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# *European Tax Newsalert*

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## *Dutch tax proposals would affect US multinationals*

### *In brief*

The Dutch government on September 18 -- budget day -- published the 2013 Tax Package, which includes several proposals that could affect US multinationals.

Since both the House of Representatives and the Senate must approve the Tax Package, it could change significantly before enactment. Because elections for the House were held on September 12, the Tax Package will be discussed by a newly composed House of Representatives and may be defended by a new government, depending on how the new government formation proceeds. Most proposals in the Tax Package are set to take effect January 1, 2013.

This newsalert summarizes the most important proposals in the Tax Package for US multinationals and funds. It also addresses the extension of RETT relief upon resale, which took effect on September 1 through a ministerial decree.

### *Thin capitalization rules abolished*

Under the current Dutch thin capitalization rules, a company is deemed to be excessively financed by debt if its average annual debt exceeds a 3:1 debt:equity ratio for tax purposes and the excess is greater than EUR 500,000. Interest paid on loans exceeding the 3:1 ratio and the EUR 500,000 threshold is disallowed only to the



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extent the interest paid on intragroup loans exceeds intragroup interest received. The deduction of interest paid on genuine third-party loans is not limited by the thin cap rules. A ratio higher than 3:1 may apply at the taxpayer's request if the group to which the Dutch company belongs has, according to the consolidated group financial statements, a higher, worldwide debt:equity ratio (group ratio).

The Tax Package would abolish the thin capitalization rules as of January 1, 2013. In light of the other specific interest deduction limitations and the recently approved limitation regarding interest expense deductions for debt used to finance qualifying participations, the government believes the thin capitalization rules no longer make sense as part of the Dutch corporate income tax act.

### ***Fiscal unity and new Dutch flexible company law***

A Dutch parent company must be the legal and economic owner of 95% of the shares of a Dutch subsidiary to form a fiscal unity with that subsidiary. The Tax Package would require the ownership to represent at least 95% of statutory voting rights. This measure would prevent shares without voting rights, which can be issued under the new private company law rules that will come into force on October 1, 2012, from having access to the fiscal unity regime.

### ***Tax liability for director's fees extended***

The non-resident tax liability of entities established abroad that perform management activities for Dutch entities will be amended. The current legislation regarding the taxation of remuneration for statutory activities of members of a board of directors or commissioners would be extended to include remuneration for actual management activities or management services. The ability to exercise the Dutch taxing right would be determined by the applicable tax treaty. For example, under the US-Netherlands tax treaty, it should not be possible to exercise the Dutch taxing right.

### ***Extension of RETT relief upon resale***

The Dutch Real Estate Transfer Tax Act (RETT Act) contains an amendment to the existing relief for real estate that is resold within six months. If the acquisition of property takes place within six months of a previous acquisition of the same property by another person, the taxable basis is reduced by the amount on which RETT (or VAT that was not recoverable) was paid upon the previous transfer. In short, RETT is due on only the excess value. In order to stimulate the real estate market, this six-month period has been extended to 36 months, through a ministerial decree. In addition, the measure takes effect for both directly held real estate and indirectly held real estate (that is, held through so-called real estate companies). **Note:** This extension took effect on September 1, 2012. The measure is granted only if the previous acquisition takes place on September 1, 2012 or later. The measure is of a temporary nature and will expire on January 1, 2015.

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