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His Excellency Henk Kamp, Minister of Economic Affairs
Her Excellency Lilianne Ploumen, Minister of Trade (Minister for Foreign Trade and Development Cooperation)
His Excellency Eric Wiebes, State Secretary of Finance

Amsterdam, May 16, 2016

Excellency,

During your visit to Silicon Valley in the beginning of February this year you solicited the views of the Silicon Valley Tax Directors Group ("SVTDG") as to how the Netherlands could maintain and improve the attractiveness of the Netherlands fiscal investment climate. The SVTDG very much appreciates this opportunity to share its views with you on these issues in this letter.

The SVTDG is composed of representatives from leading high-technology companies with corporate offices predominantly located in the area between San Francisco and San Jose, California (widely known as the "Silicon Valley"). It was formed in 1981 and now has over 80 members. A full list of members is attached as Annex A hereto.

The purpose of the SVTDG is to promote sound, long-term tax policies that support competitiveness. Members of this group believe that tax policies should enhance opportunities for productivity growth by encouraging and rewarding enterprises that develop goods and services that meet international market standards. The companies represented by the group are dependent on research and development in order to remain on the cutting edge of technology innovation and to compete in the international market place.

1. The Current Netherlands Tax Regime

1.1. Maintain the Attractive Features of the Netherlands Tax Regime

For many years, the Netherlands has been a favorite destination for US investments. US companies have created 450,000 jobs in the Netherlands, 225,000 of which are directly with US owned businesses. US companies are the source of almost five percent of the Netherlands GDP. US companies are attracted by the central location of the Netherlands, its modern infrastructure, political stability and the favorable business climate. The business tax regime has been a key policy instrument of government to create jobs and foster growth of the economy. Some features of the business tax regime have particularly contributed to the attractiveness and competitiveness of the Netherlands: (i) easy access to the Netherlands tax authorities; (ii) the possibility to obtain advance tax rulings to obtain legal certainty on a tax position; (iii) the favorable participation exemption regime; (iv) the wide tax treaty network; (v) the absence of a withholding tax on interest and royalties; (vi) the 30% tax ruling for expatriates; and (vii) the incentives for R&D related activities (innovation box and the WBSO (Wet Bevordering Speur- en Ontwikkelingswerk)).

The SVTDG believes that all of these features of the Netherlands business tax regime have been important drivers to attract US investors to the Netherlands. The elimination of one or more of these features will adversely impact both existing

US investments as well as the flow of new US investments into the Netherlands. We recommend that the Netherlands government carefully considers the pros and cons of any change to the current business tax regime.

This applies in particular to the successful tax ruling practice which has been so important to attract foreign investments to the Netherlands. The recent State aid investigations initiated by the European Commission (“EC”) have created uncertainty on the use of rulings as an instrument to manage risk. This is not a good development, certainly not in view of the earlier statement by the EC that the “Netherlands seem to generally proceed with a thorough assessment based on comprehensive information required from the tax payer” and that the EC would not “expect to encounter systematic irregularities in tax rulings”. Tax rulings are an important instrument to obtain legal certainty, which is particularly relevant if long term capital commitments are being considered by investors in the Netherlands.

A discontinuation of the ruling practice without reasonable alternatives being available will harm the Netherlands investment climate, resulting in reduced foreign investments and a loss of jobs.

1.2. Grandfathering of Existing Structures and Tax Rulings

Stability, consistency and predictability of the Netherlands tax regime have always been important pillars of the Netherlands investment climate. The international tax world is rapidly changing, and to allow companies to adjust to the new rules it is important to provide for transitional (or grandfathering) rules. Recent examples of the use of transitional rules to mitigate the effect of the introduction of BEPS related initiatives are: (i) the transitional regime for non-resident Irish companies where new rules apply effective January 1, 2015, with a transitional grandfathering period until 2021 for existing investors; and (ii) the grandfathering regime in respect of existing patent box and innovation box regimes allowing existing users to continue to benefit from the old regimes until 30 June 2021.

As mentioned above, we believe that the continuation of the current tax ruling practice is in the best economic interest of the Netherlands. However, if these practices can no longer be continued, the SVTDG recommends the introduction of grandfathering rules in the event newly introduced rules impact existing structures. This will enable companies to carefully consider the implementation of changes required by such new rules. In particular, the SVTDG requests that the Dutch Government respects the length of existing tax rulings issued in respect of structures that are impacted by new legislation.

