Ministerie van Financiën

> Retouradres Postbus 20201 2500 EE Den Haag

Directie Bestuurlijke en Juridische Zaken

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2511 CW Den Haag
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2500 EE Den Haag
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Ons kenmerk
2019-0000089713

Uw brief
18 april 2019

Datum 18 juli 2019
Betreft beslissing op uw Wob-verzoek naar asymmetrische componenten in de Nederlandse deelnemingsvrijstelling

Geachte

Met een beroep op de Wet openbaarheid van bestuur (verder: Wob) hebt u mij informatie gevraagd over de asymmetrische componenten in de Nederlandse deelnemingsvrijstelling, in het bijzonder in het kader van de recente monitoring van de Gedragscodegroep van de 2000-guidelines.

Inventarisatie
Onderzoek binnen het ministerie naar documenten over het onderwerp van uw verzoek heeft twee documenten opgeleverd, te weten een overzicht van de nationale maatregelen van de lidstaten op dit punt en een mailwisseling tussen een ambtenaar van mijn ministerie en de permanente vertegenwoordiging van Nederland in Brussel met betrekking tot dit overzicht.

Beoordeling
Ik maak deze twee documenten openbaar, met inachtneming van het volgende.

- Van het overzicht maak ik naast de titelpagina de door u gevraagde informatie over Nederland openbaar (pag. 1, 17 en 18). Informatie over andere landen valt buiten de reikwijdte van uw verzoek.
- De mailwisseling maak ik openbaar. De mailwisseling is opgesteld in het kader van intern beraad in de zin van de Wob. Op grond van mijn vaste beleid maak ik de daarin voorkomende persoonlijke beleidsopvattingen niet openbaar. Ik beroep mij daarbij op artikel 11, eerste lid, van de Wob.
- De namen van uitvoerende ambtenaren maak ik niet openbaar met een beroep op artikel 10, tweede lid, aanhef en onder e, van de Wob, omdat de eerbiediging van hun persoonlijke levenssfeer voor mij zwaarder weegt dan de openbaarheid van hun namen.

Besluit
Ik wijs uw verzoek toe, met in achtneming van het vorenstaande.

DE MINISTER VAN FINANCIEN,
namens deze,

De directeur Juridische Zaken

Deze brief is een besluit in de zin van de Algemene wet bestuursrecht. Op grond van die wet kunt u tegen dit besluit binnen zes weken na de dag waarop dit besluit is bekendgemaakt een bezwaarschrift indienen. Het bezwaarschrift moet worden gericht aan de minister van Financiën, ter attentie van de directie Bestuurlijke en Juridische Zaken, Postbus 20201, 2500 EE Den Haag. Het bezwaarschrift dient te worden ondertekend en dient ten minste het volgende te bevatten:
a. naam en adres van de indiener;
b. de dagtekening;
c. een omschrijving van het besluit waartegen het bezwaar zich richt;
d. een opgave van de redenen waarom u zich met het besluit niet kunt verenigen.

Member State	Q1:Does your Member State have a Holding Company regime ?	Q2: How are capital gains treated under that regime?	Q3: How are capital losses treated under that regime?	Q4: Do any general rules apply to capital gains and/or capital losses in addition to or instead of specific rules?	Q5: Are there any anti-abuse provisions that are relevant for preventing abuse of that regime?

MEMBER STATES' ANSWERS TO THE QUESTIONNAIRE (WK 9430/2018)

ON THE IMPLEMENTATION OF THE 2000 GUIDANCE ON ROLLBACK AND STANDSTILL

QUESTIONNAIRE ON HOLDING COMPANIES, ASYMMETRICAL MEASURES

The delates will find hereafter:

- a summary of the replies received; and

- our preliminary research and some general findings regarding the main effects of the so-called participation exemption provisions in respect of the tax treatment applied to capital gains on disposal of shares and to related capital losses (symmetry or lack of) (IBFD source).

Member State	Q1:Does your Member State have a Holding Company regime ?	Q2: How are capital gains treated under that regime?	Q3: How are capital losses treated under that regime?	Q4: Do any general rules apply to capital gains and/or capital losses in addition to or instead of specific rules?	Q5: Are there any anti-abuse provisions that are relevant for preventing abuse of that regime?
buiten reijkwijdte verzoek					
Netherlands	**Reply**: No	**Reply**: n/a	**Reply**: n/a	**Reply**: Yes. The **participation exemption provides, as a last resort, the possibility to offset capital losses**, if any, against the profit made by the Dutch parent company. **IBFD**: **Capital gains (and losses)** on qualifying participations **are exempt under the participation exemption.** Losses incurred on the disposal of a qualifying participation are not taken into account because such losses fall under the participation exemption, except for the liquidation loss regime which applies under conditions. Under **the participation exemption regime**, dividends and other profit distributions, currency gains (or losses) and **capital gains (or losses) on the disposal of a qualifying participation or part thereof may be exempt from corporate income tax.** ***Substantial corporate shareholders:*** Capital gains on the disposal of shares in a resident company by a resident or non-resident substantial corporate shareholder may be exempt by virtue of the participation exemption. Consequently, **losses are generally not deductible** (except for liquidation losses). If the shares are disposed of on an earn-out basis, the changes in value of the earn-out constitute capital gains (or losses) for	**Reply**: n/a

