Ministerie van Financiën

> Retouradres POSTBUS 20201 2500 EE 'S-GRAVENHAGE

Voorzitter van de Tweede Kamer der Staten-Generaal

Postbus 20018
2500 EA DEN HAAG

Directie Algemene Fiscale Politiek

Korte Voorhout 7
2511 CW 'S-GRAVENHAGE
POSTBUS 20201
2500 EE 'S-GRAVENHAGE
www.rijksoverheid.nl/fin

Ons kenmerk

Uw brief (kenmerk)

Bijlagen
(geen)

Datum 11-12-2024
Betreft Monitoring letter tax avoidance

In recent years many measures have been adopted to tackle tax avoidance by multinationals. The government monitors the impact of these measures in order to be able to assess whether its efforts are proving effective and reports on its findings in this annual monitoring letter. In this year's letter the impact of many of the measures is being reported on for the first time.

The analyses have shown that some key measures to tackle tax avoidance have indeed proven to be effective in reducing it. The conditional withholding tax on interest, royalties and dividends has contributed to a substantial reduction in financial flows to low-tax jurisdictions, from €37 billion in 2019 to €7 billion in 2023. Taxpayers affected by the earnings stripping measure under the first EU Anti-Tax Avoidance Directive (ATAD1)[1] pay less interest and have less debt than taxpayers not affected by the measure. The practice of deferring tax by means of hybrid CV/BV structures is also being tackled effectively by the second EU Anti-Tax Avoidance Directive (ATAD2).[2]

Sections 2 to 6 set out an analysis of each of the measures, the results of which are summarised in the table below. Section 7 describes developments in European and international legislation and regulations on tax avoidance in light of the motion submitted by MP Laurens Dassen.[3] In that section I will also address developments at national level (section 7.8).[4]

Measure	**Aim**	**Assessment of effectiveness**
Withholding tax	Preventing tax avoidance	Effective
Earnings stripping (ATAD1)	Preventing tax avoidance	Effective

[1] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016, L 193/1).
[2] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (OJ 2017, L 144/1).
[3] Parliamentary Papers, House of Representatives 2022/23, 36273, no. 7.
[4] In accordance with the undertaking given to senator Kees Vendrik during Senate deliberations on the 2022 Tax Plan (Proceedings, Senate 2020/21, no. 11, item 8, p. 29).

Measure	Aim	Assessment of effectiveness
	Encouraging equity financing	Effective to a limited extent
Supplementary CFC measure (ATAD1)	Preventing tax avoidance	Cannot be determined
Efforts to tackle hybrid mismatches: CV/BV (ATAD2)	Preventing tax avoidance	Effective
Limitation of liquidation and cessation loss relief	Balanced taxation of multinationals	Effective
Tackling mismatches in the application of the arm's length principle	Preventing double non-taxation	Cannot be determined at this stage – may be possible next year

It has not yet been possible to fully gauge the impact of all the measures that have been taken. The government will therefore continue to annually assess the impact of anti-tax avoidance measures.

1. Withholding tax on interest, royalties and dividends

The Withholding Tax Act 2021 entered into force on 1 January 2021. The withholding tax is intended to make the Netherlands less attractive for conduit arrangements to low-tax jurisdictions (LTJs) and to reduce the risk of tax avoidance arising from the shifting of the Dutch tax base to LTJs. Pursuant to this Act, withholding tax is due in certain cases, namely on interest and royalty payments that an entity established in the Netherlands makes to an associated entity established in an LTJ, and in situations of misuse. The withholding tax rate is equal to the top rate of corporation tax (currently 25.8%). With effect from 2024, the scope of the withholding tax has been extended to dividends.

In order to monitor the impact of the withholding tax, it was announced in 2020 that flows of income from the Netherlands to LTJs would be monitored with the aid of statistics from the Dutch central bank (DNB).[5] This is the third time that this monitoring exercise has been carried out. Table 1 shows the Netherlands' incoming and outgoing flows of income in relation to LTJs, broken down into interest, royalties and dividends. Compared with last time, table 1 has been expanded to include a breakdown of which portion of the flows goes to LTJs with which the Netherlands has concluded a tax treaty.[6] Table 1 also shows the Netherlands' total incoming and outgoing flows of income. For a further geographical breakdown, please refer to the DNB data.[7]

[5] Parliamentary Papers, House of Representatives 2019/20, 25087, no. 259.
[6] In 2023, that meant Bahrain, Barbados, Panama and the United Arab Emirates (UAE). As of 2024, the UAE has no longer been designated as an LTJ.
[7] See table 12.21 (in Dutch) at https://www.dnb.nl/statistieken/.

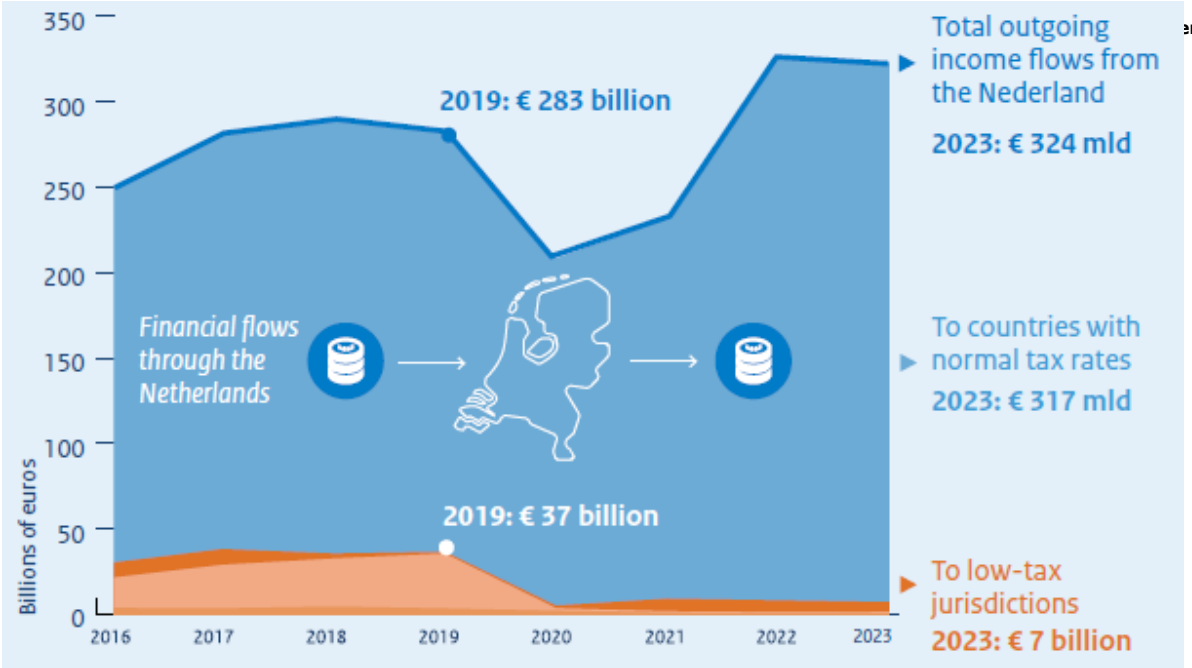


Table 1: Flows of income from and to low-tax jurisdictions and total for all countries (€ billions, source: DNB) [8]

