Tax Framework

The Dutch tax framework enables the structuring of a tax efficient securitisation transaction. For instance, where the receivables remain on the balance sheet of the originator as the economic owner, the transfer of legal title of the receivables to the issuing vehicle in the process of the securitisation is generally not considered as a transfer of the economic ownership of the receivables for Dutch corporate tax purposes either. In the past, securitisation transactions were generally viewed by the tax authorities as risk free financing transactions, the income received by securitisation vehicles was not (materially) taxed at the issuer level. In those cases clarity on tax consequences was obtained beforehand from the Dutch tax authorities by way of a tax ruling.

Tax Rulings

Historically, the Dutch tax authorities granted tax rulings confirming the Dutch tax position of the relevant parties to the securitisation transaction. As a result of a policy change of the Dutch tax authorities regarding the issuance of tax rulings for Issuers involved in securitisation transactions, the Dutch tax authorities announced on 11 June 2018 that they are no longer willing to grant tax rulings confirming the tax position of the parties to securitisation transactions. This policy change in 2018 was not the result of a change in Dutch tax law (including case law) or EU law and as a result, the tax position of the parties to a securitisation transaction should be similar to the tax position of the parties involved in the transactions entered into before 11 June 2018.

Recently, the Dutch tax authorities announced that they are again willing to grant tax rulings confirming the Dutch corporate tax position of the Dutch issuer in a securitisation transaction, but at the same time that they will take a more conservative approach in confirming the Dutch corporate tax position of the issuer not being the economic owner of the receivables.

Corporate Tax

Historically, the Dutch tax authorities have issued numerous tax rulings for securitisation transactions confirming that the cost-plus profit is an at arm's length profit for Dutch tax purposes for an issuer in standard securitisation transactions. At a later stage, the taxable profit was included in the fact pattern of the Dutch tax rulings instead of in the object of the tax rulings. Currently, in Dutch securitisation transactions where no tax ruling is obtained, the cost-plus 10% remuneration with a minimum taxable profit of EUR 2,500 (or EUR 3,500, assuming that parties applied an inflation correction) that is reported by an issuer in its tax returns has not been challenged by the Dutch tax authorities to date.

The minimum taxable profit is based on older, but prevailing case law of the Dutch Supreme Court following the analysis that the issuer has acquired the legal ownership of receivables but not the economic ownership of the receivables for Dutch corporate tax purposes. This analysis should be supported by the transaction documents, including for example the terms and conditions of the securitisation transaction, resulting in the issuer not being economically exposed to the Dutch securitisation transaction. In that case, neither interest income nor interest expense in relation to such receivables and the notes should be taken into account at the level of the issuer for Dutch corporate tax purposes. On that basis, any interest deduction limitation rules, including the earnings stripping rules (as implemented in Dutch tax laws following the adoption of the Anti-Tax Avoidance Directive I), should not apply at the level of the issuer.

A number of specific tax related issues are relevant for holders of notes issued by Dutch securitisation vehicles.

Withholding Tax

Generally, there are two situations in which Dutch withholding tax may apply in respect of payments under notes issued by a Dutch issuer, being, if such payments are made (I) on hybrid notes or (II) to an affiliated (gelieerde) entity and one of the conditions (i)-(vi) below is met (see below under Dutch conditional withholding tax).

<u>Ad (I): hybrid notes</u>

A note may be considered to function as equity of an issuer for Dutch tax purposes if the three following cumulative conditions are met:

(i) the note is subordinated to the claims of all unsubordinated creditors;

(ii) the note has no fixed term or has a term in excess of 50 years; and

(iii) the remuneration on the note is dependent on the profit of the issuer.

Ad (II): Dutch conditional withholding tax

As from 1 January 2021, the Netherlands levies a conditional withholding tax on certain (deemed) payments of interest and pursuant to the Dutch Withholding Tax Act 2021 (Wet bronbelasting 2021) against a rate of 25.8 per cent. (2024). The withholding tax can in principle be levied when the issuer is a Dutch resident entity or a foreign entity with a Dutch permanent establishment.

