Netherlands to Modify Innovation Box Regime

by William Hoke

The Netherlands will modify its patent (innovation) box regime to conform to international standards, according to Dutch Minister of Finance Jeroen Dijsselbloem.

While proponents say innovation boxes encourage innovation and increase the number of high-paying jobs, critics respond that the special regimes unfairly favor one sector of the economy and lead to unhealthy tax competition. Under the Dutch innovation box regime, eligible income is taxed at an effective rate of 5 percent rather than the top corporate rate of 25 percent.

''I strongly believe that the only way we can tackle this is by having very strong international standards, put them in hard European law, and then stick to it,'' Dijsselbloem said at an impromptu press conference in Brussels on January 15. ''We're going to do that.'' The Netherlands holds the current presidency of the Council of the European Union.

Dennis Weber of Loyens & Loeff in Amsterdam said Dijsselbloem's comment about putting the international standards into ''hard European law'' means that there should be an ''EU-wide'' directive on the subject. ''The Dutch position was always that solutions [based on the OECD's base erosion and profit-shifting project have] to be put in hard (international) law,'' Weber said.

Weber said he expects the European Commission to address the issue of innovation boxes — although not necessarily in the form of a directive — in the BEPS package that the EU's administrative branch will present before the end of the month. EU Tax Commissioner Pierre Moscovici on January 12 announced plans to unveil an antiavoidance package that includes both legislative and non-legislative proposals by the end of January. (Prior coverage: *Tax Notes Int'l*, Jan. 18, 2016, p. 216.)

Willem Bongaerts of Bird & Bird LLP in The Hague said the OECD and G-20 countries agreed in February 2015 to bring their innovation box regimes into line by June 30, 2016, with the modified nexus approach under BEPS action 5 on harmful tax practices.

Bongaerts said that rather than basing the preferential IP regime on the legal and economic ownership of the intangible, the modified nexus approach allows a taxpayer to benefit to the extent of its own qualifying R&D expenditures that gave rise to the IP income. BEPS action 5 is intended to align the taxation of IP profits with the substantive activities that generate them. Bongaerts said the OECD and G-20 agreements, which include a grandfather clause through June 30, 2021, affect both the Dutch innovation box and Luxembourg's IP box.

Asked whether Dijsselbloem's remarks were related to the start of the Netherlands' six-month EU presidency, Bongaerts said the Dutch had previously announced plans to revise the country's innovation box. ''The Dutch government has always actively cooperated in the OECD's BEPS discussions,'' Bongaerts said.

Starbucks Case a Minor Detour

The Netherlands has been criticized for private tax rulings that appear to allow multinational enterprises to avoid taxes in other EU member states. The European Commission announced in October 2015 that the Netherlands had granted selective tax advantages to Starbucks in violation of EU state aid rules by artificially lowering the company's tax bill. The commission said Starbucks received between €20 million and €30 million of illegal aid. The Netherlands appealed that decision on December 1, 2015. (Prior coverage: *Tax Notes Int'l*, Dec. 7, 2015, p. 811.)

Dijsselbloem said the Netherlands decided to appeal the decision because the government wants ''full clarity'' in order to understand the relevant international standards. Asked by a reporter about the significance of the commission's ruling to the Dutch economy, Dijsselbloem said the Starbucks case is very small. ''It's only about the burning of the beans,'' he said.

Despite contesting the commission's decision in the Starbucks case, Dijsselbloem said the Netherlands will lead the fight against tax avoidance in the EU. ''I will make sure that [the] Netherlands will be in the front of that group because I think tax avoidance eats away at the solidarity in our societies,'' he said. ''It is unacceptable that multinationals don't pay taxes and, if the Netherlands has been part of the problem in the past, we want to be part of the solution from now on.''

Dijsselbloem was unequivocal when asked whether the Netherlands accepts the commission's authority to invoke state aid principles in tax cases. ''Absolutely,'' he replied.

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