Incoming	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Dividends (incl. retained earnings)	11.5	11.3	9.9	11.6	9.6	4.7	10.7	5.6	9.4
Interest	1.4	1.2	1.0	1.0	1.8	1.0	0.5	0.4	0.8
Royalties	1.0	1.4	2.2	1.0	1.1	0.4	0.5	0.6	0.8
Other income	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0
Total for LTJs	**14.0**	**14.0**	**13.2**	**13.7**	**12.6**	**6.1**	**11.7**	**6.7**	**11.0**
Amount of total that came from countries with which there is a tax treaty	3	2	3	2	3	2	3	5	4
Total for all countries	**269**	**259**	**296**	**312**	**300**	**213**	**282**	**352**	**352**
Outgoing									
Dividends (incl. retained earnings)	3.7	8.8	9.3	3.0	1.1	1.5	7.4	6.9	5.7
Interest	4.9	4.1	3.9	4.9	3.8	2.4	1.3	0.8	1.0
Royalties	19.3	17.6	25.4	28.1	32.1	1.5	0.8	0.8	0.8
Other income	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total for LTJs	**27.9**	**30.5**	**38.5**	**36.0**	**37.1**	**5.5**	**9.5**	**8.5**	**7.4**
Amount of total that went to countries with which there is a tax treaty	1	1	6	5	5	2	4	3	3
Total for all countries	**279**	**250**	**282**	**291**	**283**	**209**	**233**	**327**	**324**

[8] Income according to the DNB definition, comprised of total profit (distributed dividend and retained earnings), charges made for IP (royalties), interest and other income.

Table 1 shows that the substantial reduction in flows of income going to LTJs that was reported in recent years has proven to be enduring. Whereas the outgoing flow of income to LTJs in 2019 was €37 billion, since the introduction of the withholding tax it has fallen substantially to €7 billion in 2023. The table also shows that the remaining flow of income is overwhelmingly comprised of dividends and retained earnings (€5.7 billion in 2023). With effect from 2024, dividends too fall within the scope of the withholding tax. In the 2025 monitoring letter, which is to be submitted in the autumn of 2025, it will therefore be possible to report for the first time on the impact of the withholding tax on dividends.

Comparison with tax return data on withholding tax
Developments in the flows of income can be compared with data from the returns for the withholding tax filed with the Tax Administration. In 2021 there were 555 tax returns and a tax base of €0.24 billion in interest and royalty payments; in 2022, 360 tax returns and a tax base of €0.23 billion; and in 2023, 340 tax returns and a tax base of €0.47 billion.

The DNB statistics show a total interest and royalty flow of €1.8 billion to LTJs in 2023. The sums in the tax returns are therefore approximately €1.3 billion lower than the sums in the DNB statistics presented in Table 1. A similar discrepancy was identified and explained last year in the previous monitoring letter.[9] At a meeting with the permanent parliamentary committee on finance on 4 April 2024, the then minister for Tax Affairs and the Tax Administration undertook to consult with DNB to examine whether further study of this discrepancy was possible.[10] Consultations have taken place with DNB for this purpose, in which it was concluded that there are differences between the purposes for which macroeconomic statistics are complied, on the one hand, and for which tax returns are filed, on the other.[11] That, along with the rules on secrecy and confidentiality, makes it difficult to draw a direct comparison. Nevertheless, the discrepancy can largely be explained by two substantive causes. The first substantive cause is that a portion of the flows of income to low-tax jurisdictions goes to jurisdictions where, on account of a tax treaty, the Netherlands is not yet able to levy withholding tax.[12] Although these flows do not appear on the Tax Administration's radar, they are visible to the DNB and constitute €3 billion of the €7 billion total flow of income, including dividends and retained earnings (see Table 1). Given the potential for traceability, it is not possible to give a further breakdown of this sum, but it would be reasonable to expect that it accounts for a substantial portion of the discrepancy between the figures of the DNB and the Tax Administration concerning interest and royalty payments.

The second explanation is that in some cases the recipient entity in the low-tax jurisdiction is transparent for tax purposes (from the perspective of both the Netherlands and the other country). This means that the payments are taxed in the hands of the underlying parties or participants in the country in question. If that country is not a low-tax jurisdiction, the payments will be taxed sufficiently. For this reason, no withholding tax will be levied. However, for the purpose of the DNB statistics the payment will in fact count as a payment to a low-tax jurisdiction. Consequently, the tax data and the DNB statistics may diverge in

[9] Parliamentary Papers, House of Representatives 2023/24, 25087, no. 320.
[10] Parliamentary Papers, House of Representatives 2023/24, 25087, no. 340.
[11] See also the explanation set out in the previous monitoring letter.
[12] That means Bahrain, Barbados, Panama and the United Arab Emirates (UAE).

some respects. According to DNB, this is a plausible explanation for the discrepancy. It is not possible to analyse this further at micro-level due to the confidentiality of the data reported to DNB and of the Tax Administration's tax return data. We will continue to remain alert to any warning signs that arise in practice in relation to these tax-transparent structures.

2. Earnings stripping measure (ATAD1)

2.1 Impact measurement

The earnings stripping measure is derived from the first EU Anti-Tax Avoidance Directive (ATAD1)[13] and was implemented in the corporation tax rules as from 1 January 2019. The measure, which places a general limit on the deduction of interest, is aimed at preventing interest deduction being used for tax avoidance. It is also intended to bring about more equal tax treatment of equity and debt for corporation tax purposes. Interest deduction is limited in so far as the net amount of paid and received interest exceeds whichever is higher: 20% of EBITDA[14] or €1 million. The percentage was 30% in the period from 2019 up to and including 2021. With effect from 2022 it was reduced to 20% and in the bill approved by the House of Representatives for the 2025 Tax Plan it will be increased to 24.5% as of 1 January 2025.

Various analyses have been carried out to establish the impact of this measure. For the full analysis, I would refer you to the impact measurement in appendix 1 to this letter. The impact measurement evaluates the effect of the earnings stripping measure on interest and debt. It concerns the extent to which the intended effects of the measure have been achieved and does not constitute a full policy evaluation.[15] For instance, there has been no study of the unintended consequences of the earnings stripping measure, such as the negative impact on investments.

The impact measurement shows that the earnings stripping measure combats tax avoidance effectively, as enterprises have shifted less of their profits by means of interest deductions. This is partly due to the limitation on deduction itself: since 2019 a large amount of interest has been subject to an additional restriction on its deductibility. Whereas in 2018 €8 billion of deductions were restricted, in 2019 a total of €19 billion of interest was restricted and €15 billion in 2021. Dutch enterprises have also started paying less interest. Enterprises affected by the measure pay on a pro rata basis around 16% less in net interest (approx. €5 billion) than enterprises not affected by the measure. This reduction is mainly evident in the interest paid on loans to affiliated group entities.

