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Ons kenmerk
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Uw brief (kenmerk)

Bijlagen
(geen)

Datum 4 december 2024
Betreft Follow-up from the thirty-member debate on an additional taxation for the extremely wealthy

Dear Chairman,

During the 30-member debate on additional taxation for the extremely wealthy on the 4th of April this year, the taxation of very wealthy persons was discussed at length.

The motions of members Dijk and Maatoug¹ and members Idsinga and Van Eijk,² respectively, request the government to continue making efforts for a worldwide minimum tax on extremely wealthy persons and to form a coalition with as many other countries as possible. Motions to this effect by Member Van der Lee and Member Alkaya were previously adopted.³ The other motion by members Dijk and Maatoug⁴ requests the government to form a coalition at the EU level for the introduction of an EU exit tax for very wealthy individuals and also to develop a national proposal for an exit tax in line with other EU countries that have already done so. This request is also echoed in the motion of Members Idsinga and Van Eijk mentioned above. Finally, the motion by members Dassen and Grinwis adopted during the General Financial Considerations meeting on October 3 also requests the government to look into working out policy options for exit taxation.⁵

In this letter, I will first discuss international developments regarding the taxation of very wealthy individuals. Next, I will discuss the existing exit taxes of the Netherlands and a number of other European countries, and then I will set out which policy aspects are relevant for a possible drafting of an exit tax similar to those of these European countries. Implementation aspects for the Tax Administration will be elaborated upon and taken into consideration at a later stage.

International developments regarding the taxation of very high net worth individuals

The taxation of very wealthy individuals is also on the agenda of the G20, and the G20 has now invited the Inclusive Framework (IF) of the OECD to consider

¹ Kamerstukken II 2023-24, 25087, nr. 330.

² Kamerstukken II 2023-24, 25087, nr. 333.

³ Kamerstukken II 2023-24, 36418, nr. 74 en Kamerstukken II 2023-24, 36418, nr. 76.

⁴ Kamerstukken II 2023-24, 25087, nr. 331.

⁵ Kamerstukken II 2023-24, 36 600 IX, nr. 23.

making work of this theme.⁶ The Netherlands wants to make an active contribution and, where possible, work together with like-minded countries. The Cabinet wants to explore whether international agreements can be reached on the taxation of very wealthy individuals and households. National tax systems are not well aligned in the areas of income tax, wealth tax, and gift and inheritance tax, as a result of which wealthy individuals in particular - similar to multinational companies - are able to minimize their tax burden worldwide.⁷ This effect is compounded by the fact that several countries have adjusted their tax systems in recent decades to attract very wealthy individuals or scarce workers. International cooperation committed to a level playing field in the taxation of the very wealthy can counteract tax competition and global erosion of the tax base and loss of tax revenue.

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The Netherlands has therefore called attention to this issue on several occasions and provided substantive input. For example, at the end of May of this year, during a meeting of the Inclusive Framework of the OECD (IF), a discussion took place on the wealthy in the context of 'Tax and Inequality' in which the Netherlands actively participated.⁸ In the meeting and in preceding discussions reference was made to, among other things, the findings of the Dutch Interdepartmental Policy Research (IBO) Wealth Distribution, which were presented by the Netherlands. The Netherlands emphasized that it is important to first examine the problem step by step in an international context before firmly advocating a particular solution. This is also important to maintain and increase support. How to shape a work stream on this theme will be explored within the IF. For example, it is important to carefully consider the scope of the work stream, because the topic must be relevant to a broad group of countries in the IF and not every country has the same target group in mind. Here, too, the Netherlands wants to make an active contribution and, where possible, join forces with like-minded countries.

In working out first concrete steps, consideration could be given to expanding the current exchange of information on financial account information and share ownership to also include ownership of real estate and other non-financial assets. Exchange of information helps countries ensure that taxpayers comply with existing laws and regulations. At the same time, we could examine existing issues within the various national systems, as was done for the Netherlands in the IBO Wealth Distribution and successive CPB studies, so that these issues can be addressed. It is also necessary to examine how the tax policy of one country affects the tax policy of another country, including the aspects of tax treaties involved. Consider, for example, tax regimes that various countries have set up in recent decades to attract wealthy individuals from around the world. The Netherlands is therefore in favour of examining in an IF context whether and on the basis of what criteria harmful regimes aimed at very wealthy individuals and households should be assessed.

