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Source: International Tax Monitor: News
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Netherlands

Dutch Hearings After Panama Papers Likely to Yield Legislation

By Linda A. Thompson

The findings of a Dutch investigative parliamentary inquiry into profit shifting by high-net-worth individuals in the Netherlands are likely to spur concrete legislation aimed at curbing tax avoidance.

Snapshot

- Tax justice advocates, researchers not impressed with findings of Dutch investigative committee
- Lawmakers, practitioners expect new legislation to follow

The ball is now in lawmakers' corner, according to a Dutch committee tasked with investigating the role played by Dutch financial service providers in the rerouting and shifting of profits through or out of the Netherlands.

Henk Nijboer, the Labor Party lawmaker who chaired the Parliamentary Investigative Committee on Tax Schemes (Parlementaire ondervragingscommissie Fiscale constructies), said at a July 5 news conference that the committee—which interviewed 27 people over eight days—completed the fact-finding mission given to it by the House.

"It's now up to the House of Representatives to follow this up," he said after lawmakers compiled the findings gathered over 23 hearings in June for the 28-page report, also published July 5.

'Overkill'

Mark Hendriks, a partner at law firm Jaegers & Soons, said the Dutch tax officials who testified before the panel indicated they aren't "necessarily in favor" of additional legislative measures. Still, he said he expects June 21 European legislation aimed at the mandatory disclosure of tax-minimizing schemes by tax advisers to also result in new Dutch legislation.

It's "very likely" such new proposals would be a topic of concern in the ongoing negotiations to form a new Dutch government following the March general elections, he said in a July 5 email to Bloomberg BNA.

Hendriks warned that plans for new legislation present a risk of "overkill," pointing to measures already announced as part of the Organization for Economic Cooperation and Development's project to combat tax base erosion as well as a Dutch proposal aimed at the exchange of tax information with foreign jurisdictions and the establishment of a beneficiary ownership registry. He also added: "I think that the mandatory disclosure of tax-minimizing schemes might conflict with confidentiality obligations and even encourage self-incrimination."

Martijn Nouwen, a researcher at the University of Amsterdam, similarly expects the committee's findings to result in new legislative measures.

"If the new government doesn't do anything with the Committee's findings, I wouldn't be surprised if the House itself sprang into action," he said in a July 5 email. Such a proposal, Nouwen said, "might tighten tax legislation and regulations and also tighten the oversight on legal entities."

Crash Course

The mandate of the committee, established in the wake of April 2016 Panama Papers revelations involving secret offshore accounts linked to a Panamanian bank, was to obtain and collect information; the committee members weren't allowed to make recommendations or suggestions to the House.

An inquiry proposal that would have also tasked the committee with looking into tax avoidance structures set up by multinational corporations didn't muster enough votes in the House of Representatives.

"The House majority needed to appoint the Committee proved achievable if the Committee's mandate focused only on the Panama Papers problem," Nouwen said. Precisely because the committee's focus was squarely on tax avoidance and profit shifting by high-net-worth individuals, the panel didn't succeed in shedding new light on tax avoidance structures used by multinationals, he said.

He said the hearings "appear to have mostly been useful as a crash tax course for the new members of Parliament who will work" on taxation over the next four years. Nouwen said he doubts a parliamentary investigative inquiry was necessary for that, and said a meeting with experts would have achieved that goal just as well.

Fictitious Reality

The Dutch committee settled on a handful of main findings after interviewing 27 people—from trust chairmen to a representative for the Rolling Stones. The most important of those, Nijboer said, is that intermediaries at letterbox companies and trust offices, together with financial advisers, "create a reality on paper."

"By using tax advice and the services of trust offices, it is possible to meet the legal requirements without having to take into consideration the spirit of the law," he said at the news conference, adding that this muddies the view of supervising agencies and the Dutch tax authorities of what was really going on.

The committee also determined that huge sums of money are at stake, with around 4 trillion euros shifted through the Netherlands annually, and that profit shifting and tax avoidance rely on the close collaboration of tax advisers, trust officers, and notaries. Tax advisers design the tax scheme building plans, notaries enshrine them, trust offices and directors manage the schemes, and banks facilitate the accompanying money flows, Nijboer said, with no one carrying full responsibility for the "harmful influence" of the scheme as a whole.

The committee also found that in spite of oversight from the Dutch watchdog tasked with surveilling local trust companies, such trust companies continue to fail to comply with the law and have largely failed to self-regulate.

More Transparency Needed

The committee hearings were useful even if they didn't reveal much new information, said Esme Berkhout, tax policy adviser with Oxfam Novib, the Dutch affiliate of the international organization. "I don't think this committee was an anticlimax because we didn't have very high expectations that new information would be put on the table to begin with," she told Bloomberg BNA.

The hearing offered another reminder of how difficult it is to maintain oversight of the financial intermediaries involved in tax avoidance, as well as the need for more transparency, she said in a July 5 interview. "The hearings underline the need for public country-by-country reporting and more public transparency on tax rulings."

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ISSN 1535-7783