In addition, the measure has, as intended, led to a reduction in debt. The total debt of enterprises affected by the measure has fallen by a limited extent (8%) as a consequence of the measure. It is also relevant in this respect that a considerable portion of that decrease seems to relate to debt provided by other group entities. Consequently, the capital structures of Dutch corporate entities

[13] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016, L 193/1).
[14] Earnings Before Interest, Tax, Depreciation and Amortisation.
[15] The European Commission is currently working on an evaluation of the ATAD1 directive. See: European Commission, «Anti-tax Avoidance Directive (ATAD) – evaluation», https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14287-Anti-tax-Avoidance-Directive-ATAD-evaluation_en.

have improved. But because the analysis shows that the effects of the measure mainly concern adjustments to intragroup loans, it is not possible to conclude that the capital structures of groups as a whole have also improved. As the impact on debt is substantially smaller than the impact on interest, it seems that, in addition to reducing the amount of debt, these enterprises have also reduced the interest rate on intragroup loans in order to limit the interest. This could be for example because enterprises have renegotiated intragroup loans and amended the conditions of the new loans in such a way that a lower interest rate would be appropriate.

2.2 Implementation of earnings stripping rule by EU member states

The bill for the 2025 Tax Plan included the anti-fragmentation measure: a measure to prevent real estate entities from 'subdividing' themselves so that each individual company can make use of the €1 million deduction threshold. Pursuant to the amendment submitted by MP Vermeer et al.,[16] this measure is no longer included in the bill. Consequently, the aforementioned 'fragmentation' will not be tackled. In response to the motion submitted by MPs Van Eijk and Vermeer, the government is assessing what, if any, anti-misuse measures other EU member states have implemented to combat tax arrangements that misuse the general earnings stripping rule.[17] The government expects to inform the House of Representatives about this before 1 July 2025.

In addition, upon implementation of ATAD1, the then government pledged to give an overview of the way in which other member states have implemented the directive, if possible followed by an analysis of how implementation in the Netherlands compares with implementation in other EU member states.[18] This undertaking was given against the backdrop of a desire to gain insight on how other EU member states have put the exemption in ATAD1 for long-term public infrastructure projects into practice.

In 2020 the European Commission submitted a provisional report to the European Parliament and the Council on the implementation of ATAD1 and the second EU Anti-Tax Avoidance Directive (ATAD2)[19] in the member states.[20] According to this report, 16 EU member states have chosen to exclude public infrastructure loans from the scope of the general interest limitation rules (earnings stripping rule) under ATAD1, while 11 EU member states have decided not to do so. No official overview is available of which countries these are and how they have put the exemption for long-term public infrastructure projects into practice. This means that it remains unclear how other EU member states deal with this exemption and it is difficult to make comparisons. As a follow up to this provisional report, the European Commission is, in the context of the evaluation of ATAD, producing a more detailed report on the ATAD measures. According to the European

[16] Parliamentary Papers, House of Representatives 2024/25, 36602, no. 130.
[17] Parliamentary Papers, House of Representatives 2024/25, 36602, no. 104.
[18] Parliamentary Papers, Senate 2018/19, 35030, no. E.
[19] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (OJ 2017, L 144/1).
[20] Report from the Commission to the European Parliament and the Council on the implementation of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market as amended by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, COM(2020) 382 final, (19 August 2020), eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0383.

Commission's most recent schedule, the report will be published in the third quarter of 2025. Once it is available, it will be shared with the House of Representatives.

3. CFC measure (ATAD1)

ATAD1 includes an obligation on EU member states to implement rules on 'controlled foreign companies' (CFCs). Such a CFC measure is intended to prevent taxpayers from shifting earnings by transferring mobile assets (such as intellectual property) to low-tax jurisdictions where the income is subject to little or no tax. The Netherlands went further than strictly necessary in implementing the CFC measure and decided, besides the existing application of the arm's length principle, to introduce rules based on ATAD1 Model A.[21] The government's intention was for this supplementary CFC measure to have a prohibitive effect, ensuring that structures of this kind – aimed at avoiding tax by shifting earnings to low-tax jurisdictions – would no longer operate via the Netherlands.[22]

Upon application of the supplementary CFC measure, with effect from 2019 foreign income is included in the tax base in the Netherlands, provided that the conditions for applying the CFC measure are met. For instance, in order to conclude that there is a CFC, a controlling interest is needed and the entity in question must be established in a low-tax jurisdiction. There must also be CFC benefits, such as dividends, interest or royalties. Furthermore, the supplementary CFC measure is subject to certain exceptions. In order to prevent Dutch enterprises with genuine foreign activities from being at a competitive disadvantage to local enterprises and to ensure that the supplementary rules are feasible for business and the Tax Administration, an exception applies in the case of substantive economic activity. In addition, an entity is not a CFC if as a rule it mainly receives benefits other than CFC benefits (such as dividends, interest and royalties) or it operates a financial enterprise and as a rule mainly receives the CFC benefits from third parties.

Effectiveness of the supplementary CFC measure
It is not possible to draw conclusions on the effectiveness of the supplementary CFC measure with any degree of certainty. This is because its prohibitive nature makes measurement exceptionally difficult. There are however some indications that the supplementary CFC measure may have had a (limited) effect on structures operating through low-tax jurisdictions. With effect from 2024, the Minimum Tax Act 2024 will in certain circumstances also affect structures operating through low-tax jurisdictions. This means that the impact of the supplementary CFC measure is expected to decline, since its function is being partly assumed by the new Act.

Addition to taxable income in the tax return
On account of the intended prohibitive effect of the supplementary CFC measure, the addition to the tax base (i.e. to taxable income) for corporation tax purposes resulting from the measure says little about its effectiveness. Table 2 shows the addition to taxable income per year and the number of enterprises affected. There seems to be a steady group of enterprises that apparently accept the addition to their taxable income and are continuing with their existing corporate

[21] Under Model A, categories of benefits (dividends, interest, royalties etc.) are determined which, if enjoyed by a CFC, are regarded as being part of the taxpayer's profit.
[22] Parliamentary Papers, House of Representatives 2018/19, 35030, no. 3, p. 20.

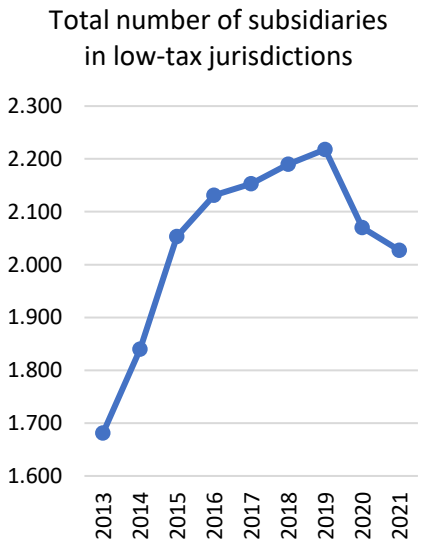
structures. The amounts involved are decreasing every year, which means that the addition is mainly accepted in cases where the consequences are relatively minor.

