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Netherlands

4,000 Tax Rulings Face Dutch Probe After Paradise Papers



By Linda A. Thompson

The Dutch finance chief has ordered an investigation into more than 4,000 cross-border advance tax rulings the country's tax administration concluded with multinational companies in the last five years.

Finance Secretary Menno Snel announced the inquiry in a letter to the House of Representatives, taking swift action after news reports—following the weekend release of the Paradise Papers—revealed that a 2008 ruling awarded by Dutch tax officials to consumer products giant Procter & Gamble didn't follow the normal procedures.

According to local reports, a local Dutch tax official didn't submit the Procter & Gamble Co. ruling request to the special division in the Dutch tax administration responsible for treating advancing pricing agreements and advance tax ruling requests, the Rotterdam-based APA/ATR team.

The Procter & Gamble ruling was only signed by one tax official, while rules state that ruling requests must be greenlit by two officials, the reports state.

Snel said in a Nov. 8 letter to lawmakers that the tax official's failure to submit the ruling request to the APA/ATR team was “not acceptable” and ordered an investigation of more than 4,000 cross-border advance tax rulings and advance pricing agreements issued by Dutch tax officials between 2012 and 2016.

The aim of this investigation, he said, would be to assess whether the rulings were “awarded in accordance with the appropriate procedures.”

Snel said he would inform the House on the outcome of the investigation “early next year.”

Correct Interpretation

Procter & Gamble's 2008 ruling request centered on an international restructuring operation that aimed to dissolve a corporate set-up involving multiple entities in the Netherlands, the U.K., Canada and the Cayman Islands, following the company's acquisition of the Gillette razor company in 2005.

In a Nov. 8 email statement to Bloomberg Tax, a spokesperson for Procter & Gamble noted that over the last 10 years, the company “eliminated” more than half of its legal entities when those units became redundant following acquisitions or otherwise became unnecessary.

“The transaction referenced in the report was part of that simplification process, intended to facilitate the dissolution of these inactive legal entities which came to P&G

Snapshot

- Procter & Gamble ruling was only signed by one tax official
- Investigation to determine whether rulings were made in line with appropriate procedures

via acquisition,” the spokesperson said, adding that the company had long disclosed all its legal entities around the world in its public financial filings.

He also said news reports alleging the company had avoided taxes were “false” and that the company observed and complied with tax legislation and their underlying intent in all the countries in which it operates.

“P&G has fully transparent relationships with governments and tax administrations worldwide. Additionally, as a best practice, we may seek confirmation from governments and tax administrations that our interpretation of tax laws is correct. This is what was done in this instance,” the spokesperson said.

The Paradise Papers involve a data leak of more than 13 million files for offshore entities, including files dating back 50 years from Bermuda law firm Appleby.

‘Done Deal’

Mark Hendriks, a partner at law firm Jaegers & Soons, told Bloomberg Tax the inquiry wouldn't have any legal repercussions for those companies that concluded a tax ruling with the Dutch tax administration between 2012 and 2016.

“A ruling that has been signed by the Dutch tax administration—whether by a local inspector or by the head of the APA/ATR team is a done deal,” he said in a Nov. 8 phone interview.

Any potential procedural mistakes in previous rulings revealed by the forthcoming investigation, he said, would constitute an “internal problem” for the country's tax administration that wouldn't affect the validity of the rulings themselves.

“Legally speaking, the state secretary can no longer do anything. These rulings were signed by someone at the tax administration; they are fixed,” he said, describing the investigation as a “political signal” rather than a legal step.

He added that there was “no chance” that the awarded rulings would be annulled or back taxes claimed due to found procedural errors.

Need Additional Measures

Tom van der Lee, a lawmaker for the Greens Party who pressed the state secretary to take action during a Nov. 7 plenary debate in the House, described the forthcoming probe as “justified” in a Nov. 8 statement.

He noted, however, that the state secretary hadn't announced any additional measures against tax avoidance in his letter. Pointing out that the Paradise Papers leaks had shed light on the leading role played by the Netherlands in global tax avoidance, he said: “We have to do more to combat this.”

In recent months, members of the Dutch House of Representatives have repeatedly pressed Snel's predecessor, Eric Wiebes, to allow them to inspect rulings awarded to multinational corporations and to disclose more information about the country's rulings practice. Wiebes had always turned down such requests, pointing out that tax rulings offer companies legal certainty that is beneficial to the Netherlands' ability to attract and retain foreign companies.

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