

SG/2014/30026--EN

Translation of letter

Letter dated: 18 February 2014

From: Ms Cora van Nieuwenhuizen-Wijbenga, Chair of the Dutch House of Representatives' Standing Committee on Finance

To: Mr Šemeta

Subject: Political dialogue - Parent-Subsidiary Directive

Ref.: 2014D05732

Dear Mr Šemeta,

The Committee has learned with interest of the proposal for a directive amending Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (Parent-Subsidiaries Directive).

At its meeting of 5 February 2014 the Committee found that the different political groups needed further information on the proposal. I am therefore sending you, on the Committee's behalf and for the purposes of the political dialogue between the European Commission and the national parliaments, the following questions raised by the different political groups.

Time frame

1. Can the Commission provide an estimate of the time frame for the political discussion and possible implementation of the proposal?

Backdrop

2. Can the Commission provide any insight into other Member States' positions on the proposal?

3. What have other countries objected to in the proposal?

4. What is the Commission's response to these objections?

Consultation of third parties

5. Which companies and NGOs have had input into the proposal's drafting?

General

6. Can the Commission provide a full explanation of how the proposed amendment to the Parent-Subsidiaries Directive strengthens the EU-wide approach to fighting tax avoidance and evasion as compared to current efforts by the Netherlands and other countries?

7. Is it true that the Commission has opted for a very general, open wording? If so, why? Does this not create a risk that different Member States and firms might differ in their interpretation of the Directive?

8. Can the Commission address the Dutch government's objections that the proposed rules are too open and too loosely worded by making the rules more specific? Is this currently being considered? Can this be done without narrowing the scope of the proposed rules? What are the conceivable options here?

Implementation of the Parent-Subsidiaries Directive

9. How will it be possible when implementing the Directive to prevent differences in interpretation between jurisdictions that might give rise to tax avoidance by firms?

Anti-abuse provision

10. Why has the Commission chosen to update the Directive's current anti-abuse provisions?

11. What anti-abuse provisions does the Directive currently include? Which articles are concerned?

12. In what cases are these articles insufficient and how does the proposed amendment solve the problem?

13. Is it true that the current Directive provides a basis for national anti-abuse provisions, whereas the amended Directive does not? If not, what form does this take?

14. Why is the Commission opting to oblige Member States to introduce a common anti-abuse provision?

15. Can the Commission offer some leeway in the Directive for Member States that have tougher anti-abuse provisions or that find the proposed anti-abuse provision a hindrance to effective action against tax avoidance or fraud?

16. Does the Commission share the view that Member States must be able to decide to step up their action against abuses of the Treaties to tackle specific situations occurring in a given Member State? Will the Commission consider continuing to allow Member States such leeway in the amended Directive?

17. What are the Commission's thoughts on the substantive criticism of the proposed anti-abuse provision voiced by the Dutch government in its BNC-fiche (Assessment of New Commission Proposals)¹ of 20 December 2013?

18. Does the Commission share the Dutch cabinet's view that the proposed anti-abuse provision is too general and subjective and therefore more likely to undermine the Dutch government's action on international fraud than to strengthen it?

¹ See Parliamentary paper 22112, No 1761.

19. Does the Commission agree with the Dutch government's claim that the provision's wording is general and subjective and therefore creates the potential for differences of interpretation about the proposed anti-abuse provision's application?
20. How can the Commission prevent the proposed anti-abuse provision from being interpreted in different ways by different Member States?
21. Might this not actually relax the anti-abuse provisions in some cases?

Coherence with anti-abuse provisions in other Member States

22. What countries have already, publicly or otherwise, expressed their support for the proposed anti-abuse provision?
23. Can the Commission expand on the matter of coherence with national anti-abuse provisions?
24. Which countries already have such a provision?
25. And what exactly happens when a national anti-abuse provision is more far-reaching?
26. Can the Commission provide an analysis (with examples) of the way in which national anti-abuse provisions in the EU differ and the problems that result?

Coherence with anti-abuse provisions in the Netherlands

27. What is the Commission's assessment of the way in which the Netherlands tackles abuse?
28. What is the Commission's response to the Dutch government, which has reacted to the proposed general anti-abuse provision by arguing that the Netherlands already has an effective battery of instruments to prevent abuse?
29. In what ways does the anti-abuse provision proposed by the Commission go further than the anti-abuse provisions currently applied in the Netherlands?
30. What is the Commission's reaction to the Dutch government's claim that the proposed anti-abuse provision might be a step backwards in the fight against abuse?
31. Does the Commission accept that adopting the proposed anti-abuse provision might restrict Dutch efforts to tackle abuse?
32. What arguments can the Commission deploy to show that the proposed general anti-abuse provision is more effective at countering abuse than those currently applied in the Netherlands?
33. How does the Commission feel that the Dutch government's view that tax evasion is to be tackled at European level ties in with the same government's position that the European anti-abuse provision is unnecessary and could even have a disproportionate impact on the effective Dutch approach to tax evasion?
34. Does the Commission consider the Dutch government's position on this dossier constructive at European level?

35. Can the proposed anti-abuse provision be tightened? If so, what steps does the Commission have in mind?

The anti-abuse provision's impact on business

36. Does the Commission believe that the proposed anti-abuse provision offers bona fide businesses more or less uncertainty?

37. What effect does the Commission expect the proposed anti-abuse provision to have on 'letter-box companies'?

Hybrid loan mismatches

38. What options other than the one finally chosen were considered for tackling hybrid forms of financing?

39. Is the Commission prepared to explain why it opted for this measure?

40. Does the proposed amendment to the Directive entail an obligation for receiving Member States to levy tax in the case of hybrid loans deductible in the source Member State? Or is it just a matter of lifting the ban on levying tax in the receiving Member State?

41. Why has the Commission chosen to oblige the receiving country to tax payments on hybrid loans when the paying country considers them to be loans? Would it not be more logical to say that the country from which the payment is made will not grant a deduction unless the receiving country taxes the payment?

42. Does the Commission agree that this will also prevent rate-shopping?

43. What form will the obligation to tax the payment take? Will the EU Member States have to adapt their law, as tax cannot currently be levied under national law? And if this is the case, how does the Commission envisage this happening?

Dutch participation exemption

44. What is the Commission's view of the Dutch participation exemption?

45. Are there cases in which it clashes with the amended Directive?

Reasonable business conduct

46. What is meant by 'reasonable business conduct' in Article 1a(2)(b)?

Relationship to OECD proposals

47. How does the proposed Directive tie in with comparable proposals from the OECD?

48. Does it not bother you that the OECD and EU proposals are not properly harmonised?

49. Can the Commission still adapt its proposal?

Thank you in advance for answering the above questions from the Dutch House of Representatives.
We would be very grateful to have your written response within three months at the very latest.

On behalf of the Dutch House of Representatives' Standing Committee on Finance,

Yours sincerely,