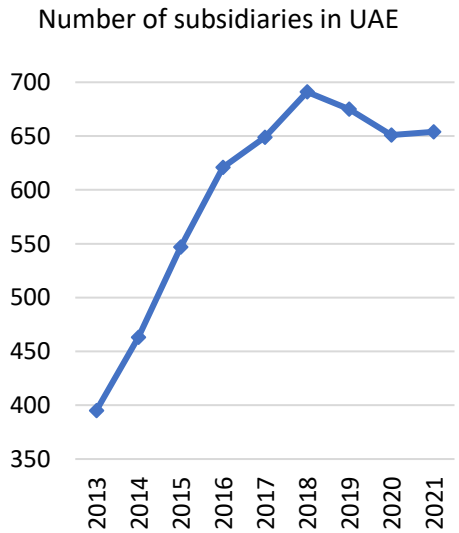
Table 2: Supplementary CFC measure

Tax year	**2019**	**2020**	**2021**
Number of enterprises with addition to taxable income based on supplementary CFC measure	86	85	83
Total addition to taxable income resulting from supplementary CFC measure (€ m)	319	70	45

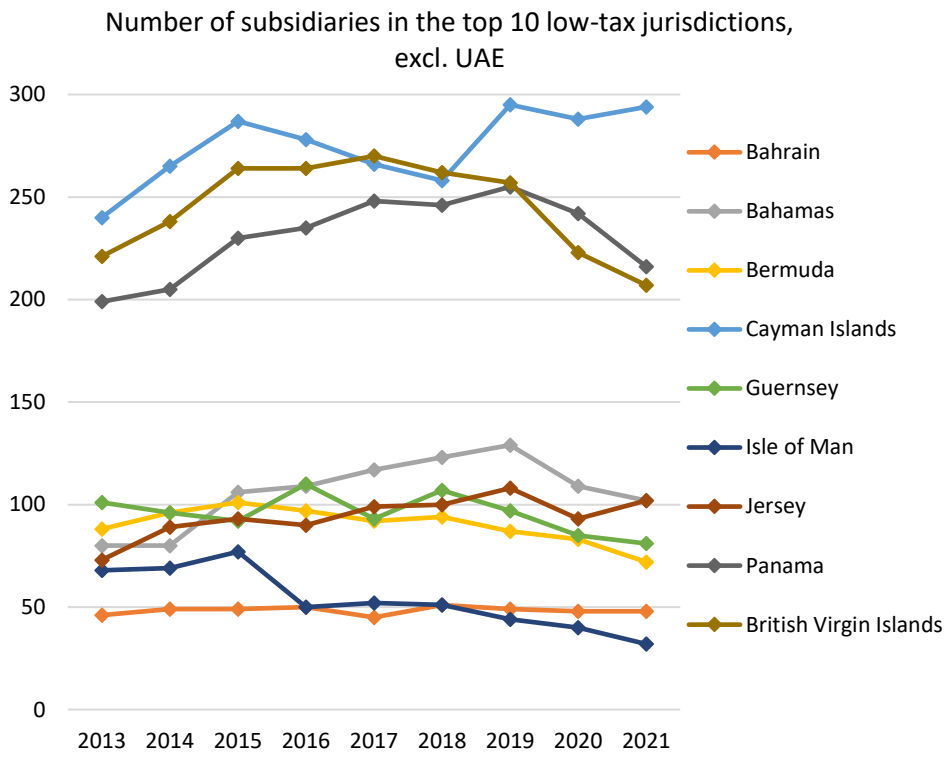
Number of subsidiaries in low-tax jurisdictions

One indicator that may say more about the impact of the supplementary CFC measure is the number of subsidiary companies in low-tax jurisdictions. Although second-tier subsidiaries can also be classed as CFCs, most CFCs are first-tier subsidiaries. Following a sharp increase between 2010 and 2015, a modest break in the trend in this respect (albeit not a sharp decline) has been evident since 2020. The number of subsidiaries in low-tax jurisdictions fell from 2,218 to 2,070. The low-tax jurisdiction with the highest number of subsidiaries of Dutch enterprises is the United Arab Emirates (UAE), which is displayed in a separate graph.[23] A stabilisation or a decline has been observable in all low-tax jurisdictions since 2020. This decline could potentially be an intended consequence of the supplementary CFC measure, but it is not possible to establish a causal connection. The decline could also have been caused by broader international efforts to tackle tax avoidance.





[23] As of 2024, UAE has no longer been designated a low-tax jurisdiction.



Incoming dividend flows from low-tax jurisdictions
If a Dutch enterprise's subsidiary established in a low-tax jurisdiction makes a profit, that profit is generally distributed to the Dutch parent company at a later stage in the form of dividend. Such CFC structures should therefore give rise to incoming dividend flows from low-tax jurisdictions. Table 1 in this letter shows that incoming dividend flows declined from €11.6 billion in 2018 to €9.6 billion in 2019 and then to €4.7 billion in 2020. This decline could be a logical consequence of the supplementary CFC measure. In 2021 there was actually an incidental rise in the dividends from low-tax jurisdictions, to €10.7 billion. This volatility could be caused by only a small number of very large enterprises and shows that it is not possible to draw any overly firm conclusions from these figures.

In addition, in relation to both the number of subsidiaries and the flows of dividend, it is not possible to establish a causal connection with the CFC measure with certainty, in particular because since 2019 (both in the Netherlands and at international level) other measures have also been taken to tackle tax avoidance by multinationals. In consequence, no firm pronouncement can be made on the effectiveness of the supplementary CFC measure.

4. Hybrid mismatch measures (ATAD2)

4.1 Impact measurement in relation to hybrid CV/BV structures

With effect from 1 January 2020, the legislation implementing the second EU Anti-Tax Avoidance Directive (ATAD2)[24] entered into force. The legislation is intended to tackle hybrid mismatches. Under a hybrid mismatch, a financial

[24] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (OJ 2017, L 144/1).

instrument, permanent establishment or legal form is treated differently for tax purposes in two different countries. Taxpayers can take advantage of the difference in treatment to avoid or defer taxation, for instance if they can deduct costs for a particular transaction in one country but need not add the profit from the transaction to their earnings in the other country. ATAD2 neutralises the effects of a hybrid mismatch by denying a deduction or taxing the benefit in such cases.

A key hybrid mismatch relied on in the Netherlands has been the CV/BV structure. On account of the hybrid nature, it proved impossible to make a direct measurement of the prevalence of these structures and the sums involved. However there are four indications that the legislation has been effective:[25]

1. There are no longer any rulings on CV/BV structures;
2. The number of CVs with US dollars is clearly on the decline;
3. US enterprises are reporting less financial accounting profit in the Netherlands, while their substantive economic activity in the Netherlands does not appear to have been scaled back;
4. Where hybrid mismatches still exist, an adjustment is made to the profit in the tax return.

From the foregoing it can be concluded that the measure is effective in combating tax deferral through CV/BV structures. For the full analysis, I would refer you to the impact measurement in appendix 2 to this letter.

4.2 Administrative burden of documentation requirement (motion submitted by MP Lodders et al.)

In the motion submitted by MP Lodders et al.[26] the government was asked to monitor the administrative burden on SMEs arising from the documentation requirement under ATAD2 and to consider as quickly as possible whether a further reduction in the administrative burden is necessary. In addition, my predecessor pledged to both the Senate and the House of Representatives to continue to examine, on the basis of experience in practice, whether any further guidance could be developed regarding the documentation requirement.[27]

Since the introduction of the measures from ATAD2 on 1 January 2020, SMEs have gained experience of the application of the documentation requirement in practice.[28] The experience gained has not given rise to any warning signs that the administrative burden for SMEs is problematic. The additional administrative burden arising from the documentation requirement is limited, since there is already an obligation to keep accounting records under section 52 of the State Taxes Act. The documentation requirement is mainly a statutory clarification of existing law in order to avoid any discussion as to whether information relating to the measures under ATAD2 is part of an enterprise's accounting records.

