. That is why the government's focus is now on international measures. Important and major steps are therefore taken at international level. That is why I will first discuss international developments below. However, the government points out that it continues to take national steps against tax avoidance as well, in addition to its international focus. I will therefore also describe developments at a national level below.

Pillar 2
In the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF)[22], organised by the Organisation for Economic Cooperation and Development (OECD), the review of the international tax system is high on the agenda. The reason for this lies in the challenges that the globalisation and digitalisation of economies brings to the taxation of multinationals. An agreement was reached in October 2021 on the revision of the international tax system. This represents an important step towards a more modern international tax system and a global minimum tax rate. The agreement is supported by 138 states in the IF and is structured around two pillars.[23] Pillar 2 of the IF agreement regulates a global minimum level of taxation for multinational groups. On 20 December 2021, the IF published the model texts participating states can use to transpose the Pillar 2 agreement into their national legislation. On 22 December 2021, the European Commission published a directive proposal to ensure that Pillar 2 measures within the European Union (EU) are transposed into national legislation in the same way and to avoid conflict with European law. On 15 December 2022, the EU member states reached agreement on this EU minimum level of taxation directive.[24] The EU member states are obliged to implement this directive into their legislation by 31 December 2023. To comply with this obligation, the government sent the Minimum Tax Act 2024 bill to the House of Representatives on 30 May 2023. The legislative bill is currently being discussed by the House of Representatives. On 14 September 2023, the House of Representatives decided to further discuss this bill in conjunction with the 2024 Tax PlanPackage.

The OECD has indicated that, in the future, it will maintain aggregated statistical data on, for example, safe harbours, the de-minimis exception, the average effective rate, the number of low-taxed entities in a state and the amount of additional tax. The EU directive proposal for minimum level of taxation does not provide for an evaluation provision. It is expected that the OECD will monitor the implementation of the Pillar 2 rules. In that context, the exchange of information between countries is taken into account in the consideration. Furthermore, in subsequent versions of this monitoring letter, the government will discuss the

[22] In 2016, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) was formed with a view to implementing the measures from the OECD/G20 Project to Combat Base Erosion and Profit Shifting (BEPS Project) and further international cooperation in the field of taxation. Within the IF, member states and non-member states of the OECD work together on an equal footing. At the time of writing this letter, the IF has 143 members.
[23] https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf
24 Council Directive (EU) 2022/2523 of 14 December 2022 Ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (OJEU 2022, L 328/1).

consequences of the measures in the legislative bill when the tax return data is available.

Pillar 1
Within the aforesaid IF, Pillar 1 is also one of the components of the revision of the international tax system. Pillar 1 concerns a redistribution of part of the profits of the largest and most profitable multinationals. Countries where companies have many customers or users are allocated additional taxing rights based on Pillar 1. Other countries will have to surrender taxing rights to prevent double taxation of the redistributed profits. Pillar 1 is a redistribution of taxing rights and therefore not necessarily aimed at tax avoidance.

In recent years, several countries have introduced taxes aimed at the digital economy (including unilateral digital services taxes). These measures often have different characteristics and conditions, resulting in the international tax landscape diverging and creating the risk of double taxation. As part of Pillar 1, all participating countries will therefore have to withdraw their current digital services taxes and other similar measures for all businesses *and* will not be allowed to introduce such taxes in the future.

To implement Pillar 1, a multilateral treaty is negotiated and drawn up by the participating countries. I will inform your house about the most recent version of the treaty text, as soon as possible.

Unshell
The government welcomes the EU directive proposal to tackle abuse of conduit companies (Unshell).[25] The Netherlands is actively involved in the directive negotiations and includes the recommendations of the Conduit Companies Committee in its efforts, as much as possible. By applying an international approach, the improper use of conduit companies is addressed in an integrated and uniform manner. The discussions in the council working groups are aimed at finding a healthy balance between effectively tackling conduits and at the same time keeping the administrative burden for implementation limited, where possible. Although the Spanish Presidency is very focused on finding a compromise, the current view is that no agreement will be reached on the Unshell directive proposal in the short term. The positions of Member States still differ widely with regard to the purpose and scope of the directive, which requires unanimity as well. Previously, I indicated that a European agreement is most desirable, whereas leading unilaterally therein is not. I further indicated that if the directive negotiations do not ultimately lead to the desired result, the government can consider whether unilateral implementation of one or more of the recommendations of the Conduit Companies Committee is still warranted. The government currently remains committed to reaching an agreement on the directive proposal and remains in close consultation with the Spanish and incoming Belgian presidencies on this matter.