The withholding tax is in principle levied only when (cumulatively) (i) the recipient (voordeelgerechtigde) of the payments is an affiliated (gelieerde) entity to the issuer and (ii) the recipient:

(i) is considered to be resident (gevestigd) in a jurisdiction that is listed in the annually updated Dutch Regulation on low taxing states and non-cooperative jurisdictions for tax purposes (Regeling laagbelastende staten en niet coöperatieve rechtsgebieden voor belastingdoeleinden);

(ii) has a permanent establishment located in such jurisdiction to which the interest is attributable;

(iii) is entitled to the interest payable for the main purpose or one of the main purposes to avoid taxation for another person;

(iv) is not considered to be the recipient of the interest in its jurisdiction of residence because such jurisdiction treats another (lower tier) entity as the recipient of the interest (a hybrid mismatch);

(v) is not treated as resident anywhere (also a hybrid mismatch); or

(vi) is a reverse hybrid whereby the jurisdiction of residence of a participant that has a qualifying interest (kwalificerend belang) in the reverse hybrid treats the reverse hybrid as tax transparent and that participant would have been taxable based on one (or more) of the items in (i)-(v) above had the interest been due to the participant directly, all within the meaning of the Dutch Withholding Tax Act 2021 (Wet bronbelasting 2021).

Generally, a noteholder should only be considered an affiliated (gelieerde) entity of a Dutch issuer if (i) it has a qualifying interest in the Dutch issuer, (ii) the Dutch issuer has a qualifying interest in the noteholder, or (iii) a third party has qualifying interest in each of the Dutch issuer and the noteholder. Generally, the term "qualifying interest" means a directly or indirectly held interest, individually or jointly as part of a collaborating group (samenwerkende groep)[1], that gives the holder of such interest definite influence over the decisions of the entity in which the interest is held and allows determination of its activities.

On the basis that (I) the notes do not effectively function as equity for Dutch tax purposes and (II) the issuer is not affiliated (gelieerd) to any recipient (voordeelgerechtigde) of any payments under the notes within the meaning of the Dutch Withholding Tax Act 2021 (Wet bronbelasting 2021), all payments of interest and principal by the Dutch issuer under the notes can generally be made without withholding or deduction of any taxes of whatever nature imposed, levied, withheld or assessed by the Netherlands or any political subdivision or taxing authority thereof or therein.

Taxes on Income and Capital Gains

A holder of notes will generally not be subject to Dutch taxation on income or capital gain derived from a note, unless:

- *The holder is or is deemed to be resident in the Netherlands for the relevant tax purposes; or*
- *the income or gain is attributable to an enterprise or part thereof which is either effectively managed in the Netherlands or carried on through a permanent establishment (vaste inrichting) or permanent representative (vaste vertegenwoordiger) taxable in the Netherlands and the holder derives profits from such enterprise (other than by way of the holding of securities); or*
- *the holder is not an individual and has, directly or indirectly, a substantial interest (aanmerkelijk belang) or a deemed substantial interest in the issuer and such interest is held with the main purpose or one of the main purposes of avoiding personal income tax for another person; or*
- *the holder is an individual and such holder or a person connected to such holder (verbonden persoon) has, directly or indirectly, a substantial interest (aanmerkelijk belang) in the Issuer; or*
- *the holder is an individual and the income or gain otherwise qualifies as income from miscellaneous activities (belastbaar resultaat uit overige werkzaamheden) in the Netherlands as defined in the Dutch Income Tax Act 2001 (Wet inkomstenbelasting 2001), including without limitation, activities that exceed normal, active asset management (normaal, actief vermogensbeheer).*

Value Added Tax

There is no Dutch value added tax payable by a holder of a note in respect of payments in consideration for the issue of any notes, payments of principal or interest under any notes, or payments in consideration for the transfer or disposal of the notes. The value added tax implications of any services to be provided to the issuing vehicle will merit careful consideration

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[1] On Budget Day 2024 (Prinsjesdag), the Dutch government announced that they want to introduce a new group definition as part of the Dutch Withholding Tax Act 2021 (Wet bronbelasting 2021) by replacing the current definition of collaborating group (samenwerkende groep) for the definition of qualifying unity (kwalificerende eenheid) for purposes of the question whether the payee and payor are considered affiliated for the Dutch Withholding Tax Act 2021. It is envisaged that this amendment will be adopted in Q4 of 2024 and enter into force on 1 January 2025.

as not all fees payable in respect of those services may be subject or exempt from value added tax. Consequently, the issuing vehicle may not always be able to recover the input value added tax it incurs in full, whereby any such irrecoverable value added tax may become a cost to the transaction.