[25] It should however be noted in relation to the CV/BV structure that in 2018 the United States also enacted the GILTI legislation, which made the CV/BV structure less appealing. It is not possible to directly distinguish between the effects of GILTI and ATAD2 in the results. Yet the strongest impact can be observed as from 2020 (the year in which ATAD2 was introduced) and not as from 2018 (the year in which GILTI was introduced), which suggests that ATAD2 had the most impact.
[26] Parliamentary Papers, House of Representatives 2019/20, 35302, no. 45.
[27] Proceedings of the Senate 2019/20, no. 12, item 12.
[28] Parliamentary Papers, House of Representatives 2021/22, 35 925-IX, no. 4.

In addition, the size of the group of taxpayers subject to the documentation requirement is small. The total number of corporation tax payers in 2021 was 912,000, of which 860,000 were SMEs. Of the SMEs, around 17% (or 147,000) of the total number of taxpayers operate internationally. Taxpayers that operate nationally, which are the overwhelming majority (around 83% or 713,000 taxpayers), are not in principle subject to an extra administrative burden. The existing accounting records of this category will demonstrate that there have not been any international payments or receipts within a group context. The additional administrative burden for the vast majority of taxpayers that do belong to an international group is negligible, since cross-border charges or payments do not involve a hybrid element. That is the case for around 99.7% of SMEs operating internationally, or 146,500. In the other cases (around 500) where cross-border payments do involve a hybrid element, the documentation will be available within the group. Obtaining that documentation will usually require a limited investment of time on the part of those taxpayers.

The increase in the administrative burden arising from the documentation requirement under ATAD2 has therefore not been notable for SMEs. Consequently, there is no need for a decrease in the administrative burden. At present there is no reason to develop further statutory guidance.

4.3 Concurrence of hybrid mismatch measures and earnings stripping rule

An undertaking was also given to examine whether clarification would be desirable in relation to other particular situations, specifically a possible concurrence between a sum of income recognised twice that is deducted and the application of the general interest deduction limitation.[29] There are no signs that this (theoretically conceivable) concurrence is giving rise to problems in practice. In view of the explanation given on this matter in the Memorandum of Reply to the 2021 Tax Plan, I see no reason to offer further statutory clarification on this point in this context.

5. Limitation of liquidation and cessation loss relief

Liquidation and cessation loss relief enables the deduction of liquidation and cessation losses of (foreign) subsidiaries and permanent establishments for the taxpayer from the Dutch corporation tax base, subject to certain conditions. Since 1 January 2021 the scope of liquidation and cessation loss relief has been scaled back. The aim is to counter the erosion of the Dutch tax base. By doing so, the measure contributes to the balanced taxation of multinationals. For the application of the liquidation loss rules, a temporal, a territorial and a material condition have been introduced, with the latter two conditions only applicable to losses above a threshold amount (see below). As a consequence of the temporal condition, liquidation losses can be recognised only if the liquidation takes place within a period of three years after the calendar year in which the business ceased to operate, unless the taxpayer demonstrates that the liquidation was not intended to avoid or defer the levying of corporation tax. The three-year time limit applies as from the end of 2020. This means that enterprises that stopped trading earlier than 2020 can in principle make use of liquidation and cessation loss relief until 2024 at the latest.

[29] Parliamentary Papers, Senate 2020/21, 35572, no. F.

Following the introduction of the threshold amount, liquidation losses of more than €5 million can be recognised only if both the territorial and the material condition are met. The territorial condition entails that the loss arises in the EU/EEA or a state with which the EU has concluded a specific association agreement. The material condition entails that a qualifying interest is required (i.e. the ability to exercise such a degree of influence over the decisions of an entity as to make it possible to determine that entity's activities). The application of the cessation loss rules is subject to territorial and temporal conditions that have a comparable effect to the territorial and temporal conditions for the liquidation loss rules.

The table below illustrates the use of liquidation and cessation loss relief. In it a distinction is made as to the country in which the losses originate and the extent to which those losses were above or below €5 million in the case of countries outside the EU/EEA. The changes to the liquidation and cessation loss rules introduced with effect from 2021 have placed a particular restriction on deductions in the latter case.

Table 3: Use of liquidation and cessation loss relief based on country category and amount (x million)

Tax year	Netherlands	In the EU/EEA	In the EU/EEA and amount below 5 m	In the EU/EEA and amount above 5 m	Overall
2018	1,571	1,477	303	2,264	5,615
2019	1,941	1,586	338	1,594	5,459
2020	2,246	1,349	490	3,643	7,728
2021	1,013	1,087	297	443	2,840

The figures in table 3 show that the limitation of the scope of liquidation and cessation loss relief has led to a substantial decrease in the liquidation and cessation losses that have been deducted. The figures also show that taxpayers anticipated the changes by deducting additional losses in 2020. The introduction of the three-year time limit will make tax planning of this kind impossible in future.

In relation to losses in the Netherlands, the figure fell from €1.6 billion in 2018 to €1.0 billion in 2021. In anticipation of the tax changes, parent companies in the Netherlands took action to liquidate old enterprises in 2020 whose activities had already ceased. This led to a higher amount in 2020 and a lower amount in 2021, when the changes to the liquidation and cessation loss rules took effect. This impact of anticipatory tax planning in 2020 will have mainly been connected with the temporal and/or the material condition, since the deductibility of such losses is not limited by the territorial condition.

The amount of losses in EU/EEA countries fell from €1.4 billion in 2018 to €1.1 billion in 2021. Anticipatory tax planning had almost no visible impact here. In relation to amounts below €5 million in EU/EEA countries, there was a near negligible decline in 2021 compared with 2018, although anticipatory tax planning did have an impact in 2020.

The key difference is the treatment of losses of more than 5 million outside EU/EEA countries. Whereas €2.2 billion was deducted in 2018 and €2.6 billion in 2019, the amount deducted in 2021 fell to €0.4 billion. The amount is expected to

fall further after 2020 as the possibility of relying on the transitional rules becomes increasingly smaller. From 2024 onwards, the amount is expected to be nil due to the application of the temporal condition.

Liquidation losses have developed in line with expectations. Their development will continue to be monitored in the years ahead. In the government's view it is unnecessary to conduct an early evaluation of these rules for this reason. The rules will therefore be covered by the regular tax relief evaluation programme.

6. Combating transfer pricing mismatches (arm's length principle)

The arm's length principle requires taxpayers in the Netherlands to account for transactions with associated parties at arm's length prices for Dutch tax purposes. This can lead to downward (and upward) adjustments of Dutch taxable profits in combination with a notional capital contribution or a constructive dividend distribution.

