Addendum
Comparative Analysis on Taxation of Multinationals

February 2020

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Ministry of Finance
Korte Voorhout 7
2511 CW Den Haag

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Dear Mr. Fuhler and Mr. Willemstein,

We hereby provide you with a requested addendum to our report regarding the comparative analysis of the taxation of multinationals as shared with you per e-mail on 15 January 2020. In this addendum, we have described whether and under what circumstances certain jurisdictions may allow for a deduction of deemed interest costs. Reference is made to page 2 for the base case-scenario and the questions which we -after your consent- have shared with the relevant jurisdictions for their input.

The following jurisdictions are in scope of this addendum: Austria, Belgium, France, Germany, Ireland, Luxembourg, Netherlands, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland (‘UK’).

The input from the jurisdictions was received in January 2020. Based on the information received, we have prepared an executive summary in Chapter 1, which allows for an easy comparison of the tax treatment in the Netherlands with the tax treatment in the other jurisdictions. In Chapter 2, the questions per jurisdiction are included (in alphabetical order). Please note that Chapter 1 only provides a high-level overview of the tax treatment in the various jurisdictions and is meant to provide visual insight in the position of the Netherlands compared to the other jurisdictions. Chapter 1 should always be read in conjunction with the detailed information in Chapter 2.

The ‘Dienstverleningsovereenkomst ARVODI-2018’ with reference ‘201850016.093.012’ is applicable to our performed activities and this report.

Best regards,

Edwin Visser and Femke van Dijk

1. Executive Summary

The following base case-scenario and questions have been shared with the relevant jurisdictions for their input:

Base case-scenario

- Company Y is a resident of your jurisdiction and receives an interest free loan from Company Z, an associated enterprise that is a resident of another jurisdiction. An arm's-length interest rate on the loan would have been 6%.

*Questions**

1) Is Company Y allowed to deduct an arm's-length interest from its taxable income?
2) If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?

Question 1: Is Company Y allowed to deduct an arm's-length interest from its taxable income?

Yes	No
Austria	**Belgium**
Luxembourg	**France**
Netherlands	**Germany**
Spain	**Ireland**
Sweden	**Switzerland**
UK	

Switzerland (canton Zurich) and Belgium have a notional interest deduction regime, allowing for a deduction of deemed interest on equity.

Question 2: If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?

No conditions apply	Conditions apply
Luxembourg	**Austria**
Netherlands	**Spain**
	Sweden
	UK

*In answering the questions, please abstract from specific interest deduction limitation rules.

2. Local country input

2.1. Austria

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	Yes. Company Y would in principle be allowed to deduct an arm's length interest from its taxable income. The legal basis for application of the arm’s length principle can be found in paragraph 6 (6) of the Austrian Income Tax Act. This can be read in conjunction with article 9 of a Double Tax Treaty (DTT) to avoid both international double and non-taxation.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	A domestic reduction in profit through deemed arm's length interest is within the scope of article 9 DTT and paragraph 6 (6) Austrian Income Tax Act if this interest is recognised as deemed profit in the other state via a TP adjustment. The position of the Ministry of Finance is that this matter could be settled bilaterally via a mutual agreement procedure according to Art 25 DTT. The question whether a deduction as in the above is unconditional has not yet crystalized in Austrian tax practice. It is argued in literature that the deduction should be unconditional. However, for specific cases, the Austrian Ministry of Finance issues statements that are binding on the tax authorities in Austria. The Austrian Ministry of Finance has expressed in one such statement that, in case of a non-interest-bearing deferral of liabilities between associated enterprises, if (e.g.) a Swiss parent company does not charge an arm's length interest to its Austrian subsidiary, there should not be a deduction of fictitious arm's length interest at the level of the Austrian subsidiary, if the corresponding amounts are not taxed as interest income at the level of the Swiss parent company. Considering this Ministry of Finance statement it may be assumed that the deduction is conditional on a corresponding taxation at the level of Company Z.

2.2. Belgium

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	No. However, Belgium does have a notional interest deduction regime, allowing for a deduction of deemed interest expenses on equity following specific rules. Please note that Belgium has an excess profit provision in its tax law, based on which Belgium provided excess profit rulings allowing companies to deduct excess profits resulting from the advantage of being part of a group from their taxable profit. However, the provision is included in the Belgian Tax Reform and will be removed from the law.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	N/A.

2.3. France

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	No.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	N/A.

