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Dutch financing companies in multinational structures

A pre-BEPS case study and the impact of ATAD

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01 Introduction

Prior to the OECD Base Erosion and Profit Shifting (BEPS) initiative, multinational groups frequently used Dutch entities as intermediate financing companies in cross-border structures. The Netherlands offered a stable corporate tax framework, a broad tax treaty network, and an established advance tax ruling practice providing binding guidance on the fiscal treatment of transactions.[1]

These structures were part of a broader international tax environment in which profit allocation through intra-group financing was widely used in practice and generally compatible with pre-BEPS international tax standards, but later identified as a key source of base erosion.[2]

This paper examines a simplified and anonymised case study based on a typical financing structure used in practice. The arrangement involves a Dutch financing company positioned between a Luxembourg holding company and a Luxembourg special purpose vehicle holding a portfolio of non-performing loans.

The paper then analyses how the introduction of ATAD, and in particular the interest limitation rule, affects such structures under the current regulatory framework.

1 R.H.M.J. Offermanns, Netherlands – Corporate Taxation, IBFD Country Tax Guides (2025).
2 OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing

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02 Structure of the financing arrangement

The structure consists of three entities:

- Lux HoldCo Sàrl – group holding and treasury entity
- NL Finance BV – Dutch intra-group financing company
- Lux Portfolio SPV Sàrl – entity holding a portfolio of non-performing loans

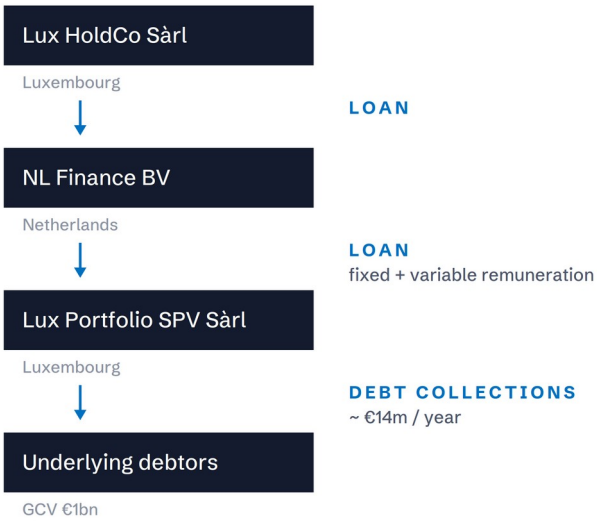


FIGURE 1 — THE FINANCING STRUCTURE

Lux Portfolio SPV Sàrl acquired a portfolio of unsecured claims with a gross claim value (GCV) of approximately €1bn, for an assumed purchase price of €100m.

The portfolio generates recoveries over an estimated 10-year period, with cash flows typically front-loaded, meaning that a significant portion of recoveries is realised in the early years.

The acquisition is financed through an intra-group loan granted by NL Finance BV, which is itself funded by Lux HoldCo Sàrl. The Dutch entity acts as an intermediary financing company, a structure commonly used in multinational groups.[3]

3 IBFD, Netherlands – Corporate Taxation (Overview), Country Tax Guides.

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Such entities are often described as conduit financing companies, as they channel financial flows within multinational groups while retaining only a limited margin.

The use of a Dutch financing entity in such structures was also closely linked to the availability of advance tax rulings providing certainty on the tax treatment of intra-group financing arrangements. In practice, such rulings played a key role in ensuring the stability and predictability of the structure over its lifetime, particularly by confirming the arm's-length nature of the remuneration and reducing the risk of recharacterisation. In the absence of such certainty, the sustainability of the arrangement would have been significantly reduced.

03 Economic operation of the structure

Lux Portfolio SPV Sàrl is financed through a €100m intra-group loan, resulting in a high level of intra-group leverage.

The financing includes:

- Fixed annual interest: €5m
- Variable remuneration (subordinated tranche): residual cash flows

The simplified annual cash flows are:

TABLE 1 — SIMPLIFIED ANNUAL CASH FLOWS

ITEM	AMOUNT
Net collections	€14m
Fixed interest	./. €5m
Variable remuneration	./. €9m
Residual profit	~ €0

As a result, the SPV retains little, if any, taxable profit under the assumed financing structure, with nearly all economic returns being upstreamed as financing remuneration.

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The front-loaded nature of the portfolio means that higher cash flows — and therefore higher financing payments — occur in the early years of the structure. This feature is consistent with the economic profile of unsecured debt portfolios and supports the design of the financing arrangement.

