

DNB (Dutch Central Bank) Derailed?

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DNB (Dutch Central Bank) issued on July 2 2019 a Guideline entitled "Good practices tax integrity risks at clients of banks" (Good practices fiscale integriteitsrisico's bij cliënten van banken). The Financieel Dagblad (Dutch financial newspaper) published an article on August 7 on the topic. The editor's comment in the August 8 paper concludes this is not good news for the investment climate in the Netherlands.

What caught my attention was a derailing of thoughts in the guideline. Three short quotes. In para 1.1 it reads (my translation) "tax avoidance today attracts questions and attention". In para 2.1 it reads "a bank shall investigate whether tax integrity risks by a client in a tax avoidance case is acceptable", final quote para 2.2 "tax integrity risks specifically show up in cross border situations".

Why derailing? Either you follow through on tax avoidance or you don't. The DNB has taken an unbalanced view. Not only do they see themselves as arbiter of what constitutes tax avoidance rather than leave that to the well functioning Revenue Service, the DNB also has not thought through the broad concept of tax avoidance and the task imposed on banks. Rather it restricts the guidance to the widely published concepts of tax avoidance, ignoring the much larger use of tax planning/avoidance by individuals all around the world. However, to identify tax integrity risks, DNB ought to cover all aspects of tax avoidance.

DNB ignores the much more frequent use of tax avoidance in every day life. Three examples: (i) anticipatory behavior on a VAT rate increase, (ii) filling up a car with petrol in say Luxembourg when vacationing from the Netherlands in France because the duties are much lower, or (iii) buying tax free articles when travelling outside the EU. Typical cases of deliberate tax planning and avoidance. I must assume these are covered by the Guideline, although not mentioned as such. Also, two out of three entail a cross border transaction.

I'm reading the guideline such that all banks operating in NL must identify these types of transactions and record as a possible risk to integrity. DNB has no clue as to what they are requesting from the banks. Indeed very bad for the investment climate in NL in a competitive world.

It is obvious, I'm not a supporter of the DNB guideline. Not only because it addresses banks to identify transactions made by virtually (let me be cautious) all Dutch residents including DNB staff but more so because it encroaches on the privacy of citizens to do what's good for them as long as they stay within the letter and spirit of the law.

I trust DNB had not envisaged the derailment and fallout from the guideline and will start a public debate on what tax avoidance entails unless they withdraw the guideline. Amending it is no good; there are many more interpretations of tax avoidance causing potential anxiety at the banks' Boards.