

European Tax Newsalert

A Washington National Tax Services (WNTS)
Publication

Netherlands

December 23, 2011

Dutch rule on exit taxes

On December 22, 2012, the Dutch State Secretary for Finance published a policy rule reflecting the European Court of Justice's ("ECJ's") November 29, 2011 judgment in Case C-371/10 *National Grid Indus* (NA 2011:016). In anticipation of legislation, this policy rule addresses exit taxes for corporations and individuals engaged in business.

Issuing tax assessments

Tax assessments are not *directly* affected by the National Grid Indus decision, according to the policy rule. These tax assessments 'freeze' the taxable amount at the time of emigration without accounting for subsequent developments in the business.

Option for payment deferral

The taxpayer may, however, opt to defer the tax payment. The following conditions apply:

- the deferral only applies to unrealized asset and liability gains at the time of emigration;
- interest will accrue on the postponed tax payment;
- payment deferral will be granted only if the taxpayer provides security, e.g., a bank guarantee;
- the taxpayer must provide the tax collector with an overview of all 'unrealized' assets and liabilities annually.

The policy rule does not clarify whether a taxpayer would be allowed to opt partially for payment deferral, e.g., to reduce administrative costs. Also, the policy rule does not address the situation where an exit tax is levied on assets that are transferred from a Dutch permanent establishment to its foreign head office.

Deferral ends at ‘realization’

The tax will be collected if and when the gains are ‘realized’. The policy rule states that Dutch domestic tax law should distinguish different types of gains, e.g., hidden reserves, goodwill and fiscal reserves. Realization will occur to the extent these gain components would create taxable profits in a domestic situation. It seems that realization could occur when these components are depreciated after emigration.

Entry into force

The policy rule entered into force on December 23, 2011 and has retroactive effect from November 29, 2011.

For more information, please do not hesitate to contact:

The Dutch Desk team in New York:

Auke Lamers (646) 471 0570 auke.lamers@us.pwc.com

Ruben van der Heide (646) 471 9986 ruben.r.van.der.heide@us.pwc.com

Local EU Direct Tax Group Specialist:

Sjoerd Douma +31 88 792 4253 sjoerd.douma@nl.pwc.com

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2011 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.