



## Internationaal belastingrecht; vennootschapsbelasting. Belastingverdrag Nederland-Brazilië; bevestiging kwalificatie Braziliaanse interest on net equity

Directoraat-generaal Fiscale Zaken/ Directie Verbruiksbelastingen, Douane en Internationale Aangelegenheden

De Staatssecretaris van Financiën deelt het volgende mee.

*In dit besluit wordt verder ingegaan op de kwalificatie van de betalingen van Braziliaanse 'Interest on net equity' voor de toepassing van het belastingverdrag tussen Nederland en Brazilië.*

### 1. Inleiding

In het Besluit kwalificatie Braziliaanse interest on net equity (besluit van 4 augustus 2020, nr. 2020-14853 Stcrt. 2020, 44499) is uiteengezet hoe de betalingen van Braziliaanse 'Interest on net equity' voor de toepassing van de op 8 maart 1990 ondertekende Overeenkomst tussen het Koninkrijk der Nederlanden en de Federatieve Republiek Brazilië tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belastingen met betrekking tot het inkomen (hierna: 'het Belastingverdrag') dienen te worden gekwalificeerd. Om te bevestigen dat de Braziliaanse en de Nederlandse bevoegde autoriteit beide de mening zijn toegedaan overeenkomstig hetgeen is uiteengezet in het genoemde besluit van 4 augustus 2020, wordt in het onderhavige besluit de tekst gepubliceerd van de uitkomst van een onderlinge overlegprocedure op grond van artikel 25 van het Belastingverdrag.

### 2. De uitkomst van de onderlinge overlegprocedure

#### COMPETENT AUTHORITY AGREEMENT

The competent authorities of Brazil and the Netherlands (hereinafter: the 'Competent Authorities') have reached the following mutual agreement (hereinafter: 'Competent Authority Agreement') regarding the application of the Convention between the Kingdom of the Netherlands and the Federative Republic of Brazil for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed on 8 March 1990 (hereinafter: the 'Convention') in relation to payments of interest on net equity (in Portuguese: *Juros sobre o Capital Próprio*, hereinafter: 'JCP') by a company which is a resident of Brazil to a resident of the Netherlands. This Competent Authority Agreement is entered into under paragraph 3 of Article 25 (Mutual Agreement Procedure) of the Convention.

JCP was introduced in Brazilian law (by Art. 9 of Lei nº 9249/1995) after conclusion of the Convention. Therefore, the Convention does not specifically address whether, under the Convention, JCP should be considered as a dividend as defined in paragraph 3 of Article 10, or as interest as defined in paragraph 4 of Article 11 of the Convention.

JCP is a remuneration that a company organized under Brazilian law can elect to pay to its shareholders on the basis of the net equity of the company. Since JCP is calculated on the basis of the net equity of the company and paid to shareholders only in the existence of profits of the current period, accumulated earnings or profit reserves of previous periods, it could raise doubts whether it can be qualified as a dividend (Art. 10 of the Convention) or interest (Art. 11).

After discussing the issue, among other reasons, the competent authorities considered that the following elements should be taken into consideration for the qualification of JCP.

First, JCP is treated as interest for Brazilian tax purposes, meaning that JCP is deductible for the payer and taxable with the payee for corporate income tax (in Portuguese: *Imposto de Renda das Pessoas Jurídicas*) and social contribution on the net profits (in Portuguese: *Contribuição Social Sobre o Lucro Líquido*) purposes, and that withholding tax is levied on JCP.

Second, Art. 10(3) and Art. 11(4) of the Convention read as follows:

*Art. 10 Dividends – 3. The term 'dividends' as used in this Article means income from shares, 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights, not being*



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debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

Art. 11 Interest – 4. The term ‘interest’ as used in this Article means income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

Thus, in specific cases, the Convention indicates that the qualification should follow the taxation treatment of the residence country of the company making the distribution of dividends or the residence country of the payer of the interest.

Considering the above, the Competent Authorities wish to clarify the treatment of JCP under the Convention. The Competent Authorities have agreed that for the purpose of applying the Convention, in accordance with Brazilian tax law, JCP is considered interest within the meaning of paragraph 4 of Article 11 of the Convention.

Agreed by the undersigned Competent Authorities:

Date: 3-12-2021 (Brasilia)  
For the competent authority of Brazil

Date: 29-8-2021 (The Hague)  
For the competent authority of the Netherlands

José Barroso Tostes Neto  
Special Secretary of the Federal Revenue of Brazil

Reijer Janssen  
Ministry of Finance

### **3. Citeertitel**

Dit besluit wordt aangehaald als: Besluit bevestiging kwalificatie Braziliaanse interest on net equity.

Dit besluit zal in de Staatscourant worden geplaatst.

*Den Haag, 16 maart 2022*

*De Staatssecretaris van Financiën,  
namens deze,  
De Directeur Verbruiksbelastingen, Douane en Internationale Aangelegenheden*