NL Finance BV is funded at a slightly lower cost by Lux HoldCo Sàrl and retains a limited margin after general and administrative expenses.

04 Impact of ATAD on the structure

04.1 Interest limitation rule

The ATAD interest limitation rule restricts the deductibility of borrowing costs to 30% of EBITDA.[4] This rule reflects the implementation at EU level of the OECD BEPS Action 4 recommendations, which aim to prevent excessive interest deductions and align taxation with economic activity.[5]

In the present case, Lux Portfolio SPV Sàrl generates approximately €14m EBITDA, resulting in a maximum deductible interest amount of:

$$30\% \times €14m = €4.2m$$

Total financing remuneration may amount to up to €14m, including both fixed and variable components, to the extent that such remuneration qualifies as borrowing costs. This qualification may be subject to scrutiny, in particular with respect to the variable remuneration, which could be characterised as profit participation rather than interest.

4 Council Directive (EU) 2016/1164 (ATAD), Art. 4.

5 OECD (2015), BEPS Action 4: Limiting Base Erosion Involving Interest Deductions, OECD Publishing.

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TABLE 2 — EFFECT OF THE INTEREST LIMITATION RULE

ITEM	AMOUNT
Total remuneration	€14m
Deductible	€4.2m
Non-deductible	€9.8m

This leads to a significant increase in the taxable base of the SPV.

However, the tax impact of the interest limitation rule must be analysed at the level of the entire structure, rather than in isolation.

At the level of Lux Portfolio SPV Sàrl, the rule limits the deductibility of financing costs, resulting in a portion of the interest becoming non-deductible.

By contrast, at the level of NL Finance BV, the corresponding income may remain taxable in the Netherlands, to the extent that such income is not offset by corresponding expenses or otherwise relieved.

This creates a tax asymmetry within the structure, as a deduction is denied at the level of the payer while the corresponding income may still be taxed at the level of the recipient. As a result, the structure may give rise to a form of economic double taxation, to the extent that the same income is effectively taxed without a corresponding deduction.

However, such double taxation does not fall within the scope of Article 23 of the OECD Model Convention, which addresses juridical double taxation affecting the same taxpayer. In the present case, the mismatch arises between different entities within the group and therefore remains unresolved by treaty mechanisms.

In addition, NL Finance BV itself may also be subject to interest limitation rules if it incurs back-to-back financing costs. Although the Dutch entity typically retains only a limited margin, the application of ATAD at this level may further restrict deductibility and reduce the effectiveness of the intermediary structure.

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From a policy perspective, this outcome reflects the objective of BEPS Action 4, which seeks to neutralise structures based on excessive intra-group debt. In this respect, the resulting asymmetry is not incidental but rather an intended consequence of the post-BEPS framework, which prioritises the protection of the tax base over the elimination of economic double taxation.

The front-loaded nature of the portfolio further reinforces this effect, as higher interest payments in the early years may lead to larger disallowed amounts when EBITDA is insufficient to absorb the financing costs.

04.2 Broader BEPS implications

Beyond the mechanical limitation, the structure raises broader BEPS concerns.

The financing arrangement effectively extracts nearly all profits from the SPV through intra-group debt. In the present case, the variable remuneration is designed to absorb the residual cash flows of the portfolio, resulting in a return that is directly linked to the performance of the underlying assets.

In such circumstances, the remuneration departs from the characteristics of a fixed return typically associated with debt and may instead display features of equity, which could lead to recharacterisation by tax authorities. In particular, the structure combines several indicators commonly associated with equity instruments:

- absence of a fixed return on part of the remuneration
- profit-dependent payments
- economic equivalence to profit participation

Furthermore, BEPS principles require that profits be aligned with economic substance. Allocating most of the return to a financing entity with limited functional activity may therefore be challenged under transfer pricing rules.[6]

6 OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing.

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This analysis aligns with the OECD's emphasis on the accurate delineation of the transaction, which requires that the legal form of an instrument be consistent with its economic substance.

05 Conclusion

This case study illustrates how Dutch financing companies historically functioned as intermediary entities enabling the upstreaming of profits through intra-group financing structures. The introduction of ATAD significantly reduces the effectiveness of such arrangements. Interest deductibility is restricted, and broader BEPS principles increase scrutiny on the allocation of profits and the classification of financial instruments.

As a result, while Dutch financing entities continue to play a role, this is now primarily in structures supported by sufficient economic substance and aligned with post-BEPS standards.

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