BEFIT
On 12 September, the European Commission presented the Business in Europe directive proposal: Framework for Income Taxation (BEFIT). The proposal contains a common basis for corporate income tax. The House has received the

[25] Directive aimed at combating abuse by conduit companies in the field of taxation and the amendment of Directive 2011/16/EU (Administrative Cooperation Directive).

government's appreciation by means of the BNC file.[26] No negotiations have taken place on this matter yet, only a technical explanation of the proposal.

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Transfer pricing
On 12 September, the European Commission also presented a directive proposal for common transfer pricing rules. The House will receive the government's appreciation by means of the BNC file. No negotiations have taken place yet, only a technical explanation of the proposal.

FASTER
On 19 June, the Commission published the proposal on a faster and safer reduction of excess withholding tax ("FASTER") and the House was informed about this via a BNC file.[27] Negotiations are currently ongoing.

The aim of the proposal is to harmonise and accelerate refund procedures and procedures for exemption at source in dividend tax and to also make them more resistant to this abuse. These procedures are very important for the Capital Markets Union and currently can have an obstructive effect as they are cumbersome, expensive and lengthy, thereby preventing investors from exercising their rights in the Capital Markets Union. On the other hand, the current procedures in the EU are susceptible to fraud, see the major dividend stripping cases.

To prevent fraud, FASTER ensures an improved information position for tax authorities. Investors must make the requests through a financial intermediary; this intermediary must register and report. Through this reporting obligation, the tax authorities receive information about the registered owners of a dividend, the holding period and whether financial transactions take place involving a (temporary) shift in legal ownership.

If an investor has held the share for less than two days or in the event of a financial transaction, he or she does not have access to the directive procedures and must use the existing procedures instead. Information about the holding period and any financial transactions will have to be provided in this procedure as well. The government is positive about the way in which abuse of procedures is combated. In the technical discussion, the topic of discussion is whether abuse of the procedures is sufficiently combated.

Transparency and exchange of information
Improving tax transparency has been an important spearhead in the Dutch tax policy for years.[28] For example, the government has encouraged the development of a Tax Governance Code by the business community, in which transparency by companies plays an important role.[29]

In cross-border situations, information can be exchanged through mutual assistance. The Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties and the Directive on Administrative Cooperation all provide

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[26] Appendix to the letter to the House of Representatives from the Minister of Foreign Affairs of 6 October 2023 (2023Z16873).
[27] See Parliamentary Papers II 2022/23, 22112, no. 3748.
[28] See Parliamentary Papers II 2020/21, 25087, no. 280. 6.
[29] See also the letter to the House of Representatives of 8 June 2022: Answering questions about the VNO-NCW tax governance code, reference: 2022D23588.

for the exchange of tax-relevant information, upon request, spontaneously or automatically. In recent years, increasing efforts have been made to strengthen the possibilities for automatic information exchange in cross-border situations. For example, financial account information, information about rulings and country reports of multinationals (country-by-country reporting) are exchanged between tax authorities. In addition, data and information about potentially aggressive cross-border tax planning structures (DAC6) are exchanged automatically and, with the implementation of DAC7 as of 1 January 2023, data and information about sellers who generate income via digital platforms are exchanged as well. On 16 May, the Ecofin Council reached agreement on the text of DAC8, which provides for an amendment to the Directive on Administrative Cooperation requiring crypto-asset service providers to provide tax information on their users, and this data will be exchanged between the tax authorities of the EU Member States. The text of DAC8 further provides for a broadening of the scope of the Directive on Administrative Cooperation to include electronic money and digital currencies issued by central banks. In addition, dividend payments paid directly to (foreign) shareholders are added to the income categories about which information is exchanged. The text of the DAC8 directive is expected to be adopted in the Ecofin Council of 17 October as a non-discussion item and then published in the European Official Journal. DAC8 provides for implementation in national legislation of the Member States with effect from 1 January 2026.