⁶ See paragraph 13 of <https://www.g20.org/en/documents/documents-resulting-from-the-3rd-g20-finceministers-and-central-bank-governors-meeting-rio-de-janeiro-25th-and-26th-of-july-2024/1-g20-ministerialdeclaration-international-taxation-cooperation.pdf>, paragraph 30 of <https://g20.utoronto.ca/2024/241024-finance-communique.html>, and paragraph 20 of <https://www.g20.org/pt-br/documentos/declaracao-de-lideresdo-g20-brasil/g20-rio-de-janeiro-leaders-declaration-final.pdf/@download/file>.

⁷ See also Belastingen in maatschappelijk perspectief – Bouwstenen voor een beter en eenvoudiger belastingstelsel, 2024. Kamerstukken II, 2023/24, 32140, nr. 180.

⁸ See for the report on the IF-meeting Kamerstukken II 2023-24, 25087, nr. 331.

It is preferable to in the first instance put this subject on the agenda in as broad an international context as possible rather than in an EU context, because this issue can best be addressed if as many countries as possible participate. Moreover, international agreements are more appropriate because countries that apply preferential regimes for very wealthy individuals are often not part of the EU. However, the Netherlands has - parallel to its efforts at the OECD/IF - brought the taxation of very wealthy individuals to the attention of the recently appointed European Commission in the context of setting its priorities.

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Variants of taxation on or after emigration

There are different ways of dealing with the taxation of emigrating individuals and households. A distinction can be made between rules related to a taxpayer's tax residence, exit taxes and trailing taxes.

Rules related to the tax residence of a taxpayer serve to determine whether a taxpayer is resident in a country and the relevant country therefore is entitled to tax the taxpayer over its worldwide income. Thus, strictly speaking, these rules are not a tax on or after emigration, but are designed to determine whether or not emigration has actually occurred and whether or not the country from which the taxpayer claims to emigrate can still fully tax the taxpayer as a resident of that country. Under Dutch law, a person is a resident here if he has durable ties of a personal nature with the Netherlands.⁹ If a person is also considered a resident under the laws of another country, and there is a tax treaty with that country, the "tiebreaker" of the treaty determines which of the two countries the individual is a resident of. In the event that an individual no longer has durable ties with the Netherlands or is a resident of another country under a tax treaty, the individual in question will no longer be fully taxed, but will remain taxable for income from sources located in the Netherlands. These rules are highly dependent on facts and circumstances. In this regard, I would like to draw your attention to the evaluation currently taking place, following a motion by Members Idsinga and Van Eijk,¹⁰ regarding the objectives, current regulations, and enforcement and implementation practice surrounding the determination of tax residence in the Netherlands (in the remainder of this letter 'the evaluation of residence audits').

An exit tax is defined as a tax levied upon emigration on capital gains or income accumulated in the period prior to emigration in the country from which emigration takes place. These taxes are meant to prevent that as a result of emigration no income, capital or gift and inheritance tax can be levied on capital gains that accrued in that country and were untaxed until then.

A trailing tax is an extended tax liability, whereby the country of emigration also taxes income and/or capital gains accrued in another country after emigration. A trailing tax goes beyond the normal rules regarding tax residence and treats the emigrant as a domestic taxpayer for several years after moving abroad. Trailing taxes come in two variants. The first variant concerns rules that apply only if the emigrant retains some ties with the country of emigration, even though the international residency concept is no longer met. The second variant concerns rules where such ties – except for nationality – do not play a role (pure trailing taxes). The idea behind a trailing tax is that a person has created his or her income and wealth potential in the country from which he or she is emigrating,

⁹ HR 20 december 1995, nr. 30452, BNB 1996/161.

¹⁰ Kamerstukken II 2023-2024, 25087, nr. 334.

thanks to the collective facilities in that country (education, healthcare, housing, infrastructure, etc.). If then this potential is actually used and converted into income growth and capital appreciation and the person in question emigrates to a country with no or a low tax burden, this is seen as a form of tax avoidance and as unfair. The person is then still required to contribute to public services in the form of a tax. The country of emigration taxes the income and capital gains realized in the destination country for a certain number of years. Trailing taxes are less common because they are also levied on income or wealth earned or accumulated in another country and the other country may also want to tax this income, so a trailing tax touches on the fiscal sovereignty of that country.