FATCA and CRS

As part of a global push towards tax transparency, the Netherlands have enacted legislation in respect of FATCA and the CRS, both of which relate to a reporting obligation by and for financial institutions (with the FATCA rules reflecting the US approach and CRS the standard put forward by the OECD). As part of that legislation, entities that are (deemed to be) a financial institution are subject to particular reporting obligations. Where an issuer of a securitisation is considered such a financial institution, the issuer may require noteholders or other transaction parties to provide, any information regarding their and, in certain circumstances, their controlling persons' tax status, identity or residence in order to satisfy its reporting requirements which the Issuer may have as a result of CRS and FATCA. Any such information may then be disclosed by the Issuer to the Dutch tax authorities. The Dutch tax authorities will exchange any such information pursuant to the rules implemented FATCA and CRS with the tax authorities of other participating jurisdictions, as applicable.

DAC 6

The EU Directive on Administrative Cooperation was amended in May 2018 ("**DAC6**") (implemented in the Netherlands in the International Assistance on the Levying of Taxes Act (*Wet op de internationale bijstandsverlening bij de heffing van belastingen*), the Dutch DAC6 Guidance of 14 April 2023, no. 2023-6233 (*Leidraad meldingsplichtige grensoverschrijdende constructies*) to require (auxiliary) intermediaries, and in some cases relevant taxpayers, to report details of certain cross-border arrangements to their home tax authority, which will then automatically exchange the information with tax authorities in other Member States. DAC6 is intended to give tax authorities greater visibility on aggressive tax planning.

Dutch DAC6 law requires (auxiliary) intermediaries, or where there are no (auxiliary) intermediaries, relevant taxpayers, to report "cross-border arrangements" that exhibit certain "hallmarks". An arrangement is generally considered to be "cross-border" if it concerns multiple countries, at least one of which is an EU Member State. Therefore, any transaction that is conducted entirely outside the EU should not be reportable, but any transaction that concerns a person or asset in the EU may be. The "hallmarks" are intended to describe tax avoidance structures and are set out in five categories (A to E). While some hallmarks require a "main tax benefit" test to be met in order to be satisfied, others do not and many are drafted sufficiently broadly such that normal commercial transactions may be caught.

Only "(auxiliary) intermediaries" and, if there is no (auxiliary) intermediary, "relevant taxpayers" (in each case to the extent they have sufficient nexus with the Netherlands) are required to report. An "(auxiliary) intermediary" is defined broadly as any person who designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement. The defined term "(auxiliary) intermediary" also includes any person who knows, or could reasonably be expected to know, that they have provided aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

Generally, in most cases securitisation transactions should not meet any of the hallmarks – not least because it would be unusual for the "main tax benefit" test to be met. On that basis there should generally not be a DAC6 reporting obligation in the Netherlands for securitisation transactions but note this should be assessed on a case-by-case basis, e.g. in relation to Hallmarks A.3, B.3, C.1, D.2 and E.3, for other jurisdictions as well.

Other Taxes and Duties

Generally, there is no Dutch registration tax, stamp duty or any other similar tax or duty payable in the Netherlands in respect of or in connection with the execution, delivery and/or enforcement by legal proceedings (including any foreign judgement in the courts of the Netherlands) of any notes, or the performance of the issuer's obligations under notes and the programme documents.

This Tax Framework and the tax and reporting requirements above are described in accordance with the law and practices applicable in the Netherlands in September 2024. These laws and practices may change over time.