PRICEWATERHOUSECOOPERS

State aid Newsalert

EU Direct Tax Group

NA 2009 – 013

8 July 2009

EU Direct Tax Group

The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.

European Commission: 'groepsrentebox' is not state aid

On 8 July 2009 the European Commission (EC) announced that the proposed Dutch regime for group interest ('groepsrentebox'; hereafter: 'group interest box') does not constitute prohibited state aid. With this, the formal investigation which the EC started in 2007 in respect to the group interest box had been concluded in favour of the Dutch government (press release EC: IP/09/1100).

The group interest box was first proposed a number of years ago, in the context of a reform of the Dutch corporate income tax in 2007. The measure is primarily aimed at mitigating the difference in treatment of respectively debt and equity in the context of intra-group financing. Under the group interest box, interest received or paid in respect of intra-group financing would be taxed in the Netherlands at a reduced rate of 5%. This is substantially lower than the regular statutory Dutch corporate income tax rate of 25,5%.

Over the past few years, the group interest box has proved controversial from a state aid perspective. In particular it has been suggested that the fact that the measure would favour multinational groups of companies means that the group interest box is a selective measure (i.e. only multinational groups benefit from the measure). It has therefore been argued that the group interest box would be a prohibited state aid measure.

Initially, the Netherlands had intended the group interest box as an optional measure for a period of 3 years. Following discussions with the EC, the Dutch government suggested to alter the scheme such that it would be mandatory for all Dutch corporate income taxpayers. In addition to this, the Netherlands expanded the scope of the group definition for the purpose of the group interest box. Furthermore, the Netherlands announced that the statutory requirement under Dutch law that a Dutch company limited ('besloten vennootschap', BV) must have a starting capital of EUR 18.000, will also be dropped.

In the light of the comments put forward by the Netherlands and the abovementioned modifications, the EC has accepted that the group interest box does not constitute state aid. In the view of the EC, the measure is not selective, as it will apply equally to all companies receiving interest paid from affiliated group companies. As such, the measure is not limited to certain sectors, certain types of companies or certain parts of the Dutch territory.

In the wake of this decision, the introduction of a mandatory group interest box by the Netherlands seems increasingly likely.

* connectedthinking

For more detailed information, please do not hesitate to contact your local PwC contact person or a member of the EUDTG.

Pieter van der Vegt	+31 10 407 6199	pieter.van.der.vegt@nl.pwc.com
Anna Gunn	+31 10 407 5224	anna.gunn@nl.pwc.com

Should you be interested in receiving the free bi-monthly newsletter, please e-mail to eudtg@nl.pwc.com, with "subscription EU Tax News".