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Below, I discuss the existing exit taxes in the Netherlands, including a levy that will be elaborated on in the proposed legislation regarding box 3. Then, as promised by my predecessor, I describe the trailing taxes of Germany, Finland, Spain, Portugal, and France. For an overview of the exit taxes of other European countries, I refer to the annex to this letter. This is taken over from the parliamentary letter 'Continuation taxation high net worth individuals'.¹¹ Finally, I discuss some choices that would need to be made in the potential design of a trailing tax in the Netherlands or the EU. The enforceability of these variants and implications for the Tax Administration still need to be examined in more detail.

Existing taxes in the Netherlands upon emigration

Exit tax on income tax box 1

An exit tax applies when someone with profits from business (an IB entrepreneur) or results from other activities emigrates and ceases to realize profits or results in the Netherlands. In that case, the hidden and fiscal reserves are included in the final settlement in the taxation in box 1. This prevents unrealized capital gains or goodwill originating in the Netherlands from falling outside the Dutch tax base. If the person in question had continued to live in the Netherlands, Box 1 tax would also have been paid at some point, for example when the IB company or the activity from which income is derived would cease to exist.

Exit tax on income tax box 2

There is a deferred tax claim on the appreciation of capital relating to a substantial shareholding. This is because substantial shareholding income is only taxed upon realization, i.e. in case of dividend distributions or when the shares are disposed of. If a substantial interest holder emigrates, the increase in value (not yet taxed in box 2) is regarded as a fictitious alienation of the substantial interest and a preserving tax assessment is imposed on the appreciation of capital.¹² This preserving assessment prevents the loss of the substantial shareholding claim accrued in the Netherlands resulting from the emigration. Because the capital gain has not yet been realized in the case of fictitious alienation, the preserving assessment does not have to be paid immediately and payment is deferred under certain conditions. At the moment the emigrated substantial shareholder actually realizes income from his substantial shareholding, (part of) the deferral of payment ends and the preserving tax assessment is collected.

¹¹ Kamerstukken II 2023-24, 25087, nr. 323.

¹² The capital gain realized upon alienation is the difference between the fair market value of the shares at the moment of emigration and the acquisition price of those shares. The preserving tax assessment in principle remains effective indefinitely since 15 September 2015 and there is no longer a waiver after a 10-year period.

The Supreme Court has confirmed in several court cases that this exit tax does not violate the agreements in Dutch tax treaties. However, this does not take away the fact that a concurrence of taxation may occur if the new country of residence also levies tax on the distributions or capital gains. Therefore, the Netherlands aims to include specific agreements in tax treaties that assign the right to levy tax to the Netherlands. In the absence of these agreements in tax treaties, the Netherlands unilaterally steps back so that emigrated taxpayers are not taxed more heavily than if they had continued to live in the Netherlands. This means that no tax is levied by the Netherlands to the extent that the other country actually taxes the income. If a lower rate applies in the other country, the Netherlands will tax the income up to the rate applicable in the Netherlands.

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Exit tax on pensions and annuities

The Netherlands also applies an exit tax to accrued pensions and annuities at emigration. When accruing a pension or annuity, the 'reverse rule' is applied: the entitlement is untaxed and the payment is taxed. This means that the premium is not taxed in box 1 and the accrued capital is not taxed in box 3. Only when the pension or annuity is paid out is this payment taxed in Box 1.¹³ A preserving tax assessment can be imposed if an individual emigrates from the Netherlands, the idea being that he has built up pension or annuity in the past by using the Dutch tax facilities. The protective assessment essentially relates to the economic value of the accrued pension rights at the time of emigration, or to the annuity premiums deducted in the past plus the return realized thereon. The tax claim is actually collected if a so-called tainted transaction occurs. If, as a result of a tax treaty, the Netherlands has no right to levy tax on the pension or annuity income, the levy will be limited to the untaxed claims and contributions, or the deducted premiums.