The introduction of grandfathering rules will not only allow companies to adapt to the new rules but will also provide your government with a window in which it can consider how the Netherlands can improve the competitiveness of its business tax regime.

1.3. Permanent Establishment Exposure

The SVTDG is very concerned about the impact of the introduction of the UK Diverted Profits Tax (“UK DPT”) on Principal Companies located in the Netherlands. The UK DPT enables HMRC to re-characterize the supply chain of a Dutch based principal company and to re-compute the UK profits and impose a 25% tax on such “diverted” profits. The levy of a UK DPT significantly increases the effective tax burden of Dutch based principal companies, which could trigger a shift of these activities, functions and employees to other jurisdictions. This issue will become even more pressing as other countries (such as Australia and Indonesia) are also introducing similar UK DPT regimes.

The SVTDG believes it would be appropriate for Netherlands government to question the legitimacy of the UK DPT on the basis that the UK DPT is in violation of the tax treaty between the UK and the Netherlands and, in addition, could constitute a breach of the EU fundamental freedoms (freedom of establishment and movement of capital).

1.4. Continued Support on the State Aid Front

The SVTDG supports the appeal that was filed by the Netherlands against the EC decision in the Starbucks case and is in agreement with the view of the Netherlands government that the EC has not demonstrated that the Dutch Tax Authorities deviated from the statutory provisions (reference framework) in the Starbucks case (thus no selectivity). As mentioned above, the ruling practice is one of the pillars of the Netherlands business tax regime and it is important to maintain this practice. We encourage the Netherlands government to continue to press for a resolution of the State aid investigation that will preserve the ability of Dutch tax authorities to provide certainty to taxpayers through the resolution of disputes and the issuance of rulings according to the well established, internationally accepted arm's length principle (which is embedded in the general Netherlands tax framework).

1.5. Cross Border Tax Disputes and Double Taxation

It is the expectation of the SVTDG that the occurrence of double taxation events and cross border tax disputes will continue to increase as a result of current developments in the international tax arena. The Mutual Agreement Procedure ("MAP") does not always resolve these disputes, which results in unrelieved double taxation. We encourage the Netherlands government to play an active role in the MAP forum of the OECD Forum on Tax Administrations to monitor implementation of the minimum standards for mutual agreement procedures. In addition, we strongly support the addition of an article to bilateral tax treaties providing for a mandatory arbitration procedure, in order to resolve cases that become deadlocked in normal MAP negotiations. We commend the Netherlands government for its efforts to date to ensure that its treaties provide mandatory arbitration as an effective mechanism for successful dispute resolution, and we urge your continued leadership in that area.

2. Improve the Netherlands Fiscal Investment Climate

2.1. Set Parameters for a Healthy Investment Climate

A robust and attractive business tax regime encourages the combination of people, functions, assets and (legal) structure in one country. This should be the underlying objective of any business tax reform in the Netherlands. Entrepreneurs with real business activities should continue to be eligible without any limitation to the benefits of the Netherlands tax treaty network and should be able to earn foreign profits from operational activities, exempt from Netherlands taxation by virtue of the participation exemption or foreign branch exemptions.

2.2. Communicate a Tax Roadmap for Foreign Investors - Motion Nepperus

Many companies are in the process of reviewing and redesigning their group structure and supply chain models to cope with the substantial changes that the international tax system is going through as a result of the BEPS Action Plan and related initiatives. In order to promote the (continued) use of the Netherlands as an regional hub or regional HQ, it is important that the government clearly communicates on its envisaged tax policy for the upcoming years. Providing clarity on maintaining and improving the competitiveness of the Netherlands tax system to attract foreign investors, similar to what other countries have done, could help to eliminate existing uncertainty about the ambition of the Netherland government to maintain the competitiveness of the Netherlands fiscal investment climate.

2.3. Achieve a Competitive Tax Rate

The SVTDG believes that the current Netherlands headline corporate tax rate of 25% should be reduced to a rate that is comparable to the UK, Ireland and Switzerland headline corporate tax rates in order to remain competitive.

2.4. Attracting Innovative Assets and Activities to the Netherlands

In order to continue attracting innovative activities to the Netherlands, it will be important to clarify as soon as possible how the Netherlands will implement the modified nexus approach in its legislation and what the transitional regime will be for existing innovation box rulings. It goes without saying that in order to be competitive within the EU, the Netherlands should not implement more strict measures than prescribed by the modified nexus approach.