2.4. Germany

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	No. However, a deduction of "deemed expense" may be claimed in case Company Z was a (direct or indirect) subsidiary of Company Y due to the treatment of the interest free loan (i.e. the fact that no arm's length interest is applied) as "deemed dividend" by Company Z to Company Y. As a further note, if the loan has a maturity of more than one year at the first tax balance sheet date after it has been granted, it would have to be discounted at a discount rate of 5.5% per year, thereby creating taxable income at the level of Company Y. In the following year(s), as we would move closer to the maturity date, a compounding loss would be realized (same discount rate of 5.5%) creating (generally) deductible expenses at the level of Company Y. In the view of the German tax authorities, such compound loss would be subject to the limitation of the German interest capping rules.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	N/A.

2.5. Ireland

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	No. The Irish transfer pricing rules seek to impute arm's length income on intra-group transactions where the income received by the Irish company is below an arm's length rate or seek to impute an arm's length expense on intra-group transactions where the expense incurred by the Irish company is above an arm's length rate. The Irish transfer pricing rules do not impute deductions where an arm's length rate would be greater than the deduction taken (or not taken) by an Irish company.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	N/A.

2.6. Luxembourg

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	Yes. A deduction of the arm’s length interest is allowed for Luxembourg corporate income tax and municipal business tax purposes.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	The arm's length character of the deduction is expected to be supported by transfer pricing documentation. Based on our current interpretation of the Luxembourg rules, we do not expect an inclusion at the level of Company Z in order to support the deduction at Company Y (no hybrid mismatch situation, in line with OECD/EU ATAD 2 interpretation). Various rules may effectively disallow (part of) the deduction, including Luxembourg recapture rules, interest limitation rules or the general anti-abuse rule.

2.7. Netherlands

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	Yes. Company Y is allowed to deduct an arm’s length interest rate from its taxable income.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	The deduction is in principle allowed unconditionally (abstracted from interest deduction limitation rules).

2.8. Spain

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	Yes (in theory, see below).
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	There is a high risk that the deduction may be challenged by the Spanish tax authorities (mainly with reference to Spanish accounting rules requiring that all deductible expenses should be registered for accounting purposes; transfer pricing adjustments are exceptional and only used to avoid risks).

2.9. Sweden

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	Yes.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	As a main rule, interest costs on intra-group loans should be deductible for tax purposes if at least one of the following conditions are met: i. The receiver of the interest is domiciled in a jurisdiction within EES; ii. The receiver of the interest is domiciled in a jurisdiction which has entered a double tax treaty covering the interest agreement with; iii. The interest income would be taxed at a rate of 10 % or more if it was the receiving entity's only income. Interest deduction may be denied, if the loan structure exclusively or as good as exclusively has been put in place in order for the associated enterprises to receive a substantial tax benefit. Furthermore, when applying the conditions above, the receiver should be considered to be the entity that qualifies as the "beneficial owner" of the interest, i.e. the actual and rightful owner that receives the economic benefits of the interest income. An arrangement involving an interest free-loan may be considered to be (as good as) exclusively driven by tax motives, whereby interest deduction may be denied. In a situation where the interest income is not subject to tax, an interest deduction may be refused either based on an interest deduction limitation or through Swedish anti-tax avoidance rules. A case-by-case analysis would be required in this respect.

2.10. Switzerland

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	No. However, in the canton Zurich, a notional interest deduction on equity may apply for cantonal and communal taxes following specific rules.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	N/A.

2.11. UK

Cost imputation	
Is Company Y allowed to deduct an arm's-length interest from its taxable income?	Yes.
If yes, is that allowed unconditionally or only when specific conditions are met, e.g. that the arm's-length interest is part of the taxable income of Company Z?	If the non-UK lender has interest income imputed under transfer pricing rules, the UK company may only be able to claim a deduction via the "competent authority" procedure which may be set out in the double tax treaty, if applicable, between the two countries. It should be added that the UK generally follows the accounts (UK GAAP or IFRS). Therefore, if the interest free loan was to have a fixed maturity, whereby the net present value (NPV) of the repayment obligation on the date of borrowing is less than par, the difference would be amortised to P&L and would be deductible. This would be approximately equal to the arm's length interest rate (because GAAP would require the company to discount the repayment by the company's estimated arm's length borrowing rate, although this would be based on accounting principles rather than transfer pricing theory). However, here, certain limitations may apply: • the deduction is disallowed automatically if the lender is in a ''tax haven''; • the deduction is within the scope of anti-hybrid rules, so if there is a mismatch between tax deduction for borrower and taxable income for lender, there would be a disallowance if this is caused by the terms of the debt. The UK tax authorities may argue that, if the interest free nature of the balance caused the mismatch, this would be due to the "terms of the debt". However, if the mismatch arises for other (non-hybrid) reasons, there would not be a disallowance under these rules; • the regular rules for tax deductions for finance cost remain applicable (e.g., thin capitalisation tests, no tax avoidance purpose etc.).