Exit tax proposed legislation actual return box 3

The proposed legislation on the actual return box 3 develops a regulation under which a taxpayer is deemed upon emigration to have disposed of certain box 3 assets at fair market value. This relates to assets that are taxed upon realization, namely real estate and shares in innovative start-ups and scale-ups. Here, as with the exit tax of a shareholder with a substantial shareholding, a preserving tax assessment is imposed which does not have to be paid immediately as a deferral of payment will be granted under certain conditions. If the relevant property or shares subsequently generate income or are alienated, the deferral of payment may end (partially or fully).

Trailing tax gift and inheritance tax

Finally, the gift and inheritance tax contains a provision regulating that a Dutch national who makes a gift or dies within 10 years of leaving the Netherlands is deemed to be living in the Netherlands at that time. The same applies to persons without Dutch nationality who lived in the Netherlands up to one year prior to making a donation.

On significant elements of income and capital, the Netherlands therefore already has variations of exit taxes or trailing taxes.

¹³ See Kamerstukken II 2022-23. 36200 X, 32043, nr. 44 for an explanation regarding the fiscally facilitated pension accrual via the 2nd and 3rd pillar.

Taxation on emigration in some other countries

Regarding trailing taxes, a further distinction can be made between rules that only apply if the emigrant retains some connection to the country of emigration, and rules where no such connection is required (pure trailing taxes). The regulations of Finland and Germany belong to the first category, and the trailing taxes of Spain, Portugal and France to the second.

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Finland

Finland has a specific regulation for emigrations with respect to the determination of a taxpayer's residence. A person with the Finnish nationality who emigrates to another country is fully taxed as a Finnish resident for income tax purposes for a total of three more years, unless he can prove he no longer has essential ties with Finland. If the stay abroad is temporary, it will in principle be assumed that essential ties with Finland remain in place. In the case of a permanent move, the following factors, among others, will be considered to determine whether the emigrant retains essential ties with Finland:

- he or she retains a permanent residence in Finland;
- his or her spouse continues to live in Finland;
- he or she continues to own property in Finland, with the exception of a holiday home;
- he or she remains covered by the Finnish social security system;
- he or she runs a business in Finland; or
- he or she performs labour or personal services in Finland.

Finland grants a credit for any tax paid in the new country of residence.

Contact with the Finnish Ministry indicates that the enforcement burden of the three-year rule for the Finnish tax administration is relatively limited, as it is up to the taxpayer to prove that he or she no longer has essential ties with Finland. However, the rules do require some prioritisation in the implementation work, where, for example, the size of the tax interest is a relevant element.

Germany

Germany also applies a specific regulation regarding tax residence on emigrations. A German national emigrating to another country remains liable to income tax for income attributable to Germany for another 10 years if the following three conditions are met:

- 1) in the 10 years prior to emigration, he or she was subject to taxation on his worldwide income in Germany for at least five years;
- 2) he or she is emigrating to a country with no or low taxation; and
- 3) he or she retains essential economic ties with Germany.

No or low taxation is assumed if the tax payable is more than one-third lower than it would have been in Germany for a single person with an annual income of €77,000. The same applies if the taxpayer owes significantly less tax than other taxpayers in that country due to a special regime.

Essential economic ties with Germany exist if, among other things, one of the following criteria is met:

- 1) he or she holds an interest in a company established in Germany of at least 1%;

- 2) he or she receives income from Germany that exceeds either 30% of his worldwide income or €62,000; or
- 3) the assets that would give rise to income in Germany if he or she were a resident taxpayer exceed either 30% of his total assets or €154,000.

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Contact with the German Ministry suggests that these rules are more difficult for the tax authority to enforce than the Finnish variant. The difference seems to be explained by the fact that under the Finnish scheme, it is up to the emigrant to prove that there are no longer essential ties with Finland, whereas under the German scheme, the burden of proof is on the tax authorities.

Spain

A Spanish national that emigrates to a jurisdiction that qualifies as a non-cooperative jurisdiction is taxed as a Spanish resident for a total of five more years. This is a pure form of a trailing tax. In addition, residents of these jurisdictions are excluded from certain income tax benefits.

The list of non-cooperative jurisdictions is set by ministerial regulation and is based, among others, on the OECD¹⁴ and EU list¹⁵ of non-cooperative jurisdictions. Spain uses three parameters to adjust the list, namely (i) the degree of transparency between Spain and the other country, (ii) whether the country facilitates profit shifting to offshore companies with no real economic activity and (iii) whether the country has no or low taxation.

