BIJLAGE 1

QUESTIONNAIRE

A. Outline of the proposed Investment Yield Tax

Introduction: Boxes I, II and III

In September 1999, the Dutch government launched a Bill that contains a complete re-draft of the existing Personal Income Tax Act. The Bill is planned to come into effect in January, 2001. For a general description of this tax reform, we refer to the Brochure "Revision of Taxation, 2001", issued by the Dutch Ministry of Finance, that we attached to one of our previous e-mails to you.

In the proposed new Personal Income Tax Act, three types of income will be taxed: income from Box I, Box II, and Box III. In short, the income of Box I includes profits, employment income, income from other activities, and a deemed income from house ownership (residential only); Box II includes income from shares in the event of a substantial interest (5% or more), and Box III includes the income from savings and investments (the Investment Yield Tax). Each Box has its own rules for determining the taxable basis, and income from each Box is taxed at a different rate. Income from Box I will be taxed with a progressive rate (52% maximum rate), income from Box II will be taxed with a flat rate of 30% (will probably be reduced to 26%), and income from Box III will be taxed at a flat rate of 30%.

There is a strict "wall" between the three Boxes: losses that the taxpayer might incur in Box I can be set-off (carry back/fwd) against income from Box I only, and the same goes for losses in Box II. The income of Box III cannot be negative at all (see below).

A so-called Levy Rebate, a general basic allowance that is not specifically related to one of the Boxes, will be effected by means of a tax credit that can be credited against the combined amount of tax due on income from Box I, II and III. Some specific expenses that are not related to one of the Boxes (e.g. some personal obligations or exceptional expenses) will be effected by means of a reduction of income from Box I, III, or II respectively.

Investment Yield Tax: Box III

Box III income includes, in short, the income from shares and savings deposits, non-exempt endowment savings, land and property (other than the taxpayer's principal residence), and other (movable) property, not in personal use. A significant change with respect to the existing situation is that the income from savings and investments will no longer comprise separate interest, dividend and rental revenues. The new system is based on a fixed yield (or return) on assets minus liabilities, and it is this yield which becomes taxable under the rules of Box III. Interest paid and other costs cease to be deductible.

The taxable income in Box III is calculated at 4% of the fair market value of the taxpayer's property, minus the amount of his outstanding debts (to the extent that these are not attributed to Boxes I and II), and minus a basic allowance of Euro 17.000.

In other words, the tax burden on savings and investments that fall under the scope of Box III, minus debts and basic allowance, ands minus the Levy Rebate, is 1.2% (4% income x 30% tax rate).

As compared to the present tax legislation, the Investment Yield Tax of Box III will replace:

(i) the taxation of investment income in the existing Personal Income Tax Act (i.e. taxation of realised dividend income, interest receipts, etc. at a progressive tax rate); note, however, that presently there is no taxation of capital gains realised by portfolio investors, and

(ii) the Property Tax Act, a separate tax which is levied on the ownership of real estate, goods, savings, other investments, etc. (presently at a rate of 0.07%), which will be abolished.

The investment yield of 4% is deemed to reflect the realised return on savings and investments, such as dividend and interest receipts, as well as capital gains. Under the new system of Box III, the income actually realised by the taxpayer, will no longer be relevant.

The value of the savings and investments that are taxed in Box III is the average of the fair market values per 1 January and per 31 December of a tax year (calendar year).

Example
If a tax payer with an investment of 1000 (average fmv of January 800 and December 1200) receives a dividend of 100, only a deemed income of 40 will be taxed.

Example
If , alternatively, he disposes of his investment in December for a purchase price of 2000, the capital gain actually realised (assume 1200, i.e. 2000 -/- 800 cost price) is completely irrelevant, because only a deemed return of 56 on his investment for this calendar year will be taxed (4% x 1400 (average of January 800 and December 2000)).

If the taxpayer has incurred investment losses, this will probably not stand in the way of his obligation to pay taxes under the regime of Box III.

Example
If the value of savings and investments is 1000 in January, but, due to investment losses, is reduced to 50 in December, the taxable Box III income for that calendar year will be 21 (4% of 525), despite of an economic loss (realised or unrealised) of 9950.

If the investments of the taxpayer have been financed with a loan, the taxpayer may even find himself in the situation that the value of his savings and investments is negative. However, the new rules do not allow a negative income of Box III, so there will be no off-setting of Box III losses against Box III income.

In fact, there is no link whatsoever between the investment yield of 4%, and the income (positive or negative) that will actually be realised by the taxpayer in a specific calendar year. In addition, there is no relation or interdependency between Box III and the other two Boxes, except for the facts already mentioned, that (i) the Levy Rebate will be credited against the combined tax that is due on the income of all three Boxes, and (ii) certain expenses, such as specific personal obligations and exceptional expenses can be deducted, first from Box I income, then (if Box I income is not sufficient) from Box III income, and finally from Box II income (a tax base reduction).

