The Ambassador

June 15, 2015

Dear Senator,

On behalf of the government of the Netherlands, I am writing to express my concern about the Senate Bill 61, which seeks to include the Kingdom of the Netherlands on the State of Oregon's statutory tax haven list. For the reasons below, I respectfully urge you to refrain from including the Netherlands on any such list or any administrative actions leading to the same result.

Introduction

The Netherlands is a highly-developed industrial and trading center, with the largest port in Europe. As you know, Oregon's only year-round direct flight to Europe is to Amsterdam, one of the busiest airports in the world. Estimates from 2011 attribute 211 Portland airport jobs to this connection, as well as 1,341 Oregon tourism jobs. This impact has likely grown since 2011.

Direct investment in US companies constituted $275 billion in 2012, making the Netherlands the world's third-largest investor in US business.[1] These ties support nearly 685,000 US jobs. In Oregon, these investments include AkzoNobel Wood Finishes & Adhesives in Salem, EcoFys sustainable energy consultants in Corvallis and several other companies in the Portland area.

Consequence of SB 61

Adoption of SB 61 would have as a consequence that the income of any company incorporated in the Netherlands would be specifically taxed on the Oregon tax return filed by any US affiliate doing business or receiving income in Oregon. For example, a Dutch company intending to invest in business operations in Oregon through a subsidiary would need to take into account the fact that the new Oregon subsidiary would be taxed on its own income as well as on the income of the Dutch company, which would almost certainly have a negative impact on investment and bilateral relations.

[1] Netherlands Embassy, June 19, 2014, available at http://dc.the-netherlands.org/news/2014/06/economic-ties-2014.html

No valid arguments exist for such arbitrarily and discriminatory treatment of the Netherlands. Changes to SB 61 that would allow for example the Department of Revenue to add jurisdictions to the list without any legislative action potentially could have an equally negative impact.

Netherlands' Tax System

The Netherlands has a corporate income tax system which complies with international standards. Initial proceedings on the parallel bill (House Bill 2099) focused on the Netherlands' tax rate. According to the Oregon Tax Statute a tax haven is a jurisdiction with no or a nominal tax rate. The statutory tax rate in the Netherlands is 25%, with a 20% rate for profits up to EUR 200,000 for SME companies. The effective rate has ranged from 13.4% to 16.9% in recent years, which is within the norm for European countries. A report by the European Commission on effective rates in European member states has been provided to the Department of Revenue. The Netherlands has also commented extensively on all other points raised after it learned on its own that it had been named in the January 2015 report of the Department of Revenue. We enclose those documents and comments for your information. The Department has not responded to the substantial evidence the Netherlands has presented to counter the arguments of the Department; therefore, we remain uncertain about where the Department of Revenue stands.

Netherlands' Efforts to Combat Tax Avoidance

The Netherlands has longstanding ties with the United States, which go back over 400 years and include a long history of cooperation on tax issues. The US-Netherlands tax treaty dates from 1948. This treaty was replaced by a new treaty in 1992, with an update approved by the US Congress in 2004. The Netherlands was one of the first to begin negotiating with the US federal government to report taxpayer information under the Foreign Account Tax Compliance Act (FATCA), resulting in the signing of an agreement in December 2013. As from September 2015, our countries will start to exchange information under this agreement.

As you know, representatives of the Netherlands Ministry of Finance and the diplomatic corps visited Oregon in April, learning important insights about Oregon's concerns from legislative leaders, the Governor's office and the Department of Revenue. We acknowledge Oregon's desire to ensure that its citizens and businesses pay their fair share of tax to the state, as well as Oregon's frustrations with the pace of change in federal law and the inherent potential for avoidance caused by disparate systems of taxation among nations. The Netherlands understands Oregon's concerns regarding international tax avoidance and is actively involved in the fight against tax avoidance and evasion, both domestically and internationally.

