Dutch Supreme Court confirms fraus legis for interest deduction at acquisition holding company for purchase of a participation

On December 19, 2025 the Dutch Supreme Court rendered judgment in the so-called 'Coffee case'. The main question in this case was whether the interest on a loan provided by a Luxembourg shareholder for an acquisition ('acquisition loan') is deductible. The Supreme Court did not depart from the position taken in previous case law, i.e. that the acquisition loan and intended interest deduction can be regarded as abuse of law (fraus legis). However, insofar as the loan was used to refinance an existing debt of the acquired group, there is no fraus legis.

The Supreme Court thus confirmed and clarified its previous case law. The judgment is relevant for all acquisitions of participations that are financed with shareholder loans. This news item addresses this issue.

The facts of the case: Shareholder loan for an acquisition and refinancing

The case in question bears many similarities with the so-called Brillen case, on which the Supreme Court rendered judgment at the beginning of September 2025. The proceedings in these cases mostly took place at the same time, and the Coffee case has now also been brought before the Supreme Court twice.

The case concerned the 2010/2011 tax year. The taxpayer – an acquisition holding company of a private equity fund – was incorporated in that year and purchased the shares in the target (participation). The acquisition price was EUR 438 million, with a further EUR 240 million being needed to refinance existing loans of the acquired group. The total amount needed of EUR 678 million was financed by means of EUR 43 million in paid-in capital and a EUR 635 million loan from the 100% shareholder (the shareholder loan), a Luxembourg company. The latter, in turn, raised the entire financing by issuing Preferred Equity Certificates (PECs): hybrid financing instruments that qualify as debt in Luxembourg but, according to the Dutch Appeals Court, the payments received on the PECs had not been taxed as interest income at the recipients.

The Appeals Court ruled that while the shareholder loan did indeed qualify as a loan and not as capital, it was however a 'non-business motivated loan'. Therefore the interest charged on the loan had to be adjusted downward for tax purposes, from around 15.2% to 2.5%. Of this 2.5% in interest, some was subsequently non-deductible. To the extent that the loan was used to acquire shares, the interest deduction on the loan was deemed to be contrary to the law (fraus legis) and therefore was not allowed. To the extent that the loan was used to refinance an existing loan, the interest was deductible. The Appeals Court noted that refinancing involves replacing one loan with another one, and that therefore there is no profit shifting.

The Dutch Supreme Court had to address a further two points:

1. The taxpayer argued that in the present case there should not be any fraus legis/fraus legis should not be possible.

2. The Deputy Minister of Finance, on the other hand, argued that the part of the interest relating to the refinancing should also be non-deductible under fraus legis.

Fraus legis with regard to the acquisition loan

In its judgment, the Dutch Supreme Court once again confirmed that lex fraus legis in respect of a loan that, in principle, falls within the scope of Section 10a Corporate Income Tax Act 1969 ('CITA 1969'), is only not possible if the loan comes from an entity that fulfills a *pivotal financial function* with the group. In 2023 it had already decided this. However, the pivotal financial function in respect of the loan must then not be merely that of a *conduit*. Also in 2023, the Dutch Supreme Court had formulated specific rules for the qualification as a pivotal financial function (see our previous memorandum about this).

No fraus legis with regard to the refinancing

The Dutch Supreme Court upheld the Appeals Court's judgment that the part of the shareholder loan used for the refinancing does not constitute fraus legis. The Deputy Minister of Finance had in this respect referred to, among other things, the Hunkemöller case from 2021 (see our previous memorandum), in which part of a shareholder loan was also not used for the acquisition but was onlent to a German subsidiary. In the Hunkemöller case, it was accepted that there also was fraus legis with regard to the onlent amount.

On this point, the Dutch Supreme Court agreed with the Opinion issued by the Advocate General that the refinancing in the Coffee case involved another situation, because the Coffee case concerned a non-business motivated loan (on which the lower interest rate of 2.5% was taken into account), and there was no onlending that would create an interest deduction at another level. In addition, of importance was that the acquired company and the tax inspector had previously reached a compromise on the existing debt, whereby no fraus legis was established by the tax inspector. Consequently, the old debt did not constitute fraus legis, and the refinancing cannot therefore lead to fraus legis.

KPMG Meijburg & Co comments

This judgment constitutes confirmation of previous case law in which the interest deduction on shareholder loans for acquisitions was also not accepted. Even if Section 10a CITA 1969 cannot be used as an argument because not all its conditions are met, the interest deduction can be refused on the basis of fraus legis if the financing can be regarded as artificial and leads to profit shifting. The Dutch Supreme Court did however formulate a safe harbor rule. If the loan is raised from a group entity that performs a pivotal financial function, there is no fraus legis. Lastly, the tax landscape has changed significantly in the 15 years since the tax year at the center of the Coffee case. Hybrid structures and hybrid financial instruments are tackled under ATAD2 legislation (since 2020), international mismatches with regard to transfer pricing can be adjusted (since 2022) and since 2019 the earnings stripping measure can significantly limit the interest deduction. This, in addition to the current interest deduction limitations of Section 10a and Section 10b CITA, and of course not forgetting fraus legis. The bottom line is that there are many obstacles to deducting interest, and then mainly interest on loans from related entities and related natural persons.

If you would like to know more about this, feel free to contact us or your usual Meijburg tax advisor.

KPMG Meijburg & Co
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