

Government Critical of Proposed EU Head Office Tax System, Notes Drawbacks Outweigh Benefits

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Report from Marnix Schellekens, Principal Associate, IBFD

The Dutch government has expressed its concerns over the European Commission's recently launched proposal - the Head Office Tax System for SMEs (HOT proposal) - stating that the drawbacks outweigh any benefits it may bring.

The HOT proposal seeks to remove obstacles to cross-border business within the EU for small and medium-sized enterprises (SMEs). For details of the proposal, see [European Commission Launches Head Office Tax System for SMEs Proposal \(13 September 2023\)](#).

While the government agrees with the stated goal of helping this group of enterprises, it has expressed the following critical notes:

- There are doubts regarding the size of (i) the benefits the HOT proposal will bring, and (ii) the actual problem it aims to address, as out of the 817,000 SMEs operating in the Netherlands only about 8,000 do cross-border business through a permanent establishment (PE).
- The proposal could lead to fiscal arbitrage, as companies could use, for example, the [Merger Directive \(2009/133\)](#) to get more beneficial tax treatment.
- The fact that the tax base is determined under the rules of the headquarter state means that, in cases where the Netherlands is the PE state, Dutch policy choices will be side-lined (and vice versa).
- Under the proposal, several domestic anti-abuse measures will no longer be applicable.
- The compatibility of the proposal with tax treaties concluded based on the OECD Model Convention is questionable, in particular regarding the taxation of PEs under the non-discrimination provision.
- The proposal could give rise to a competitive imbalance: internationally operating enterprises have the potential to benefit more as they can choose the most advantageous tax system, while purely domestic enterprises do not have this option.
- The fact that the only SMEs that are not connected/related fall within the scope of the proposal means that a significant number of SMEs that use a holding structure cannot make use of its benefits.
- There are administrative concerns with regard to the exchange of information, verification, and capacity.

Letter [No. BZDOC-2017960319-16](#) of 24 November 2023 and the [document](#) outlining the Dutch position is available on the website of the Ministry of Foreign Affairs (in Dutch only).

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