Member State	Q1: Does your Member State have a Holding Company regime ?	Q2: How are capital gains treated under that regime?	Q3: How are capital losses treated under that regime?	Q4: Do any general rules apply to capital gains and/or capital losses in addition to or instead of specific rules?	Q5: Are there any anti-abuse provisions that are relevant for preventing abuse of that regime?
				both the acquiring company and the disposing company. Capital gains may also be exempt if the shares are alienated within the framework of a merger or division. Under the participation exemption, **changes in the value of a qualifying participation do not affect** the taxable income of the parent company. It **is not allowed to devalue** participations.	

buiten reikwijdte verzoek

Van: [redacted] (AFP/BELEID)
Aan: [redacted] (AFP/BELEID)
Onderwerp: FW: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation exemption) - ddl 10/01/2019
Datum: woensdag 29 mei 2019 11:27:27

Van: [redacted] (DB/WINST) [redacted]@minfin.nl>
Verzonden: dinsdag 18 december 2018 16:55
Aan: [redacted]@minbuza.nl>; [redacted] (AFP/EDA) <[redacted]@minfin.nl>
CC: [redacted]@minbuza.nl>; [redacted]@minbuza.nl>
Onderwerp: RE: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation exemption) - ddl 10/01/2019

11.1 [redacted]

Met vriendelijke groet,

[redacted]
Beleidsmedewerker
....
Directoraat-Generaal voor Fiscale Zaken
Ministerie van Financiën
Korte Voorhout 7 | Den Haag |
Postbus 20201 | 2500 EE | Den Haag
....
T [redacted]
E
www.rijksoverheid.nl

Van: [redacted]@minbuza.nl>
Verzonden: dinsdag 18 december 2018 16:54
Aan: [redacted] (DB/WINST) [redacted]@minfin.nl>; [redacted] (AFP/EDA) [redacted]@minfin.nl>
CC: [redacted]@minbuza.nl>; [redacted]@minbuza.nl>
Onderwerp: [***MOGELIJK SPAM***] RE: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation exemption) - ddl 10/01/2019

11.1 [redacted]

[redacted]

From: [redacted] (DB/WINST) [redacted]@minfin.nl>
Sent: dinsdag 18 december 2018 16:19
To: [redacted] (AFP/EDA) [redacted]@minfin.nl>; [redacted]@minbuza.nl>
Cc: [redacted]@minbuza.nl>
Subject: RE: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation

exemption) - ddl 10/01/2019

Hoi [redacted]

11.1

Met vriendelijke groet,

[redacted]
Beleidsmedewerker
....
Directoraat-Generaal voor Fiscale Zaken
Ministerie van Financiën
Korte Voorhout 7 | Den Haag |
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Van: [redacted] (AFP/EDA)
Verzonden: dinsdag 18 december 2018 15:44
Aan: [redacted]@minbuza.nl>; [redacted] (DB/WINST) [redacted]@minfin.nl>
CC: [redacted]@minbuza.nl>
Onderwerp: RE: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation exemption) - ddl 10/01/2019

11.1

Groet,

[redacted]

Van: [redacted]@minbuza.nl>
Verzonden: dinsdag 18 december 2018 15:18
Aan: [redacted] (AFP/EDA) [redacted]@minfin.nl>; [redacted] (DB/WINST) [redacted]@minfin.nl>
CC: [redacted]@minbuza.nl>
Onderwerp: FW: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation exemption) - ddl 10/01/2019

Hoi [redacted]

Zie bijgevoegde mail van de CIE. Ze hadden al aangekondigd dat ze gingen proberen de antwoorden beter vergelijkbaar te maken. Kunnen jullie nog even checken wat ze bij NL hebben toegevoegd (van IBFD site gehaald kennelijk). 11.1

Deadline voor reactie is 10/1. Wellicht kunnen we het deze week nog afronden?

