PwC Newsflash
Dutch Bank levy

FS Corporate Tax Group
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On 15 December 2011, the Dutch State Secretary of Finance published the Bank levy proposals which are expected to be introduced in 2012.

Introduction

On 15 December 2012, the Dutch State Secretary of Finance introduced the Bank levy bill. All entities with a banking license allowing them to operate on the Dutch market are potentially in scope. The tax is calculated over the non-secured liabilities on the bank's (consolidated) balance sheet in excess of € 20 billion. Due to this high threshold, only a few banks will be impacted. Smaller Dutch banks and foreign (non-Dutch) banks with limited activities in the Netherlands should therefore not be impacted.

Although no indication of the exact date of implementation has been given yet, it is anticipated that the bank levy will become law before October 2012. In such a case, the bank levy should effectively apply to financial years ending per 31 December 2011. The annual revenue is expected to be EUR 300 million.

Background

In light of the financial crisis and several bank bailouts, the bank levy became an important subject of discussion in the G-20 and the European Union. In line with several other EU Member States that enacted or proposed a bank levy, the Netherlands decided not to await an EU proposal and introduced Dutch bank levy rules.

As in other countries, the overriding objective to introduce a bank levy is for the Dutch banking sector to contribute to the (implicit) guarantees the sector received from the Dutch State during the financial crisis.

Another objective for the introduction of the bank levy are to promote a move away from short term funding that is perceived to be more risky. Furthermore, the proposals include an incentive to limit excessive variable remuneration of the Bank's executive directors.

Please find an outline of the proposed bank levy below. This is based on the bank levy bill published by the State Secretary on 15 December 2011 and is subject to parliamentary discussions.

Key aspects of the Bank Levy

- All entities that have a license allowing them to operate on the Dutch market are in scope. This includes banks that have a Dutch banking license, as well as other banks regulated within the EU and operating on the Dutch market (EU branch passport).

- The bank levy will in principle be levied from the bank itself. If the bank's financial accounts (IFRS or Dutch accounting principles) are consolidated into the accounts of another Dutch entity, the tax is levied from the latter entity. This rule also applies where an exemption for the consolidation requirement applies (so-called 403-declaration). The bank levy should however still be levied from the Dutch bank itself if the amount of the Dutch bank's total assets (i) does not exceed € 20 billion or (ii) are less than 10% of the consolidated total assets of the other Dutch entity.

- The tax is calculated over the non-secured liabilities on the consolidated balance sheet of the Dutch bank (or branch) and its subsidiaries in excess of € 20 billion.

  The non-secured liabilities are calculated as the banks total liabilities (i.e. credit side of the bank's balance sheet) less equity (Tier I and II), less the debt covered by a Deposit Guarantee Scheme and liabilities related to insurance activities. In case of a Dutch branch of a non-Dutch bank, only the balance sheet items allocable to the Dutch branch are considered.

- A rate of 0,022% applies to short-term non-secured debts (less than 1 year), whilst a rate of 0,011% applies to long-term non secured debts. This, in order to promote a move away from short term funding and as such to increase the stability of the Dutch financial system.

- The aforementioned tax rates are increased with 5% if the variable remuneration of one or more of the bank's executive directors exceeds 100% of the director's annual fixed remuneration (increasing the rate to respectively 0,0231% and 0,0155%).

- A possibility will be created to obtain a functional currency ruling to calculate the bank levy in a different currency.

- The tax is due on the first day of the 10th calendar month after (consolidated) balance sheet date.

- The bank levy will not be deductible for Dutch corporate income tax purposes.

PwC Comments

The Dutch bank levy is based on the bank levies enacted or proposed in other EU Member States, and in particular has similarities with the UK bank levy. This is in line with the State Secretary's previous comments and his aim to maintain a level-playing-field in the EU.

As a € 20 billion threshold is introduced, the number of banks affected by the bank levy will be limited. Smaller Dutch banks or foreign (non-Dutch) banks with limited activities in the Netherlands should therefore not be impacted.

The bank levy will apply only to licensed banks. SPV's of foreign banks, leasing companies, market makers, broker dealers or other entities that do not have a banking license should not be impacted, unless these companies are part of a Dutch banking group.

It should be considered whether or not (mortgage) SPV's will be consolidated into the bank's financial accounts as this may have a direct impact on the taxable base of the bank levy.

Similar to the UK bank levy, the Dutch bank levy tax base may lead to double taxation for banks operating internationally. As the Dutch Treaty network would not relieve liabilities arising under the bank levy, the legislator is exploring the possibility to avoid double taxation by amending double tax treaties or by unilateral measures. The legislator indicated that in case of double taxation, the state where the subsidiary or branch is located should provide for relief.

The legislator indicated that currently the potential impact of a financial transaction tax ("FTT") is being analyzed. Irrespective of the outcome of such analysis, it is the view of the Dutch legislator that the bank levy and a FTT should not exist side by side, in order to avoid accumulation of taxation.

PwC Contacts

For more detailed information on the Dutch bank levy, FTT or other EU bank levies, please do not hesitate to contact your local PwC contact person or the following persons:

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