In order to stimulate companies transferring ownership of valuable intangibles to Dutch companies, it is vital that certainty can be given on a controlled future exit from the Netherlands. This could for example be achieved by allowing for the (temporary) transfer of intangibles through the contribution of an exclusive license right to use and exploit intangibles for a limited period of time (e.g., 5 or 10 years), without creating new intangibles during the period of such license.

2.5. Ensure Clarity Around Substance Requirements

Guidance should be given to determine which group functions relating to regional HQs qualify as real economic activities. This applies particularly for holding companies, financing companies and cash pool companies. One important and practical point to consider in this respect is to what extent safe harbors can be prepared to clarify under which conditions “substance” in one legal entity can be attributed to another legal entity.

3. Anti Tax Avoidance Directive (“ATAD”)

The scope of the ATAD (EU) goes substantially beyond the outcomes of the OECD BEPS Action Plan (Global). This applies both to scope of the issues addressed in the ATAD (in particular the introduction of the GAAR, Exit Tax and Switch-Over Clause) and to how the measures are implemented (minimum standards in the ATAD versus best practice or mere “building block” recommendations in the final BEPS Reports on hybrid mismatches, interest deductions and CFC regimes).

The ATAD requires minimum standards, but subsequently allows Member States to be more strict than the minimum standard. This will not achieve a cohesive implementation of the BEPS Action Plan. On the contrary, it will create only more uncertainty within the EU (not unlike what the effect has been of the introduction of a GAAR in the Parent Subsidiary Directive), but it will also create more uncertainty for non-EU resident companies dealing with the EU. The SVTDG is of the view that the ATAD should not go beyond what the OECD is proposing via the OECD BEPS Action Plan. SVTDG believes an impact assessment in order to determine the potential impact of the ATAD on the economy, jobs and tax revenues in the Netherlands and the EU as a whole is essential.

Supporting an open economy has always been important in Netherlands tax legislation and tax policy. This is reflected by two cornerstones of the Dutch tax system: (i) adherence to the principle of capital import neutrality and (ii) the absence of a withholding tax on interest and royalties and the objective to eliminate, through the use of tax treaties, withholding taxes on (non-portfolio) dividends.

Capital import neutrality means that Netherlands investors are able to invest in foreign markets under the same conditions as other foreign or domestic investors. For this purpose, profits derived by a Netherlands parent company from a foreign

subsidiary are exempt from taxation in the Netherlands on the basis of the participation exemption regime and profits obtained companies whose permanent establishment is situated abroad are exempt on the basis of the object exemption. This approach, safeguarded by domestic anti-abuse provisions, ensures that tax is levied there where value is created. The SVTDG is concerned that the wording of the Switch-Over Clause (article 6 ATAD) and the CFC clause (article 8 ATAD) cause a departure from the principle of capital import neutrality and will not result in companies being taxed where economic activities occur and where value is created.

The Netherlands has always endeavored to remove any obstacles that hinder the international flows of goods and capital. Accordingly, its international tax policy strives for withholding taxes on (non-portfolio) dividends to be as low as possible and a full elimination of withholding taxes on interest and royalties. The SVTDG reiterates that the absence of these withholding taxes is an important and attractive feature of the Netherlands tax system and would discourage a departure from this longstanding policy.

4. Public Country by Country Reporting

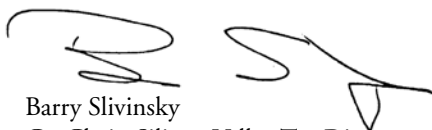
The SVTDG believes that the European Commission proposals to have companies report financial information on a country by country basis will hamper the business environment in the EU and will make the EU a less attractive place to invest in. Also, the SVTDG is concerned that the public report of data will result in reputational damages for companies as a result of an incorrect interpretation of such data and a general lack of understanding of complex tax laws.

The European Commission is taking the approach that the proposed amendment to the Accounting Directive (2013/34/EU) introducing public disclosure of tax information on a country by country basis can be adopted by a qualified majority voting. The SVTDG considers the amendment to the Accounting Directive introducing a requirement to publicly disclose tax information on a country by country basis as a matter directly affecting the Netherlands business tax regime, which should be an exclusive sovereign matter that can only be imposed on the basis of a unanimous vote of the Council (article 115 TFEU).

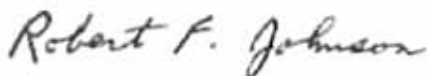
Yours Sincerely,



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