The Income Tax Disclosure Directive (Implementation) Act was adopted by the House of Representatives on 6 July 2023. This legislative bill is currently being discussed in the Senate. This bill implements EU Directive 2021/2101, requiring multinational companies to prepare and publish a separate report on their income tax. This is also known as public country-by-country reporting. This obligation will apply to financial years starting on or after 22 June 2024.

The purpose of exchanging this information is to combat tax evasion and avoidance. The information exchanged facilitates tax authorities to levy tax correctly and fairly. The application by tax authorities of legislation that contributes to the prevention of tax avoidance or tax evasion is more effective when information can be exchanged quickly and completely. This underlines that the exchange of information between tax authorities must continue unabated.[30]

To improve the practice surrounding data exchange, the European Commission set up an Expert Group. This Expert Group examines the use of data collected in the context of international data exchange and the quality of the data provided by Member States. This group, in which the EU Member States are represented, started in July 2022. In the first part of the study by this Expert Group, a questionnaire was drawn up for the Member States (period July 2022 to December 2022). The second part of this study, which started in January 2023, will involve visits to EU Member States. The Netherlands will be visited by this Expert Group in the autumn of 2023. A report will be issued on this.

Open standard of the capital requirement for conduit companies (amendment 8c of the Corporation Tax Act)
The Conduit Companies Committee has recommended that the safe harbour in Article 8c of the Corporation Tax Act 1969 for companies through which interest flows be deleted and replaced by an "open standard". On the basis of this safe

[30] See Parliamentary Papers II 2020/21, 25087, no. 280. 6.

harbour, an interest conduit company that falls within the scope of Article 8c of the Corporation Tax Act 1969 is deemed to run a real risk with regard to its related loans if the equity of that interest conduit company is the lowest of 1% of the amount of the outstanding loans or € 2,000,000. Instead of this safe harbour, the committee recommends assessing whether there is a real risk (open standard) based on the facts and circumstances of the case. This is in keeping with a more economic approach. This makes it less attractive for conduit companies to establish themselves in the Netherlands. This recommendation is also included in the report of the Advisory Committee on Taxation of Multinationals (2020), although the Advisory Committee did not reach consensus on the desirability of this measure.

In the government's response to the recommendations of the Conduit Companies Committee and in the tax policy agenda, the government has indicated that it would examine whether, and if so, how an open standard can be introduced in Article 8c of the Corporation Tax Act 1969. Due to this government having a caretaker status, it is up to the next government to take further steps in this regard. The government submits to the working group of the "Building blocks for a better and simpler tax system 2024" to make proposals to this end.

Tackling tax structures
The government is committed to tackling tax structures by applying national measures as well. In the 2023 Budget Memorandum, the government included an assignment of €162 million by 2024, increasing to a structural €550 million from 2027, to tackle notable tax structures and (improper use of) tax schemes. Tax structures involve the structuring, transforming or shifting of transactions, income, profit and capital in such a way to reduce tax payments to a minimum. This use is at odds with what the legislation intended when it was introduced. So these can be ways to avoid taxes. In order to execute the assignment, an assessment was made taking stock of existing tax structures. This involved an examination of the full width of the tax system.

In the letter to the House of Representatives dated 19 September,[31] the government informed you in detail about the outcome of the assessment and the execution of this assignment. For example, the government is tightening its efforts against dividend stripping as from 2024. The government also wants to tackle the division of activities between different companies by removing the threshold of the earnings stripping measure specifically for property companies with property leased (to third parties). This measure requires more time for thorough elaboration and, with a view to the proceeds included in the 2024 Budget Memorandum, a legislative bill is being prepared that can be presented to your House with the 2025 Tax Plan. Ultimately, the government was able to largely and structurally execute its assignment by tackling various structures *and* tax expenditures that were recently evaluated with a negative outcome. Of the €550 million assigned, an amount of €71 million remains. This means that structurally, more than 90% of the assignment has been completed. The letter also discusses other measures from the 2024 Tax Plan Package that tackle tax structures, but the proceeds of which do not contribute to the execution of the assignment. This concerns the legislative bill for the Mutual Funds and Exempt

[31] Parliamentary Papers II 2023/24, 32140, no. 175.