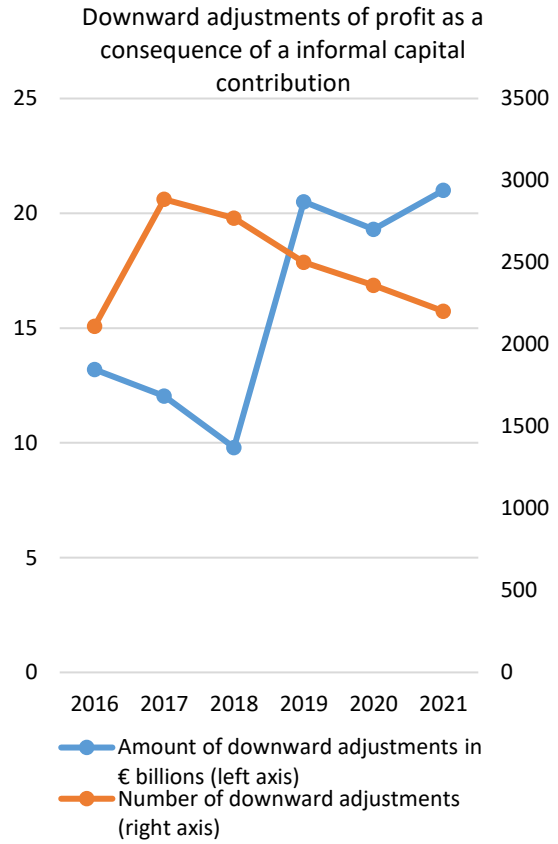
Other countries sometimes treat these matters differently. As a consequence, in the case of a cross-border transaction, the country in which the party with which the transaction is concluded is based may not apply a corresponding adjustment. This gives rise to a transfer pricing mismatch in the application of the arm's length principle, which can lead to double taxation (if the profit in the Netherlands is adjusted upwards and is not adjusted downwards in the other country) or double non-taxation (if the profit in the Netherlands is adjusted downwards and is not adjusted upwards in the other country).

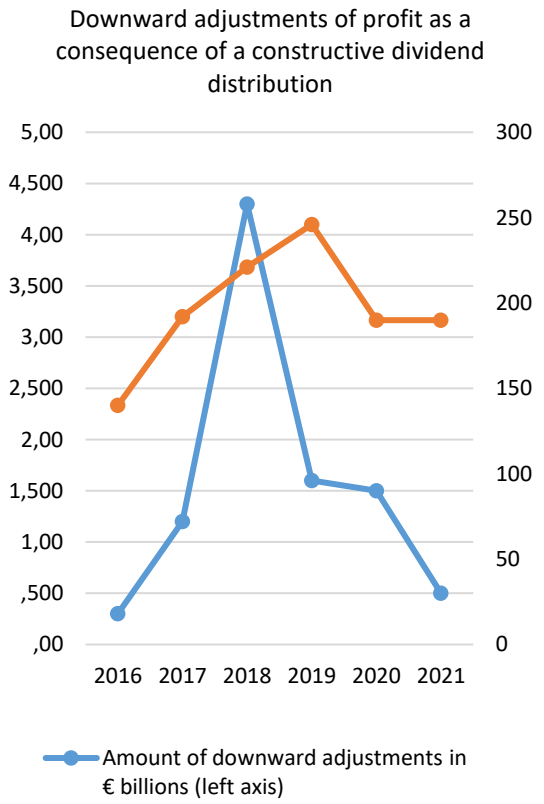
The Tax Administration tightened up its ruling policy with effect from 1 July 2019. Engaging in preliminary consultations to obtain certainty in advance is no longer possible in the case of a downward adjustment without an equal upward adjustment in the other country.

On 1 January 2022 the Combating Mismatches in the Application of the Arm's Length Principle Act entered into force for financial years commencing on or after 1 January 2022.[30] The Act is intended to prevent mismatches which, mainly in international situations, arise from the application of the arm's length principle and lead to double non-taxation. The Act restricts the scope for taxpayers to recognise a downward adjustment of profit on the basis of the arm's length principle. A downward adjustment is not permissible without a corresponding upward adjustment (of an equal amount) being made to the tax base of another associated entity involved in the transaction. The measures ensure that the profit is taxed somewhere at least once.

Since 2016 on tax return forms taxpayers have been asked whether there has been a downward adjustment of profit as a consequence of an "informal capital contribution" or a constructive dividend distribution and, if so, for which amount. The figure below shows the results up to and including 2021.

[30] Application of Arm's Length Principle (Tackling Mismatches) Act, Bulletin of Acts and Decrees 2021, no. 654.





The graphs show the number of informal capital contributions gradually falling from 2017 onwards, while the upward trend in constructive dividend distributions ended as of 2020. Yet there has been no clear visible decline in the amount of informal capital contributions. There is in general more volatility in the amounts involved, as they can be strongly impacted by a small number of very large enterprises.

With effect from 2022, a downward adjustment is permitted only if counterbalanced by an upward adjustment elsewhere. If taxpayers did indeed stop using informal capital contributions and constructive dividend distributions of this nature from 2022 onwards, a one-off decrease should be evident in the figures from 2021 to 2022. However, the figures for the year 2022 are not yet sufficiently comprehensive to test this hypothesis. I will share that data with the House in the next monitoring letter and on that basis it may be possible to make an initial assessment of the impact of the measure.

7. European, international and national developments

7.1 Pillars One and Two

In the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting, work has been done in recent years to reform the international tax system.[31] This was prompted by the challenges posed by the increasingly globalised and digitalised economy to the levying of tax on multinationals. The reforms to the international tax system are grouped under Pillar One and Pillar Two. Pillar Two has now led to the introduction of the Minimum Tax Act 2024, which implements the EU directive.[32] The directive does not include an evaluation provision. It is expected that the OECD will monitor the implementation of the Pillar Two rules. The exchange of information between countries will be taken into consideration in this context. When return data on this subject becomes available, the government will incorporate it in the monitoring letter.

Pillar One entails a reallocation of taxing rights and, just like the work being done at the UN, is not as such aimed at addressing tax avoidance. Pillar One consists of Amount A and Amount B.

Amount A concerns a reallocation of a portion of the profits of the largest and most profitable multinationals. On the basis of Amount A, countries where enterprises have large numbers of consumers and users are allocated additional taxing rights. Other countries will have to surrender taxing rights to prevent the reallocated profits from being subjected to double taxation. A Multilateral Convention (MLC) is being drawn up to implement Amount A. Efforts to reach agreement in the IF on the MLC for Amount A have so far been unsuccessful. At their summit in Rio de Janeiro on 18-19 November 2024, the G20 countries reiterated their commitment to the swift implementation of the two Pillars, including expeditious negotiations on the final package of Pillar One.[33] I will inform the House of Representatives as soon as possible about any further developments.

Amount B is aimed at simplifying existing international agreements on the allocation of profits to marketing and distribution activities. On 19 February 2024 the OECD released a report on Amount B, containing guidance and information for the application of Amount B. Using the report to apply Amount B is optional. The Netherlands will not be implementing Amount B as generally applicable. However, the Netherlands did give a political commitment in the IF to accept the application of Amount B by certain other countries in specific situations. The Netherlands is implementing this commitment by means of the Amount B Order 2025, which will enter into force in January 2025.

[31] The OECD/G20 Inclusive Framework on BEPS was established in 2016 with a view to implementing the measures of the OECD/G20 project to address base erosion and profit shifting (the BEPS project) and for further international cooperation in the area of taxation. OECD members and non-members work together on an equal footing within the Inclusive Framework. At the time of writing, the Inclusive Framework has 147 members, only a small number of which are not participating in the reforms of the international tax system.
[32] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (OJ 2022, L 328/1).
[33] See paragraph 21 of https://g20.org/wp-content/uploads/2024/11/G20-Rio-de-Janeiro-Leaders-Declaration-EN.pdf.