The government takes the position that the Investment Yield Tax is a an income tax, levied on deemed income (the yield of 4%), whereas in literature this is seriously challenged by authors who take the position that the Investment Yield Tax is nothing but an ordinary property tax of 1.2%.

B. Questions

All our questions below relate to private individuals who receive income that will be taxed in Box III under the new Dutch Personal Income Tax Act (see above).

We would like to discuss the following specific cases:

I. Dutch resident taxpayer receives income from a source in your country.

Assume that the Dutch resident receives the following types of income, which are subject to the Box III regime in the Netherlands:

- Interest, paid by a resident in your country;
- royalties, paid by a resident in your country;
- Dividends, paid by a company resident in your country;
- Rent paid for using real property located in your country
- Capital gains realised upon disposal of real property located in your country;
- (Profit) Distributions paid by a partnership that is resident in your country.

Question 1

1.1 Our principal question is whether, in general, the Dutch resident can claim the Treaty benefits under the tax Treaty between your country and the Netherlands. Do you expect any problems in this respect? (You may refer to the more detailed questions below).

1.2 Will this Box III tax, under your national interpretation of the tax Treaty with the Netherlands, be classified as a tax on income (e.g. articles 6 - 21 OECD Model Treaty), or as a tax on capital (e.g. article 22 OECD Model Treaty)?

1.3 Will the income subject to this Box III tax, insofar applicable to the tax Treaty between your country and the Netherlands, be qualified as having satisfied the subject-to-tax criterion (income or capital tax)?

Question 2

2.1 Will the introduction of the Investment Yield Tax (Box III) change your country's attitude with respect to the granting of a withholding tax reduction, or of any other Treaty benefit, for interest, paid by a resident of your country? If so, please explain why.

2.2 Same as above for royalties, paid by a resident in your country?

2.3 Same as above for dividends, paid by a company resident in your country?

2.4 Same as above for rent paid for using real property located in your country? (Stating the obvious: the rent is paid by a resident of your country, and the real estate is owned by a resident of the Netherlands.)

2.5 Same as above for capital gains realized by a resident of the Netherlands upon disposal of real property located in your country?

2.6 (...)

II. Resident taxpayer in your country receives income from a Dutch source

Under the regime of Box III, non-resident taxpayers will (only) be taxed on 4% of the fair market value of the following Dutch assets:

(a) real property located in the Netherlands and rights directly or indirectly associated with or related to this real property (mineral resources included);

(b) profits shares in an enterprise carried out in the Netherlands, which profit shares have not been taxed under the regimes of Boxes I or II already.

Assuming that your country will tax these categories of income, our concern in this situation is whether (and how) your country will grant avoidance for double taxation for this income, if we take into account that this income has been subject to the Box III tax only.

Question 3

3.1 Our principal question is whether, in general, the resident of your country can claim the Treaty benefits under the tax Treaty between your country and the Netherlands for income that is subject to the Box III tax in the Netherlands only. Do you expect any problems in this respect? (You may refer to the more detailed questions below.)

Question 4

4.1 Will your country grant avoidance for double taxation with respect to income from real estate located in the Netherlands? If so, which article(s) of the Treaty will apply, and please describe the mechanism of the avoidance technique. Please address in your answer both rental income and capital gains realised upon disposal of the Dutch real estate.

For example: when the Box III tax qualifies as an income tax under your national tax law: is under your interpretation of the tax Treaty with the Netherlands the income deemed to have been "derived" from real property in the meaning of article 6 paragraph 1 OECD Model Treaty and will avoidance of double taxation be granted? If the income is not qualified as being "derived", will your local resident be able to claim avoidance of double taxation for the actual rent received from the Dutch located real property, even though this rent itself is not subject to tax, other than by the taxation of a fictitious yield under the Box III regime?

4.2 Will your country grant avoidance for double taxation with respect to income from profit shares in an enterprise that is carried out in the Netherlands, assuming that these profit shares are taxed under the regime of Box III in the Netherlands? If so, which article(s) of the Treaty will apply, and please describe the mechanism of the avoidance technique.

The taxation of non-residents addressed in this question applies to all entitlement to profits (other than by shareholdings), irrespective of the type of entity that runs the enterprise: for example enterprises run by corporations, partnerships, limited liability companies or enterprises run by private individuals. However, this way of non-resident taxation has been introduced in particular to tax a non-resident limited partner that is not directly liable to third party claims under the regime of Box III, similar to the way a Dutch resident limited partner in these circumstances will be taxed under the regime of Box III (see above, Ad 2.6).
For example: can a resident in your country claim avoidance of double taxation if the value of the profit share has been taxed under the regime of Box III (e.g. by arguing that the income is derived from a Dutch permanent establishment, see article 7 OECD Model Treaty)?

Question 5

Can you think of any other international complications with respect to the introduction of the Investment Yield Tax (Box III) in the Netherlands? Can you think of any international situations or examples that we may have overlooked in relation to your country?

Thanks again for your cooperation!

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Jaap Bellingwout/Klaas-Jan Visser