

## **Frankrijk en Nederland zijn nieuwe administratieve afspraken overeengekomen met betrekking tot de onderlinge overlegprocedure**

De bevoegde autoriteiten van Frankrijk en Nederland zijn nieuwe administratieve afspraken overeengekomen die schetsen welke leidende beginselen worden gevolgd bij toepassing van de regeling voor onderling overleg zoals neergelegd in artikel 27 van het Frans-Nederlandse belastingverdrag. Deze afspraken zijn gemaakt ten einde te verzekeren dat het proces van de onderling overlegprocedures zo efficiënt en effectief mogelijk verloopt.

De Engelstalige tekst van de afspraak is als volgt:

### **CODE OF CONDUCT**

**The French and Dutch competent authorities have agreed to implement a code of conduct in order to improve the effectiveness and progress of the mutual agreement procedures initiated under Article 27 of the tax convention between France and the Netherlands of 16 March 1973 (hereafter “the Convention”).**

If the validity of the request to initiate a mutual agreement procedure is recognised, the competent authority of a State may agree with the competent authority of the other State to avoid double taxation in the cases mentioned in article 27 of the Convention.

According to article 27, paragraph 1, of the Convention, the request for opening a mutual agreement procedure must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention. It is understood that the term “first notification of the action”, which is the starting point of the three-year period, must be interpreted as:

- for France: the date of receipt of the notification of adjustments or of the proposal of rectification in case of contradictory procedure, or the date of receipt of the notification of basis or elements of assessments in case of estimated assessment;

- for the Netherlands: the date of the tax re-assessment notice, or original assessment, whichever is later.

France and the Netherlands are committed to comply as much as possible with the following conduct:

### **Timetable for the treatment:**

The competent authority to which the request to initiate the mutual agreement procedure is submitted must, provided that such request is complete, acknowledge receipt to the taxpayer of such submission within one month from the date of receipt of the request. Within the same period of time, it informs the other competent authority of such request, with the mention of the date of receipt of this request from the taxpayer.

The requested competent authority will endeavour to communicate a position on the substance of the request to the other competent authority within 120 days after the receipt of the complete request in order to initiate the mutual agreement procedure.

The other competent authority will endeavour to answer to the position on the substance within 180 days after the receipt of the first position.

The mutual agreement procedure shall in any case be dealt with within a time limit not exceeding 24 months.

### **Taxpayer's role:**

France and the Netherlands consider that, from a juridical point of view, negotiating a mutual agreement is a State-to process. A taxpayer has no legal right to attend or take part in the negotiations between the competent authorities of the States.

However, the competent authorities agree to keep taxpayer regularly informed about the progress made in the procedure and may invite them to provide explanations, information or documents that may be helpful to solve the case of taxation not in accordance with the Convention that was presented for consideration under a mutual agreement procedure. At the competent authorities' initiative, the taxpayer may be held to provide explanations or information when presenting the case to either competent authority or during a joint meeting.

### **Accelerated mutual agreement procedure:**

Where a taxpayer requests to initiate a mutual agreement procedure over a period of time subsequent to the previous period of time being examined under a mutual agreement procedure between the competent authorities, France and the Netherlands shall endeavour, at the same time, to solve the case of taxation not in accordance with the Convention for the whole period concerned, provided that the *de facto* and *de jure* factors are similar.

### **Joint commission:**

France and the Netherlands agree to meet twice a year to discuss the cases submitted to the mutual agreement procedure within the framework of a joint commission held alternatively in France and the Netherlands. Interim meetings and all sorts of informal communications between competent authorities should take place as often as necessary in order to reach agreements for the avoidance of double taxation.

The competent authorities will see to it that each case that is submitted for consideration under the mutual agreement procedure is discussed at least once within the framework of a joint commission within the twelve months following its initiation.

### **Notification of the agreement:**

After the competent authorities of the States have reached agreement on a case, the competent authority of the State that was originally asked the opening of the mutual agreement procedure will present this agreement to the taxpayer and ask the taxpayer to renounce any claim in the two States in relation to the case that was submitted for consideration in the mutual agreement procedure and to forgo or withdraw any judicial proceedings with respect to this case. The taxpayer will expressly confirm in writing his acceptance of the agreement that was reached between the competent authorities, as well as the aforementioned renouncement of claims and judicial proceedings.

**Follow-up of the mutual agreement procedures:**

France and the Netherlands shall exchange every six months an overall statement informing each State Party of the progress made in the treatment of mutual agreement procedures between two joint commissions.

**Confidentiality:**

France and the Netherlands are committed to ensure the confidentiality of the information transmitted by the taxpayer, in accordance with the Convention and their respective domestic laws.

**Suspension of recovery of taxes late payment interest and penalties:**

If the request to initiate a mutual agreement procedure is formulated before the collection or payment of tax, late payment interest or penalties, the competent authorities are committed to suspend their recovery of the amount of tax that is under consideration in the mutual agreement procedure or agree to grant a stand over order for the time necessary to solve the taxation not in accordance with the Convention, insofar as such suspension or stand over order does not generate a risk that such tax claims may not be recovered.

Both States agree not to charge interest for the period where the suspension of collection of tax or a stand over order is granted based on the above mentioned consideration. Accordingly, the Netherlands shall not grant any refund of interest for the period where interest is not charged by France.

France and the Netherlands have agreed to publish this code of conduct in order to assist taxpayers to understand and apply, in the appropriate way, for the mutual agreement procedure provided for in Article 27 of the Convention. This code of conduct may be reviewed from time to time.