[redacted]

From: [redacted]@ec.europa.eu <[redacted]@ec.europa.eu>
Sent: dinsdag 18 december 2018 15:04
To: [redacted]@diplobel.fed.be; [redacted]@minfin.fed.be; [redacted]@bg-permrep.eu; [redacted]@mzv.cz; [redacted]@um.dk; [redacted]@brue.auswaertiges-amt.de; [redacted]@mfa.ee; [redacted]@dfa.ie; [redacted]@rp-grece.be; [redacted]@reper.maec.es; [redacted]@dgtresor.gouv.fr; [redacted]@mvep.hr; [redacted]@rpue.esteri.it; [redacted]@mof.gov.cy; [redacted]@mfa.gov.lv; [redacted]@eu.mfa.lt; [redacted]@mae.etat.lu; [redacted]@mfa.gov.hu; [redacted]@gov.mt; [redacted]@minbuza.nl>; [redacted]@bmeia.gv.at; [redacted]@msz.gov.pl; [redacted]@msz.gov.pl; [redacted]@reper-portugal.be; [redacted]@rpro.eu; [redacted]@gov.si; [redacted]@mzv.sk; [redacted]@formin.fi; [redacted]@gov.se; [redacted]@fco.gov.uk
Cc: [redacted]@mef.gov.it; [redacted]@consilium.europa.eu; [redacted]@ec.europa.eu; [redacted]@ec.europa.eu; [redacted]@ec.europa.eu; [redacted]@ec.europa.eu; [redacted]@ec.europa.eu; [redacted]@ec.europa.eu
Subject: Follow-up email to MS - preliminary views on the Questionnaire on monitoring the implementation of 2000 Guidance on rollback and standstill (Holding Co v. participation exemption) - ddl 10/01/2019

Dear colleagues,

In the Code of Conduct meeting of 15 November 2018, the replies on the questionnaire on monitoring the implementation of the COCG Guidance on rollback and standstill were presented. It was mentioned that – considering the replies to this questionnaire – Member States seem to have a different understanding of what constitutes a "Holding Company Regime" and of the scope of the Guidance, therefore the answers to the questionnaire varied significantly.

In order to achieve a common understanding and to prepare the way forward, we would like to share with you the attached annex and the following explanations. In the table:
For easy reading, we summarised the replies received; and
We completed it with the results of a preliminary research and some general findings regarding the main effects of the so-called participation exemption provisions in respect of the tax treatment applied to capital gains on disposal of shares and to related capital losses (symmetry or lack of).

First, the 2000 Guidance on Holding Company reads as follows:
'18. The features that the Group took into account when evaluating whether the measures it assessed in the areas of finance branches, holding companies and headquarter companies were harmful are:
…
Holding Companies:
(iii) Exemption of foreign source dividends in circumstances in which the profits giving rise to the dividends: …. [It has been decided that the dividend aspect is not relevant for the monitoring exercise.]
(iv) Asymmetrical measures where capital gains are exempt but capital losses are tax deductible. '

There is no further explanation in the text of what constitutes a holding company in the sense of the guidance.

Second, the outcome of replies to the questionnaire on Holding Company Regimes can be summarised as follows:
7 MS indicated that they have a specific holding company regime; they provided replies to the questions on the tax treatment of the capital gains and related capital losses, and /or anti-abuse rules;
21 MS indicated that they have no specific holding company regime.
Within this category, one third explained the tax treatment applied within the so-called *participation exemption* rules in instances where shares held by a resident company were disposed of; while two thirds of the MS did not provide any reply to the subsequent questions.

We can conclude that there was unfortunately no common understanding on the scope of the questions raised. Some Member States understood that the Guidance is applicable only to specific holding company regimes, while other Member States understood the guidance as being applicable to participation exemptions (for capital gains and received dividends) in a more general sense (which would also cover holding companies), while other MS disregarded the questions entirely as not relevant for their tax rules.

In order to complete the monitoring exercise swiftly and most importantly to avoid reopening the guidance and discussing the meaning of holding company, the Commission suggests a pragmatic way forward.

The key issue is whether the measures may – regardless of the legislative technique of the regimes **These measures may be part of a special Holding Company Regime, or such measures may also be part of the general tax system, or those measures may apply to capital gains and losses in addition to or instead of the special rules of the Holding Company Regime.** – **result in an asymmetrical treatment of capital gains and capital losses from participations exemptions.** The Group took a similar approach in the context of the guidance on criterion 4 where is states under 5.: *The measure allows a deduction for costs or losses that is not symmetrical to the determination of the taxable earnings;*

Therefore, the Commission briefly analysed the answers provided and also gathered some publicly available information on Member States' tax systems with regard to the tax treatment of capital gains and capital losses for holding companies and participation exemptions.

We kindly ask you to verify the information in the attached annex for your country and confirm whether it is accurate. If necessary, please briefly clarify and/or correct this information, preferably in track changes.

We would be grateful to receive **your reply by Thursday, 10 January 2019**.

The final and overall results could then be discussed in one of the next COCG meetings.

In the meantime, we wish you all restful upcoming Holidays.

Meilleures salutations

Kind regards,
Cu respect,

[redacted]

European Commission
DG Taxation & Customs Union - Direct taxation
Harmful tax practices

[redacted]

http://ec.europa.eu/taxation_customs
https://twitter.com/EU_Taxud
https://www.goo.gl/7ELtXT

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