7.2 Role of the United Nations

In 2023 an initiative was launched to have the United Nations (UN) play a greater role in making discussions about international tax cooperation more inclusive and effective. Further to this, in 2024 an Ad Hoc Committee (AHC) of the UN General Assembly drafted the terms of reference for a Framework Convention that could signed by the UN member states upon completion. Those terms of reference leave many questions unanswered but do provide an idea of the topics that could be addressed by the Framework Convention. The main topic is aimed at reallocating taxing rights on income derived from the provision of cross-border services in an increasingly digitalised and globalised economy. The project is therefore not primarily concerned with combating tax avoidance, although reference is made to the importance of addressing illicit financial flows. Other topics mentioned include the taxation of high-net worth individuals and the resolution of tax disputes. The terms of reference drafted by the AHC were considered by the General Assembly on 27 November 2024. A General Assembly resolution was adopted under which a new negotiating committee will be established to draft the Framework Convention in accordance with the terms of reference. The resolution provides that the Framework Convention will be drafted in the next three years by holding three sessions per year of 10 working days per session.

The Netherlands supports the objectives underlying the development of a UN framework convention on international tax cooperation and is committed to achieving a broadly supported outcome. However, the Netherlands does not yet support the plans for the framework convention contained in the terms of reference. The current plans are focused on a subject that many UN member states will be unable to commit to, namely the allocation of taxing rights on the profits of multinationals. This focus could result in a framework convention that a large number of UN member states will be unable to sign, thereby rendering the efforts to be made in the forthcoming years fruitless. In order to eliminate these objections, the Netherlands and the other EU member states have put forward a number of proposals. In essence, these proposals entail that the UN framework convention should focus on broadly supported agreements. Only in this way can a broad body of members agree on an effective UN framework convention and make it succeed in practice. These proposals have not been accepted at this stage and for this reason the Netherlands was unable to vote in favour of the resolution. Going forward, the Netherlands does see plenty of scope for a good outcome to the process and remains dedicated to securing a broadly supported UN framework convention. In order to express this positive stance in combination with their concerns, the EU member states took the joint decision to refrain from voting.

7.3 Proposal for Unshell directive

The government welcomes the proposal for an EU directive to tackle the misuse of conduit (or 'shell') companies ('Unshell').[34] The directive contains measures on the exchange of information about conduit companies between member states and on denying such companies certain tax advantages. The Netherlands is actively engaged in the negotiations and is taking account of the

[34] Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending 2011/16/EU (directive on administrative cooperation).

recommendations of the Committee on Conduit Companies[35] wherever possible. An international approach will ensure that the misuse of conduit companies is tackled in a comprehensive and uniform manner. The discussions in the Council working parties are aimed at striking a good balance between tackling conduit activities effectively while at the same time minimising the administrative burden of implementation where possible. Although the member states and the European Commission are giving consideration to a workable compromise, the impression is that it will be some time before agreement is reached on the proposal for the Unshell directive. The member states still have different positions on the purpose, scope and administrative consequences of the directive, whereas unanimity is required. It was previously indicated to the House of Representatives that a European agreement would be the best option and that taking action unilaterally in advance of that would not be desirable. If the directive negotiations do not ultimately lead to the desired outcome, the government may then consider whether unilateral implementation of one or more recommendations of the Committee on Conduit Companies is called for. At present the government's aim remains to reach agreement on the proposed directive.

7.4 Proposal for FASTER directive

On 14 May 2024 the Council of the European Union reached a political agreement on the Council Directive on faster and safer relief of excess withholding taxes (FASTER).[36] The Directive must be implemented on 31 December 2028 and will enter into force of 1 January 2030.

FASTER is aimed at harmonising and accelerating refund procedures and procedures for relief from dividend tax at source and making such procedures more resilient against misuse. These procedures, which are very important to the capital markets union, can presently function as a barrier because they are lengthy, cumbersome and expensive and leave investors unable to exercise their rights in the capital markets union. On the other hand, the current procedures in the EU are susceptible to fraud.

Adjustments have been made to the original proposal to ensure that more investors have access to the FASTER procedures. Contractual investment funds, including Dutch mutual funds, now have access to the procedures if they, or their investors, are entitled to relief from withholding tax. This important expansion in scope is aimed at strengthening the capital markets union.

The procedures will be optional for member states that have both a small stock exchange and an effective system for granting investors relief at source from excess withholding tax. This means that all investors who would normally be covered by the FASTER procedures must be able to make use of relief at source in the member state in question and that the investor may not be asked for more information than under the FASTER procedures.

Various adjustments have been made in relation to increasing resilience against misuse. Member states have been given greater scope to deny access to the FASTER procedures. For instance, access may be denied if a share was acquired five days before the ex-dividend date. In addition, more information on the

[35] Parliamentary Papers, House of Representatives 2021/22, 25087, no. 286, annexe 1007733.
[36] See Parliamentary Papers, House of Representatives 2023/24, 21501-07, no. 2042.

dividend and the investor must be reported to the Tax Administration by financial institutions. It has also now been clarified that the FASTER procedures will not reduce the enforcement options available to tax authorities.

7.5 Proposal for a directive on transfer pricing

The proposal for a directive on transfer pricing was published on 12 September 2023. Its aim is to harmonise the rules on the application of the arm's length principle derived from the OECD guidelines within the European Union. The House of Representatives has received the government assessment of this proposal in the form of the BNC file.[37] In the course of the still-ongoing negotiations, the Netherlands has, in accordance with the BNC file, expressed its support for the general objectives underlying the proposed directive, such as offering greater certainty to multinationals. In this regard it has also made the case for incorporating the arm's length principle in European legislation and for avoiding a separate European standard on the interpretation of the OECD Guidelines in relation to transfer pricing. During the negotiations various member states have indicated that they are not in favour of a European directive on transfer pricing. Consideration is therefore currently being given to whether there are other, non-legislative options for more effective cooperation at European level aimed at achieving improvements in transfer pricing practice. The Netherlands supports these efforts because more effective cooperation can help create greater certainty for taxpayers.

7.6 Proposal for BEFIT directive

On 12 September 2023 the Business in Europe: Framework for Income Taxation (BEFIT) proposal was presented. This proposed directive provides for a common tax base for corporation tax and a profit allocation mechanism. The House of Representatives has received the government assessment in the form of the BNC file.[38] When the proposal was considered by the House of Representatives, the motion submitted by MP Van Dijck was passed,[39] asking the government not to agree to BEFIT and to make that position abundantly clear to the European Commission in Brussels. The matter has been discussed with the European Commission at senior civil service level. There is currently little support in the Council for the BEFIT proposal. It is therefore not to be expected that there will be agreement on it in the near future.