Portugal

When emigrating to a country with a more favourable tax regime, a person of Portuguese nationality is deemed to be a Portuguese resident for income tax purposes for a total of five more years. This too is a pure form of a trailing tax. Portugal has drawn up a list of countries for this purpose. This tax does not apply if the individual can prove that his tax residence in the other country is justified, for example because he is carrying out a temporary activity for a Portuguese entity.

France/Monaco

A person of French nationality residing in Monaco is taxed in the same way as a French resident. There is, however, an exception for persons who have lived in Monaco their whole lives. This tax therefore only covers Monaco residents with French nationality and does not apply to Monaco residents with the nationality of another country. In that case, the national legislation of that country and any tax treaty between Monaco and that country determine the tax treatment of the relevant Monaco resident.

This tax was agreed in 1963. Its historical background is very complex. There were major political tensions between France and Monaco at the time, which, among other things, touched on Monaco's sovereignty and tax policy and led France to close its borders. This tax is part of a broader agreement between the two countries to ease those tensions. While a relevant factor in the agreement was that many wealthy French residents emigrated to Monaco to avoid paying tax on their income, it is difficult to translate the situation to the Dutch situation. This

¹⁴ This refers to the peer reviews carried out within the Global Forum on Transparency and Exchange of Information for Tax Purposes in the context of the international standards developed by the OECD for the exchange of information.

¹⁵ <https://www.consilium.europa.eu/nl/policies/eu-list-of-non-cooperative-jurisdictions/>.

means, for instance, that it would be more feasible for the Netherlands to introduce a unilateral tax than to make such an agreement with Monaco.

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Aspects relevant for designing a trailing tax

When designing a tax that taxes emigrated residents as if they were still domestic taxpayers, choices would need to be made regarding various aspects of such a tax. These options are presented below for a variation of a trailing tax that could possibly be implemented by the Netherlands. These options, among other things, draw from the legislation of the countries described above. Specific considerations that would come into play for a European trailing tax are discussed in a later section of this letter.

Hereby I would like to emphasise that these are policy aspects of a trailing tax. Implementation aspects for the Tax Authorities are left aside for the time being. For legislation regarding the tax residence of a taxpayer, please refer to the aforementioned ongoing evaluation of residence audits.

The following aspects are relevant to the design of a trailing tax:

1. Nexus: a trailing tax would apply to individuals who have or have had sufficiently strong ties with the Netherlands, because they have been able to benefit from public services here. This nexus could be based on having the Dutch nationality. In addition or instead of this criterium, the condition could be set that the emigrant has been subject to income tax in the Netherlands on his worldwide income for a number of years prior to emigration. Here, to mitigate avoidance possibilities, a longer period prior to emigration of which the individual has been a domestic taxpayer for a certain period of time (e.g. five out of 10 years prior to emigration) could be considered.
2. Target group: a trailing tax aimed at very wealthy individuals could impose a requirement on the amount of income or capital the individual has at the time prior to emigration. A choice has to be made whether to look at income, assets, or both. For example, the trailing tax could apply if the income in box 1 is higher than the general remuneration maximum under the Wet normering topinkomens (currently EUR 233,000). In addition, for box 2, a minimum amount of the fair market value (WEV) of the substantial shareholder's substantial interest could be applied, for example. Based on the data of the IBO Wealth Distribution, it is estimated that with a limit of EUR 1 million regarding the WEV of the substantial shareholding, approximately the richest 1% of Dutch citizens would be affected. This could include, for example, the average of the previous three years to reduce opportunities for structuring. For box 3, either the actual return on the assets in box 3 or the value of those assets themselves could be considered. This threshold can also be designed in a way that, for example, only the richest 1% of Dutch citizens are affected.
3. Duration: it must be determined how many years the individual would be taxed after emigration as if he were still a domestic taxpayer. The number of years generally used by other European countries is between three and 10 years. The number of years that the trailing tax applies could depend on the duration of Dutch residency prior to emigration.
4. Jurisdiction of destination: when designing a trailing tax, choices have to be made in relation to which destination jurisdictions the levy would be effected. If the purpose of the levy is to prevent tax flight, the obvious choice would be to limit this group of jurisdictions to those with no or a low taxation. Here, a material tax burden comparison could be made between the Netherlands and

