

UPDATE: Changes in the fiscal unity regime

Introduction

On February 22, 2018, the European Court of Justice EU published its decision that elements of the Dutch fiscal unity regime for corporate income tax purposes are not compatible with EU laws. Following this decision, the Dutch State Secretary of Finance has announced amendments to the fiscal unity regime to prevent further financial disadvantages, which amendments will become applicable retrospectively per October 25, 2017, 11:00 AM. Based on these amendments, several benefits of the Dutch fiscal unity will no longer be available. We refer to our previous [tax alert](#).

The legislative proposal for these amendments still has to be approved by the Dutch parliament. On April 20, 2018, the Dutch State Secretary of Finance announced a transitional measure to limit undesirable consequences of the proposed amendment of the fiscal unity regime especially for small and medium sized enterprises.

Announcement

Based on this transitional measure, the announced amendments of the fiscal unity regime regarding the applicability of article 10a CITA (the limitation of interest deduction to prevent base erosion) will not apply during 2017 and 2018, in case the following conditions are met:

- the loan from the affiliated party already existed on October 25, 2017, 11:00 AM;
- the “tainted” transaction (dividend payment, capital contribution or acquisition) has taken place before October 25, 2017, 11:00 AM;
- the total amount of interest (including finance costs and currency results) due on the tainted loan does not exceed € 100,000 per 12 months.

The latter condition entails that in case the amount of interest exceeds € 100,000, the full amount of interest is limited under 10a CITA, so also the first € 100,000.

The transitional measure also does not apply in case the tax inspector can substantiate that the loan or the transaction are not carried out based on business considerations.

The legislative proposal containing the amendments to the Dutch fiscal unit regime is expected to be published in the second quarter of 2018.

For more information on this, please contact your tax advisor at Crowe Horwath Foederer.



Contact

Laurence Fastabend

+31 (0)497 - 36 15 55

+31 (0)6 - 13 77 17 53

l.fastabend@crowefoederer.nl



Thijs Wiertsema

+31 (0)20 - 564 60 00

+31 (0)6 - 47 14 75 84

t.wiertsema@crowefoederer.nl

