Effective tax rate

The revised Multistate Tax Commission model statute defines the term *'tax haven'* as a jurisdiction that has no or nominal effective tax on the relevant income. This is the first criterion.

- The Oregon Department of Revenue (DOR) referred to statistics of the US Bureau of Economic Analysis (BEA) and computed on the basis of the BEA-figures an effective tax rate of 2.31% in the Netherlands (2012). See DOR document dated February 4, 2015.
- While the calculation of effective tax rates is complex, the Netherlands refutes the 2.31% effective tax rate assertion. The statutory corporate tax rate in the Netherlands is 25%. A recent in-depth study by the European Commission covering the years 1998-2014 concluded that the effective tax rate in the Netherlands for the year FY 2012, FY 2013 and FY 2014 is 16.9%, 13.4% and 16.9%[1] respectively. The average effective tax rate is even higher[2].
- Effective tax rate calculations should encompass actual tax paid in the Netherlands as a percentage of the legally delineated tax base in the Netherlands. This principle is embraced by the international tax community for over a century; profits are taxed where they arise, and double taxation is avoided by a proper allocation of taxation rights. The Netherlands believes that the effective rate percentage in the DOR-paper does not reflect this.
- Within the EU this principle has led to a statute which prohibits double taxation within the EU (Council directive 90/435/EEC, 1990, known as "parent subsidiaries directive"). The Netherlands is bound by this directive and in full compliance therewith. This directive has been amended in 2003 (2003/123/EC) and on 9 December 2014 the Council agreed a further amendment to the directive so as to counter situations of tax avoidance.[3] As a result of the directive, because certain profits of French, Spanish or German subsidiaries, for instance, are taxed in their respective EU-countries, the Netherlands may not tax dividends received associated with a regional headquarters in the Netherlands if such dividends are derived from subsidiaries engaged in active business. This guarantees that the tax treatment of such dividends is effective the same in all European Member States.

Many US companies have their regional, European, headquarters in the Netherlands, for historical reasons and to benefit among others from the high-quality of Dutch infrastructure, its strategic trading geography, and from its highly-educated, multi-lingual, and adept labor force. These headquarters manage subsidiaries, both in EU and non-EU countries. To assign all or most profits generated by subsidiaries in other countries to the headquarters in the Netherlands is incorrect; conversely, assigning such profits to the Netherlands without a proper accounting and allocation of taxes paid elsewhere will lead to the incorrect and faulty tax rate noted above. The error is most visible for small economies, as the tax base attributable to actual economic activities in those economies is relatively small.

We assert that the effective tax rate for the Netherlands noted above is incorrect, which has also been acknowledged by US studies. In 2009, a research paper of the BEA prepared for the OECD pointed to the pernicious conclusions that could be drawn by the double counting that occurs when conventional methods are used to determine effective tax rates.[4] According to this paper the Netherlands, using methodologies that avoid double counting, yields effective tax rates up to 12 times higher than the DOR rated noted above.

In conclusion, given its statutory and effective tax rates the Netherlands has never been regarded a tax haven by any country or international institution.

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[1] http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/final_report_2014_taxud_2013_cc_120.pdf. Page C-443.

[2] Summary table, page 2.

[3] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/146127.pdf

[4] Daniel R. Yorgason, 'Collection of Data on Income and Other Taxes in Surveys of U.S. Multinational Enterprises', Paper prepared for the 4th Joint Session of the Working Group on International Investment Statistics and the Working Party on Globalisation of Industry, OECD, 8 October 2009 Paris, France.