

## Announced bill regarding new group company interest tax regime

In December 2008, the Dutch Secretary and Deputy for Finance announced a bill to change the corporate income tax treatment of interest paid to and received from group companies on intercompany loans. Furthermore, the Secretary and Deputy envisage a limitation of the deductibility of third-party interest relating to participations. We will discuss this matter briefly in the end of this Dutch Alert. First we will explain the proposed measures with respect to group company interest.

### Taxation of group company interest

According to current corporate income tax legislation, companies can deduct interest paid on loans from the taxable profit, unless one of the specific regulations on the non deductibility of interest applies (e.g. thin cap). Dividends paid to shareholders are not deductible from the taxable profit.

Following the abovementioned announcement, the question whether and how the deduction and taxation of interest paid and received within a group of affiliated companies should be abolished is currently under investigation. Although this study could lead to several outcomes, it is currently most likely that the changes will aim at no deduction of interest paid on loans from and no taxation of interest received from affiliated group companies on intercompany payables and receivables.

Subsequently, it is expected that this spring a legislative bill will be submitted to the Dutch parliament based on the results of this study.

According to the Dutch Secretary and Deputy for Finance, there are three advantages with respect to the possible changes which are currently subject to study:

1. *a positive effect on the Dutch climate for establishing a business;*
2. *excessive interest deduction shall be challenged;*
3. *a simplification of the Dutch corporate income tax Act.*

We will briefly explain these advantages.

1. *Favorable Dutch climate for establishing a business*

According to the Secretary and Deputy, additional State revenue as a result of the abolishment of the current interest taxation regulations shall be allocated to the Dutch corporate sector. This will be arranged for by a reduction of the effective tax rates that apply under the Dutch corporate income tax Act.

As a result of the possible changes to come, it will be favorable for multinationals to keep or bring their treasury in the Netherlands because their overall tax burden might be reduced. This is in line with the policy of the Dutch government to attract the head offices of large multinationals.

## 2. Challenge excessive interest deduction

As a result of the different tax treatment of interest (deductible) and dividends (not deductible), private-equity funds tend to finance their acquisitions with an excessive amount of debt resulting in a major interest deduction. The announced abolishment will put an end to this practice of private equity funds, which is also common in (international) groups of companies.

## 3. Simplification of the Dutch corporate income tax Act

As mentioned, the complicated and different tax treatment of remunerations on debt and equity shall be abolished. This will lead to a simplification of the Dutch tax regime because several complicated Dutch anti-abuse rules will become redundant.

### Deductibility of third-party interest

Another issue raised by the Secretary and Deputy, is the difference in treatment of participations under the Dutch participation

exemption. Income derived from participations is normally exempt under the Dutch participation exemption. Costs and interests of loans connected to participations are tax deductible. This mismatch – deductible costs, exempt income – will, in most cases, be resolved by the aforementioned announced changes regarding group interest. In addition, the Secretary and Deputy also propose a limitation on the deductibility of interest paid to third-parties in relation to participations. A similar earningsstripping-method has last year been introduced in Germany.

### What will follow?

The exact date for legislative bill is not known yet. Until then, we have to wait and see how fundamental the changes eventually will be. It goes without saying that international corporate structures may need to be restructured in order to optimize their corporate tax position.

In the meantime, several academics, (representatives from industry and tax practice) will give their input to the study. They already have criticized (parts of) the proposed changes. It is therefore to be seen what the outcome of the study will be.

We will keep you updated.

For additional information regarding any of the issues raised in this Taxmail, please contact any of the professionals of Van Oers International listed below or your local Van Oers contact person.

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