

Israel Desk E-mail Bulletin

This e-mail bulletin is issued by the Israel Desk of Loyens & Loeff. It is intended to provide you on an ad hoc basis with news flashes or background information on topical corporate, finance and tax law issues in the Benelux.

**E-mail Bulletin no. 10,
9 July, 2009**

Reduced tax rate on group interest approved by EC

The European Commission has issued a press release on 8 July 2009 that it has found that the plan to apply a reduced tax rate on income from intercompany loans (a mandatory "group interest box") proposed by the Dutch government does not constitute state aid. The Dutch government is considering introducing such an interest box, see the Israel Desk E-mail bulletin no. 9 "*Dutch proposal amending taxation of interest and the participation exemption*".

The text of the decision will be released once any confidentiality issues have been resolved. The text of the press release is reproduced below.

We will provide you with further information once the text of the decision of the European Commission becomes available.

Press release European Commission

Brussels, 08 th July 2009

State aid: Commission endorses Dutch "Groepsrentebox" tax break scheme

The European Commission has found that a Dutch plan to apply reduced taxation on revenue from intra-group loans under a scheme known as "Groepsrentebox" does not constitute state aid. The Commission has therefore closed a formal investigation procedure opened in 2007 (see IP/07/154), to verify whether the measure would not confer a selective advantage on certain companies. In the light of commitments received from the Dutch authorities regarding the scope of the measure and the definition of groups, the Commission has now concluded that the measure, as amended by the commitments, will equally benefit all companies that receive interest from related companies regardless of their size, sector, or legal form.

In July 2006, The Netherlands notified to the Commission an innovative fiscal scheme, aimed at reducing differences in the fiscal treatment between two instruments of intra-group financing, namely equity and debt. Currently, when a Dutch company injects capital into another company, the dividend it receives is tax exempted, whereas when it lends money, the interest received is taxed at the general corporate tax rate of 25.5%.

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The members of the Israel Desk strongly focus on Israeli clients that invest or trade in Europe or other regions, as well as on international companies and financial institutions that want to expand their businesses to Israel. The team comprises members from various Loyens & Loeff practice groups.

The experience of the members as regards the Israeli market is combined with their extensive knowledge of international tax law, corporate structuring, banking and securities law, regulatory law, employment law. In addition to being part of the Israel Desk, the members also participate in Loyens & Loeff teams that focus on specific industries and sectors, such as energy, real estate, private equity, fund structuring, corporate finance, and financial products.

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The same is true for companies that receive funds: dividends paid for capital injections are not tax deductible, whereas interest paid for loans can be deducted at the general corporate tax rate of 25.5%.

The measure aims at lowering from 25.5% to 5% the tax rate on interest received from loans with related companies. Conversely interest paid will be deductible at a reduced rate of 5%.

In February 2007, the Commission opened an in-depth investigation because it had doubts that the measure would confer a selective advantage to some companies (see IP/07/154).

The Commission received comments from several third parties, including Belgian and Hungarian authorities and the Dutch Confederation of Industry and Employers association (VNO-NCM).

Initially, the measure notified was optional for a period of at least three years. Following discussions with the Commission, the Dutch authorities undertook to make the measure compulsory for all entities subject to corporate income tax in The Netherlands. The Dutch authorities also undertook to enlarge the definition of a group for the application of the measure to take account of situations where one entity has, directly or indirectly, effective control over the financing of the other entity, or where a third party has effective control over the financing of the two entities involved in the loan arrangement.

In addition, the Dutch authorities announced their intention to remove the existing statutory €18,000 capital requirement for the creation of limited liability company. In the light of the comments submitted and the modifications introduced by the Dutch authorities, the Commission concluded that the interest box measure does not constitute state aid as it will apply equally to all companies receiving interest from related companies. The measure is not limited to certain sectors, certain types of companies, or certain parts of the Dutch territory. Following the abolition of the minimum capital requirement for the creation of a limited liability company, there will be no legal or economic obstacle to the creation of a group. There are no restrictions regarding the turnover of the company, its size, the number of employees, whether or not it is part of a multinational group, or the nature of the operations that the beneficiaries would be authorised to perform.

The non-confidential version of the decision will be made available under the case number C 4/2007 in the State Aid Register on the DG Competition website once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.

Should you have any questions please feel free to contact jeroen.janssen@loyensloeff.com or any other member of the Israel desk.

Members of the Israel Desk visit Tel-Aviv on a regular basis. If you would like to make an appointment or would like to receive more information with respect to the above, please feel free to contact jeroen.janssen@loyensloeff.com or any other member of the Israel Desk.

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