7.7 International exchange of information

Another priority of Dutch tax policy is the exchange of information in cross-border situations. The aim of this is also to combat tax evasion and avoidance. Exchanging information puts countries in a better position to levy amounts owed under their tax legislation. Information relevant for the levying of tax may be exchanged automatically, spontaneously or upon request. The relevant legal instruments are the Convention on Mutual Administrative Assistance in Tax Matters, various bilateral treaties and the Directive on Administrative Cooperation (DAC). Increasingly, efforts are being made in this context to pursue automatic information exchange. This is because automatic exchange generally enables information to be exchanged more swiftly, which contributes to the effectiveness

[37] Parliamentary Papers, House of Representatives 2023/24, 22112, no. 3820.
[38] BNC file on COM(2023)532.
[39] Parliamentary Papers, House of Representatives 2023/24, 21501-07, no. 1981.

of efforts to prevent tax avoidance and evasion and, where appropriate, to the ability to impose penalties for tax evasion. Automatic exchange of information has mainly been provided for in successive amendments to the DAC, which are implemented in the International Assistance (Levying of Taxes) Act. For instance, tax authorities automatically exchange information with one another on financial accounts (DAC2),[40] rulings (DAC3) and country-by-country reporting by multinationals (DAC4). The same applies to data and information on potentially tax-harmful cross-border arrangements (DAC6) and data and information on sellers generating income through online platforms (DAC7). The most recent amendment – the seventh (DAC8) – entered into force on 13 November 2023. Pursuant to this amendment, crypto-asset service providers are required to disclose certain information about their users to the tax authorities of the member state in which they are registered. DAC8 also updates what financial institutions have been required to disclose since the implementation of DAC2, as a consequence of which DAC now covers for example electronic money and central bank digital currency. DAC8 also broadens the scope as regards rulings, by bringing certain rulings in respect of (wealthy) individuals within the scope of DAC. Member states are required to have implemented DAC8 in their national legislation by 1 January 2026. An implementing bill is therefore currently being prepared.

In July 2022 the European Commission established an Expert Group, in which all member states are represented, to improve information exchange practices.[41] The Expert Group is examining the options for making improvements and best practices in relation to the effectiveness of the implementation and operation of various international tax information exchanges. The Expert Group has examined the implementation of Directive 2011/16/EU (DAC1), Directive 2014/107/EU (DAC2), Directive 2015/2376/EU (DAC3) and Directive 2016/811/EU (DAC4). The VISDAC expert team, part of the Expert Group, visited the Dutch Tax Administration in November 2023. The assessment of the Netherlands has been completed but as yet there has been no final report setting out the VISDAC expert team's results and findings as regards the Netherlands. Once the final report becomes available, a copy of it may (if desired) be made available for inspection on a confidential basis. In the EU it is not yet clear whether all member states will agree to the publication of the consolidated report of the VISDAC expert team, which is expected in 2025.[42]

Another key piece of implementing legislation has now been enacted. On 7 December 2023 the Country-by-Country Reporting Directive Implementation Act entered into force. Under this Act, multinationals are obliged to draft and publish a separate report on their corporation tax, also referred to as 'country-by-country reporting'. This obligation applies for financial years that commence on or after 22 June 2024.

Country-by-country reporting (CbCR)
The OECD is working on various indicators relating to tax avoidance, for example by collecting (anonymised) data from country-by-country reports. As the OECD itself says, a country-by-country report is mainly useful for assessing

[40] DAC2 is aligned with the Common Reporting Standard (CRS) adopted by the OECD in 2014.
[41] The full name of the Expert Group is the «VISDAC» Expert Group (FISC-2022-ET-VISDAC).
[42] Parliamentary Papers, House of Representatives 2023/24, 25087, no. 327, p. 25.

(substantial) risks in the area of transfer pricing and tax avoidance in relation to a multinational. It is not necessarily the case that aggregated CbCR results produce a standard from which to infer tax avoidance. This data often includes double counting of profits that are taxed elsewhere. Consequently, profits could be overestimated by as much as 75%. In addition, when calculating the effective rate, losses incurred in earlier years are often disregarded, which leads to lower tax in subsequent years. Without the appropriate adjustments, the data could suggest that the profits of multinationals are taxed at a low rate. In recent years, in the absence of adjustments, the effective Dutch rates for 2020 and 2021 would have been 12.7% and 13.5% respectively. Following adjustment, the rates would have been 18.0% and 21.3% respectively. This partly explains why some studies conclude that the Netherlands is responsible for a large portion of international tax avoidance.

In this context it is good to note that in the most recent report of the Tax Justice Network, the Netherlands is considered responsible for just 1.8% of total worldwide tax avoidance. In earlier years the percentage was estimated to be considerably higher. In the latest report[43] there are 17 countries deemed responsible for a larger portion of worldwide tax avoidance than the Netherlands. The Netherlands is behind countries such as Canada (8.1%), Denmark (3.3%) and Brazil (2.5%). In contrast with earlier editions of the report, the current report now says that on a net basis the Netherlands loses more from tax avoidance than it gains.

7.8 National developments

The international and national measures of recent years have made the tax system substantially more robust in countering the scope for tax avoidance. The government wants to continue to tackle tax avoidance. In doing so it will be vigilant against such measures having a negative impact on genuine economic activity. The government's focus will therefore mainly be on measures coordinated at international and European level. This is because such measures are most effective against international tax avoidance. Unilateral measures entail the risk that tax avoidance will merely be displaced to other countries. Moreover, for the sake of the competitive position of Dutch business, it is important not to put enterprises established in the Netherlands at a disadvantage. In efforts to tackle international tax avoidance, the government will therefore generally seek alignment with international or European agreements and when it comes to new policy will not unilaterally go further than what is required. The government will also not resort to unilateral measures where international or European initiatives have not, or have not yet, led to measures.

This does not detract from the government's continuing dedication to tackling tax avoidance arrangements by means of national measures as well. For instance, the 2025 Tax Plan contains specific measures to tackle tax avoidance arrangements in the field of VAT and transfer tax. In the next Spring Memorandum, the government will therefore include a further list of tax avoidance arrangements and options for policies to address them where possible. In addition, the government has committed itself to raise 250 million euros on a structural basis by curbing notable tax avoidance arrangements and scaling back tax relief schemes.

[43] https://taxjustice.net/reports/the-state-of-tax-justice-2024/ (November 2024).

The government will also continue efforts to tackle dividend stripping. A number of measures to strengthen those efforts entered into force on 1 January 2024. These measures were included in the Miscellaneous Tax Measures Act 2024. In the explanatory memorandum regarding these measures the previous government announced a study into additional measures to combat dividend stripping. This government too agrees that a further strengthening of efforts to tackle dividend stripping would be desirable. The study initiated by the previous government is therefore being continued. It is expected that the House of Representatives will receive a report on the study in the spring of 2025.

8. Conclusion

In recent years many measures have been adopted to tackle tax avoidance by multinationals. This letter shows that some of those key measures are tackling tax avoidance effectively.

Reports by external parties also illustrate this positive development. In the latest report of the Tax Justice Network, the Netherlands' contribution to total worldwide tax avoidance is estimated as being considerably lower than in previous years. According to this report, on a net basis the Netherlands now loses more from tax avoidance than it gains. This confirms that the Netherlands is not an attractive country for tax avoidance structures.

It is not yet possible to obtain a clear picture of the impact of all the measures, such as the impact of withholding tax on dividends going to low-tax countries and of the Combating Mismatches in the Application of the Arm's Length Principle Act on structures involving informal capital. The government will therefore continue to annually assess the effects of tax avoidance measures.

Yours sincerely,

The minister for Tax Affairs and the Tax Administration,

T. van Oostenbruggen