

Courtesy translation of the main parts of the report on tax evasion requested by the House of representatives to the Court of Audit (6 November 2014)

At the request of the Lower House , the Court of Audit investigated tax evasion in relation to the tax rules and the Dutch tax treaty network .

The main report is available in Dutch at this web link:

<http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2014/11/Belastingontwijking>

Background

Between countries, there are differences in the tax regime : differences in national tax legislation and differences in tax treaties concluded with other countries . International companies usually try to structure their operations so that they can reduce their own tax burden within the framework of the law . This is called tax planning , also called tax evasion. Tax avoidance is not illegal, but means that international companies are making an increasingly smaller contribution to the tax revenue which must be matched by others in order to maintain a similar level of facilities within countries. International companies can namely optimum use of national differences in corporate tax rate , tax base and withholding tax . This contrasts with only national companies.

Conclusions

Dutch law and regulations

The tax climate in the Netherlands is favorable for international companies through measures to avoid double taxation, but the legislation as such is not very different from our neighboring countries.

Dutch policy as regards tax treaties

The principles of taxation that in tax treaties are presented in the "Netherlands Tax Treaty Policy Note 2011". The starting point of this policy note is the model convention of the Organisation for Economic Co-operation and Development (OECD). In the recent last six sets of negotiations that we have investigated, the State Secretary of Finance applied these principles in negotiations.

Tax planning in practice

Tax planning is customized (case by case). Due to the lack of a consistent pattern, we cannot indicate how often certain structures are used. The attractiveness to establish a possible structure is dependent on a combination of many factors such as corporate tax rate and base, withholding tax, ability to set off withholding taxes in a different country, anti-abuse provisions in national legislation or in double tax treaty and the presence of an investment protection treaty. The availability of a tax treaty is in itself not a prerequisite for setting up a tax-efficient international structure; it however offers in many cases additional savings or additional security to taxpayers.

Information provision to the parliament

The Secretary of state for Finance provides information on current events to the Parliament mainly following negotiations on tax treaty and parliamentary questions. The information provided by the Secretary of State in response to this is not different from what we find in our report. However, we draw here the attention to the fact that the Secretary of State is obliged to confine its information. Information that can lead to individual companies should not be made public. We also indicate that the House does not have an integrated view of the Dutch tax settlement policy (Dutch establishment policy) in relation to international tax planning. There is hardly no information on the results of this policy and the associated financial flows; A systematic periodic reporting is missing.

Recommendations

Tax avoidance is an international phenomenon. Measures from the Netherlands alone cannot prevent companies to use a fiscal pathway leading to the lowest possible tax burden. The Netherlands therefore actively support initiatives by international organizations to reduce tax arrangements that lead to almost no taxation, in violation of the intent of the rules.

We recommend that the responsible ministers:

- indicate what is done to prevent abuse or improper use of the new or revised treaty when providing to parliament review and new treaties.
- further intensify cooperation with treaty partners. Extra attention on the following will be needed when concluding and implementing tax treaties
 - better exchange of information;
 - avoid legal uncertainty for companies wishing to use the treaty (including the application of anti-abuse provisions)
 - the active assistance to the tax administration of the other treaty country.
- provide to the House a regular fiscal monitor report on the (use of) the tax settlement climate, the funds involved, and the impact of measures taken to combat the improper use of tax regulations and tax treaties