The Netherlands actively supports the initiatives of the G20, OECD and EU to combat tax avoidance and evasion, for example by participating in the Base Erosion Profit Shifting project of the OECD (referred to as BEPS). In particular, the Netherlands has good working relations with the US Treasury on the OECD BEPS process. All of these initiatives include, as important spearheads, proposals to improve transparency and the automatic exchange of information and to modernize bilateral tax treaties (i.e. with anti-abuse provisions, see below). A solution to international tax evasion can only be found through international coordination and international enforcement. The OECD is scheduled to report to the G-20 in September 2015 on the BEPS recommendations.

Netherlands' participation in EU efforts. Recent legislative work within the EU has focused on the inclusion of anti-abuse clauses in EU legislation.[2] The Netherlands is fully supportive of these efforts. In December 2014 changes to the so-called Parent-Subsidiary Directive were adopted at the EU level.[3]

The revisions include general anti-abuse measures to counter tax avoidance. They apply within the EU, but the Netherlands intends to apply these provisions worldwide (see discussion below).

Further work is underway to update the existing so-called Interest and Royalty Directive (originally adopted in 2003) to include anti-abuse provisions to counter tax evasion. Finally, a proposal for a new directive on the automatic exchange of tax rulings is supported by the Dutch government. The Dutch government considers this legislative work a priority of its presidency of the European Union which the Netherlands will hold in the first half of 2016.

Netherlands' new tax treaty provisions. A policy of including anti-abuse measures in tax treaties was already announced in the Netherlands in 2013.[4] The Finance Ministry's letter to the Dutch Parliament on this has been provided to the Department of Revenue. The letter focuses on treaties with developing countries, but the tax treaties with developed countries will also include a new anti-abuse measure. The purpose of the anti-abuse clause is to deter and prevent treaty abuse. Negotiations with an initial group of 23 developing countries have begun, with the following results to date:

- With 2 countries a new treaty/protocol has been signed (Malawi and Ethiopia).
- With 3 countries there is agreement but not yet a formal signature (Kenia, Zambia and Ghana).
- With 5 countries negotiations are in advanced stages, with some close to finished (Kyrgyzstan, Bangladesh, Egypt, Moldova, Uganda).

[2] This legislation is called Directives; all EU countries are bound by them.

[3] See attached press release of the European Council, which is in the legislative record.

[4] See August 30, 2013 letter from Ministry of Finance to Parliament.

Conclusion

In summary, the government of the Netherlands respectfully rejects the proposed classification of the Netherlands as a tax haven. The Netherlands is not considered a tax haven by the OECD nor by any other country, state or public entity. The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes acknowledges in its Progress Report 2014 that the Netherlands – just like the United States – is largely compliant in the area of tax transparency.[5] I therefore respectfully urge you to consider this submission of evidence and to refrain from adding the Netherlands on Oregon's statutory tax haven list. Our earlier letter to the House Revenue committee which sets out more detailed arguments is enclosed.

Should you have any questions regarding this matter or wish to discuss it further, I would welcome the opportunity to do so.

Sincerely,

Rudolf Bekink

The Honorable
Senator Mark Hass
Chair, Senate Committee On Finance
and Revenue
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Salem, OR 97301

Cc:Senator Brian Boquist, Senator Chris Edwards, Senator Chuck Riley, Senator Herman Baertschiger Jr.

[5] See http://www.oecd.org/tax/transparency/GFratings.pdf

LIST OF ENCLOSURES

Embassy of the Netherlands Press Release, "Dutch-American Ties Growing Stronger, Supporting 685,000 Jobs in the US" (June 19, 2014).

Centre for European Economic Research, "Final Report 2014, Effective Tax Levels Using The Devereux/Griffith Methodology" (TAXUD/2013/CC/120).

Backgrounder on Netherlands tax system (circulated to legislators spring 2015).

April 1 email to Joe DiNicola of Department of Revenue, plus March 22 email to Mary Kintner/Jim Bucholz of Department of Revenue (April 1, 2015, March 22, 2015).

European Council Press Release on Anti-Abuse Provisions (December 9, 2014).

Letter from Dutch tax department (Ministry of Finance) to Parliament (August 30, 2013).

OECD Global Forum on Transparency Ratings (May 2015).