Investment Institutions Amendment Act and the legislative bill for the Fiscal Investment Institutions Amendment Act.

In addition, the government is still investigating various concrete measures for notable tax structures that have been assessed. I refer to the aforesaid letter to the House of Representatives for a complete overview of assessed structures, the concrete approach thereto in the 2024 Tax Plan Package and the approach in future tax legislation.

6. Ongoing investigations

Investigation into permanently loss-making companies
The report of the Advisory Committee on Taxation of Multinationals (2020) found that some companies suffered losses from a tax perspective each year. From an economic perspective, it is strange that a company continues to exist without making a profit for so long. The committee has therefore recommended to conduct further investigation into these companies. The investigation is ongoing and scheduled for publication at the end of this year. I will inform the House about the results in a separate letter.

The investigation focuses on structurally loss-making companies: these are companies that never made a taxable profit between 2010 and 2019, are not a start-up and still operated in 2019. There are approximately 50,000 such companies, accounting for 6% of all corporation tax returns by companies liable to pay corporation tax in 2019.

Because of the losses, these companies do not pay corporation tax. An important question is to what extent tax facilities or undesirable structures play a role in the losses of these companies. On the other hand, it is also possible that these companies carry out specific activities for which very long-term (start-up) losses are common. In recent years, financing options have been relatively extensive driven by low interest rates. The aim of this investigation is to gain more insight into which types of companies make long-term tax losses and what economic or tax reasons can be found for this.

Investigation effective rate based on commercial profit
In the report of the Advisory Committee on Taxation of Multinationals (2020), tax return data was used as a starting point for calculating the effective tax burden. However, without data regarding the commercial financial statements of these companies, it remains unclear how the declared taxable profit by multinationals, and therefore any tax paid, relates to actual business-economic reality. The Advisory Committee concludes that, although differences do not necessarily have to be the result of aggressive tax planning, they could nevertheless provide important reference points for more in-depth investigations into the causes of differences in the effective burden of multinationals, and thus the extent to which tax avoidance strategies play a role therein. The Advisory Committee has therefore recommended further investigation into differences between tax and commercial data.

The investigation is ongoing and scheduled for publication at the end of this year. I will inform the House of the results in a separate letter, together with the results regarding the investigation of structurally loss-making companies (see above).

Department of General Tax Policy

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The investigation focuses on differences between commercial and taxable profits. This is specifically investigated in the event of large, non-financial companies (with balance sheet totals exceeding EUR 40 million) for which data is available from Statistics Netherlands (CBS) regarding commercial profit data. In 2018, there were approximately 2,500 of such groups of companies. The taxable profit data for these groups of companies is based on tax return data linked from the corporation tax register. The investigation compares differences between commercial and taxable profit data at both an aggregated level and at company level. Differences are broken down by, among other things, globalisation status and sector.

7. Conclusion

It is important for the government to continue to monitor the effects of tackling tax avoidance annually. For some measures it is still too early to draw conclusions about their effects. However, the effects of the withholding tax appear to be lasting. This because the sharp decline in the total income flow to LTJs since 2019, which could already be reported last year, is perpetuating. Whereas the outgoing income flow to LTJs still amounted €38 billion in 2019, since the introduction of the withholding tax this has fallen sharply to an amount of €6 billion in 2022. The remaining income flow largely concerns dividends/retained earnings. Dividends will fall within the scope of the withholding tax with effect from 2024. Moreover, there is no observable effect in which income flows would be diverted via other conduit jurisdictions.

The government, albeit outgoing, continues its fight against tax avoidance unabated. Important and major steps are still taken at international level. The government is also taking further steps at national level, for example by strengthening its efforts against dividend stripping and the measure against splitting up activities among different companies for property companies with property leased (to third parties). In addition, the government is still investigating various concrete measures for notable tax structures that have been assessed.

Yours faithfully,

the State Secretary for Tax Affairs and Tax Administration

Marnix L.A. van Rij