

Brazil Desk Email Bulletin

This e-mail bulletin is issued by the Brazil 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.

Announcement of legislative proposal regarding, inter alia, the Dutch tax treatment of intra-group interest

On 15 December 2008 the Dutch Ministry of Finance (the "Ministry") submitted a letter to the Dutch Parliament in which a further investigation into the tax treatment of intra-group interest and interest relating to the acquisition of participations is announced. Representatives from the business community, tax advisers and academia will be involved in the investigation. Based on the findings of its investigation the Ministry will draft a legislative proposal to amend the Dutch 1969 Corporate Income Tax Act, which it intends to submit to Dutch Parliament in the first half of 2009. Although the exact scope of the announced legislative proposal is as yet unclear, it could have a significant impact on the deductibility of interest for Dutch tax purposes.

Summary

The Ministry's investigation will focus on limited taxation of interest received from group entities and limited deductibility of interest paid to group entities. Furthermore, it is considered to introduce a limitation on the deduction of interest in connection with (the acquisition of) participations, even if it concerns third party debt. Additional tax revenue as a result of these measures will be redirected towards the business community in the form of tax cuts.

Background

According to the Ministry, the current unequal tax treatment of debt (interest is tax deductible) and equity (dividends are not tax deductible) leads to a number of undesirable effects. These include the tendency of multinational enterprises to optimize their tax position by allocating intra-group payables to high tax jurisdictions and intra-group receivables to low tax jurisdictions, as well as the trend that takeovers of Dutch operating companies, for instance in private equity transactions, are primarily financed with debt. Furthermore, the Ministry perceives an imbalance in the tax treatment of participations: proceeds from participations are usually tax exempt under the participation exemption, whereas interest relating to the acquisition of participations is in principle tax deductible.

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Loyens & Loeff is an independent Benelux law firm with over 700 lawyers and offices in the main financial centres around the world. Loyens & Loeff combines an integrated corporate law, regulatory and tax practice.

In order to be able to give the best advice possible to our clients, Loyens & Loeff formed the Brazil Desk.

The members of the Brazil Desk strongly focus on Brazilian 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 Brazil. In many cross border (including cross Atlantic) transactions, benefits can be derived by investing through the Benelux (Belgium, Netherlands and Luxembourg).

The team comprises members from various Loyens & Loeff practice groups. Members of the Brazil Desk visit Brazil three to four times a year.

Members of the Brazil Desk speak the Portuguese language.

Although this e-mail bulletin has been prepared with great care, Loyens & Loeff accepts no responsibility for the consequences of any reliance upon this e-mail bulletin without the further involvement of Loyens & Loeff.

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The Ministry identifies a number of potential solutions which could be considered to counter these undesired effects, such as elimination of all interest for tax purposes, a type of CBIT (comprehensive business income tax), elimination of intercompany interest for tax purposes - a proposal recently put forward by three Dutch tax law professors, a compulsory interest box (the optional Dutch interest box regime has not yet entered into force pending approval of the European Commission) and German-style earnings stripping rules. In addition, the Ministry is considering to introduce a limitation on the deductibility of interest on debt relating to the acquisition of participations, even if it concerns third party debt.

According to the Ministry, the investigation will focus on limited (or no) taxation of interest received from group entities and limited (or no) deductibility of interest paid to group entities, such as the elimination of intra-group interest for tax purposes and the somewhat similar alternative of a compulsory interest box, in combination with a limitation on the deduction of interest on debt relating to the acquisition of participations, even if it concerns third party debt. Since these alternatives are likely to result in an increase in tax revenue, the announced legislative proposal will also include measures to redirect the additional tax revenue towards the taxpaying business community in the form of a reduction of the (effective) corporate income tax rate. The Ministry's letter does not include any suggestions regarding the scope of the participation exemption or the abolishment of the dividend withholding tax.

We trust to have fully informed you. Should you have any questions, please do not hesitate to contact us.

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