At a glance

Accounting for uncertain tax treatments – (re)assessment of your article 13l CITA position

On 26 October 2017, the Court of Justice of the EU published its judgment in Argenta (C-39/16) which has potential tax accounting implications.

As you may have become aware through various media publications EU direct tax law is moving quickly and the developments in this area may have a significant impact on your income tax position in the Financial Statements. In that regard, there are recent developments on whether the excessive participation debt rule under article 13l Dutch Corporate Income Tax Act 1969 (CITA) is allowed under the EU Parent-Subsidiary Directive (PSD). Considering the recently issued guidance by the IFRS Interpretations Committee (IFRIC) for Uncertain Tax Provisions (UTPs), a (re)assessment of all article 13l CITA related UTPs should be considered. In this publication we have outlined the potential tax accounting implications of the Argenta case.

The Argenta case – a quick recap

In the Argenta case, the Court of Justice of the EU (CJEU) examined Belgian legislation in light of the PSD which provides that Member States may deny the deduction of costs relating to the holding and any losses resulting from the distribution of the profits of the subsidiary. Under the Belgian domestic legislation implementing the provisions of the PSD, dividends received by a Belgian parent company from its foreign subsidiary are up to 95% exempt, provided that specific requirements are met. However, another Belgian provision limits the tax deduction of interest to the extent that in the same tax year the taxpayer had received exempt dividends from participations held for less than one year, irrespective of whether the interest paid is connected to the participations from which the exempt dividends were derived.

The CJEU ruled – in line with Advocate General Kokott's reasoning – that in situations covered by the PSD, interest deduction could only be denied if such costs relate to the financing of holdings in participations. This CJEU judgment may have potential implications for Dutch tax provisions which provide for an interest deduction limitation for which no direct (causal) link between the interest costs and the acquisition of a participation is required, such as article 13l CITA.

Article 13l CITA

As a general rule, article 13l CITA restricts the deduction of interest for Dutch corporate income tax on all ‘excessive’ loans (both related and third party loans) which are deemed to be used to finance participations to which the Dutch participation exemption applies. Article 13l CITA, in principle, does not depend on any actual link between a taxpayer’s debt and its investment in exempt participations. Instead, this article allocates loans to exempt participations through a strictly mathematical formula.

Tax accounting implications

Considering the above, that interest deduction in PSD situations can only be denied if such costs relate to the financing of holdings in participations, the interest deduction limitation resulting from article 13l CITA may, in certain circumstances, not be allowed under EU law. As a result, interest expenses could potentially be treated as tax deductible. In case such deduction is indeed claimed, a Company will need to assess how to treat the tax benefit of this deduction for reporting purposes. The assessment which should be made, is whether it is probable (i.e. more likely than not) that the tax benefit will ultimately be sustained, and consequently whether a tax receivable can be recorded in the financial statements. The outcome of this assessment could potentially lead to a material impact on a Company’s financial statements.

We help you gain a clear view of tax risks and opportunities so you can create transparent reporting and enhance enterprise risk management.

Do you have questions? Want more information?

Our EU Direct Tax Group (EUDTG) and Tax accounting experts can assist you with the (re) assessment of your article 13l CITA position and the potential impact on your income tax position in the Financial Statements. In addition, find out more on other EU developments here.

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