



Dutch Decree: Qualification Brazilian ‘Interest on Net Equity’

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Background

For Dutch corporate income tax purposes JCP is considered a benefit derived from shares. Before 1 January 2016 the Dutch participation exemption could be applied to JCP derived by a Dutch taxpayer.

However, during the parliamentary proceedings on the implementation of the anti-hybrid rules included in the EU Parent-Subsidiary Directive, it was confirmed by the Dutch State Secretary of Finance that JCP would no longer be exempt under the Dutch participation exemption.

Consequently, JCP derived by a Dutch taxpayer is included in the Dutch taxable base and subject to Dutch corporate income tax at a current general rate of 25%. However, a Dutch taxpayer is eligible for a tax sparing credit pursuant to the Treaty, which credit can be offset against the Dutch corporate income tax due on the JCP income.

Treaty qualification of JCP

In view of the hybrid character of the Brazilian JCP payments, the question was raised whether JCP income derived by a Dutch taxpayer should be qualified under the Treaty as interest (eligible for a tax sparing credit of 20%) or as dividend (eligible for a tax sparing credit up to 25%).

In the past the Dutch tax authorities confirmed the qualification of JCP under the Treaty as dividend. Recently, however, the Treaty qualification of JCP led to discussions with the Dutch tax authorities.

To take away uncertainty, the Decree was issued in which it is clarified that the decisive interpretation is dependent on the qualification of the source country, i.e. Brazil. Considering the understanding that Brazil qualifies JCP as interest for Brazilian tax purposes, JCP should according to the Dutch State Secretary of Finance also be qualified as interest for Treaty purposes. Hence, JCP derived by a Dutch taxpayer is eligible for a tax sparing credit of 20%.

It is recommended for Dutch taxpayers to review the Dutch tax positions taken with respect to JCP income derived from Brazil.

Please contact a member of our Region Team Latin America or your trusted Loyens & Loeff adviser to assist.

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