the jurisdiction of destination, as with the German regulation. The trailing tax would then apply if the emigrant pays less than X% of the tax compared to if he would have remained subject to unlimited domestic tax in the Netherlands. This could be based on a standard situation that could, for example, align with the income and wealth thresholds above which the measure would take effect. Generous regimes leading to lower taxation in the jurisdictions of destination in comparison to income not subject to the regime should also be taken into account. An alternative to the material tax burden comparison is to use a list of jurisdictions or regimes covered by the trailing tax, as Spain and Portugal do. While such a list would improve enforceability of the tax, it may create tensions in the diplomatic sphere.

5. International rules: in light of existing international agreements, the trailing tax would be limited to jurisdictions with which there is no tax treaty or where there is a tax treaty that allows imposition of the trailing tax in situations where a preferential tax regime applies to the individual. This is further elaborated below.
6. Possible tax credits: the trailing tax may allow the taxpayer to credit tax they pay in their new jurisdiction of residence against the Dutch tax base. In addition, emigrants should be able to credit tax levied in third countries against their tax base to the same extent as other domestic taxpayers. Without these safeguards, the trailing tax could lead to double taxation.
7. Possible rebuttal: finally, a rebuttal option could be included for situations in which a person moves to a country for legitimate reasons. This could be an open norm, or a list of specific circumstances where there of legitimate reasons are presumed, e.g. because the emigrant will perform a temporary activity for a foreign branch of a Dutch company. A rebuttal rule offers more room to take the taxpayer's specific circumstances into account, but would also mean that the measure is considerably more difficult to execute for the Tax Administration.

When making choices about the design of a trailing tax, it is important that the final variant is proportionate. When drafting possible legislation, it is important to consider any possibilities to make the measure work in a targeted way while improving taxpayer protection.

If a trailing tax were designed at the EU level, choices would have to be made regarding the aspects mentioned above. For instance, countries could agree to implement the measure only towards countries outside the EU or the European Economic Area (EEA, within which similar rules apply). An additional aspect is the distribution of taxing rights if a natural person has lived in several European or EEA countries before emigrating to a third country in relation to which the trailing tax could be applied. The design of the tax should then take into account that such a distribution of taxing rights could result in taxpayers planning out the most favourable tax route (possibly through the use of constructions). Designing a trailing tax at the EU level would probably take several years.

Relationship with tax treaties

If a Dutch citizen moves to another jurisdiction, a tax treaty with that jurisdiction may apply. Tax treaties distribute taxing rights over income (and sometimes capital) of individuals who are residents of one or both countries. Under an applicable treaty, the Netherlands can only tax an individual over his world income if he qualifies as a resident of the Netherlands under both Dutch law and the treaty. The treaty contains a provision regulating in which jurisdiction an

individual resides if he is considered resident by both treaty jurisdictions. This provision may take into account, for example, where the individual has a permanent home at his disposal, and where his personal and economic relations are strongest.¹⁶

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An individual is currently considered a Dutch resident for the purposes of Dutch law if he has durable ties of a personal nature with the Netherlands. This follows from Article 4 of the Algemene wet inzake rijksbelastingen and Dutch case law. A new trailing tax could fictitiously consider an individual as a Dutch resident for several years after emigration (where the durable ties with the Netherlands have been severed). However, the Netherlands would still lose its taxing rights on the individual's worldwide income under the treaty if the individual qualifies as a resident of the other country based on the aforementioned provision. In that case, the Netherlands would only be able to levy tax on income from Dutch sources for which the taxing right is assigned to the Netherlands. The trailing tax would not lead to any taxation by the Netherlands in this case.

Thus, a measure that taxes emigrated individuals after emigration as if they were still domestic taxpayers would only be effective under a tax treaty if the individual qualifies as a resident of the Netherlands based on the aforementioned provision. If a person actually emigrates to the other country, this will usually not be the case. Because of the Netherlands' extensive treaty network, this means that a trailing tax could only be applied towards a limited group of countries. If, in relation to certain countries with which the Netherlands has a tax treaty, it would be desirable to implement a trailing tax, for example because the country in question has no income tax at all or applies a fiscally advantageous regime, a tax treaty could be designed in such a way in consultation with that country that a trailing tax could be enforced in relation to that country. Finland, for example, has included such a provision in a dozen tax treaties. However, experience has shown that amending a tax treaty - especially if there is a desire to do so by only one of the two countries - is difficult and takes a long time. Consequently, Finland has not been able to agree on such a provision in its more recent treaties.

Relationship with European freedoms

EU-rules on the free movement of persons can affect the taxation possibilities of member states. In this context, two cases regarding taxation at emigration are relevant.

The ECJ has ruled that it is consistent with EU law for member states to use the nationality of their nationals as relevant nexus for the member state's taxing rights even after emigration.¹⁷ This decision concerned the trailing tax included in the Dutch inheritance and gift tax providing that a Dutch national who dies or

¹⁶ The OECD Model Tax Convention, that in principle forms the basis for Dutch tax treaties, includes the following provision: "Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a. he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
d. if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement."

¹⁷ See the case of 23 February 2006, van Hilten-van der Heijden, C-513/03, ECLI:EU:C:2006:131.

makes a gift within 10 years of emigration is deemed to have been resident in the Netherlands at the time. In addition, the ECJ ruled that the time of emigration to another EU or EEA member state, regardless of the nationality of the taxpayer, may also qualify as a taxable event for the purpose of taxing capital gains accruing during the stay in the territory of the member state. However, the court held that recovery of the tax should not take place earlier than if the individual had not emigrated and no guarantees should be required to secure recovery.¹⁸

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A national trailing tax can (depending on its design) be in accordance with EU law if it is limited to persons with Dutch nationality. Other EU countries with such legislation for emigrants also only apply this tax to their own nationals.

It is of importance here that the Netherlands has a tax treaty with all countries of the European Union and a national 'trailing tax' cannot be effected in relation to those countries. In order to avoid any doubts about the compatibility of a national trailing tax with EU-law, it could be decided to only apply it to countries outside the EEA. This also leaves room to choose nexus criteria other than nationality.

Conclusion

Based on this analysis, I conclude that the Netherlands already has exit taxes for various taxes and that a trailing tax in the Dutch income tax would primarily function in addition to and/or on the basis of existing international rules and that its effect is assumed to be relatively limited in the coming years. Given the extensive treaty network of the Netherlands, a trailing tax could be effectuated immediately upon implementation in a limited number of cases, namely in relation to jurisdictions with which no treaty exists. These do include a number of jurisdictions with no or low taxation, such as Monaco. However, the Netherlands does have a tax treaty with a number of jurisdictions with low taxation or a favourable tax regime for very wealthy individuals. This requires that the tax treaty would first need to be amended before a trailing tax could be implemented. This is usually a lengthy process. An alternative would be to make global agreements about abolishing harmful preferential tax regimes, for which the Netherlands is an advocate at the OECD, or allowing effectuation of a trailing tax in such cases under tax treaties as well. These alternatives do take some time to implement, because they require support from a large group of countries.

To help decide whether the introducing a trailing tax is appropriate, it is important to determine whether the objective of the tax is proportionate to the burden on the Tax Authorities and taxpayers. Even if a trailing tax can only be implemented towards a limited number of jurisdictions and a relatively small group of individuals, a trailing tax could be helpful, for example, where it concerns countries that have no income tax at all or a favourable tax regime. In addition, the potential tax revenues could be large due to the characteristics of the group. A next step that I therefore want to take is to provide reliable figures on how many people and with which income emigrate to a country with no or low taxation with which the Netherlands has not concluded a tax treaty and to map out the implementation consequences more accurately.

Finally

At this moment, the evaluation of the objectives, current regulations and the enforcement and implementation practice surrounding the determination of tax residence in the Netherlands is still taking place. If possible, this evaluation will

¹⁸ Case of 7 September 2006, N. C-470/04, ECLI:EU:C:2006:525.

also investigate the size of the potential target group and the tax revenues concerned.

In any case, I attach importance to making agreements about the effective taxation of very wealthy individuals in an international context and I want to make an active contribution in this respect and, where possible, work together with like-minded countries. I will continue to inform you about progress made.

Yours sincerely,

The Minister for Tax Affairs, the Tax Administration and Customs

T. van Oostenbruggen

**Directie
Verbruiksbelastingen,
Douane en Internationale
aang.**

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