For the attention of Mr Marius Kohl
Administration des Contributions Directes
Bureau d'Impostion VI
18, rue de Fort Wedell
L - 2932 Luxembourg

28 November 2008

References: AEJE/TSAZ/W1908003M-FYHS

Waalfin Holding S.A. – 1999 4009 454
WE Finance and Services (Luxembourg) S.à r.l. – 1996 2412 281

Dear Mr Kohl,

We are pleased to submit for your review and approval/comments the Luxembourg tax treatment of the restructuring proposals.

A Description of transactions

1. The WE Group (hereafter referred as to the “Group”) is an international fashion group with around 330 retail stores in six European countries. It owns around 70 retailing properties in the Netherlands, Belgium and Switzerland. Beside its retailing operations the group has a portfolio of fashion brands which it distributes in Europe and overseas.

2. The Group hold the operational companies through a Luxembourg structure composed of two companies, WE Finance and services (Luxembourg) S.à r.l (hereafter referred as to “WE Finance”) held by Waalfin Holding S.A, incorporated under billionaire Holding 1929 status (referred as to “Waalfin”).

3. In anticipation of the abolition of the Holding 1929 regime as from end of 2010, the Group has decided to reorganize its Luxembourg holding and financing structure.

4. For your information, you will find enclosed, a description of the Group in Appendix 1, the current abbreviated structure of the group in Appendix 2. Moreover, the envisaged transactions steps and the final abbreviated structure are depicted respectively in Appendix 3 and in Appendix 4.
B Applicable tax regime

B.1. Tax treatment applicable to Waalfin upon the sale of its assets to WE Finance (step 1)

1. Waalfin will sell all its assets at fair market value to WE Finance except for the IP, its participation in WE Finance, and its receivables towards WE Finance in consideration of a profit participating loan 1 (hereafter referred to as “PPL 1” – please refer to point B.8 hereafter for the tax treatment, and to Appendix 5 for the detailed tax analysis). The fair market value of the assets transferred and thus the value of PPL1 is expected to be of around EUR 33 Mio.

2. Since Waalfin benefits from a special tax-exempt status foreseen by the law on Holding 1929 dated 31 July 1929 (hereafter referred to as the “Law on Holding 1929”), potential capital gain to be realized upon the disposal of its assets will be exempt from corporate income tax, capital gains tax, municipal business tax and net wealth tax. This step will not trigger any particular tax consequences.

B.2. Tax treatment applicable to the conversion of the Waalfin’s receivables towards WE Finance into a profit participating loan (step 2)

3. The Waalfin receivables towards WE Finance (including the accrued interest) will be converted into a profit participating loan 2 (hereafter referred to as “PPL 2” – please refer to point B.8 hereafter for the tax treatment, and to Appendix 5 for the detailed tax analysis). This step will not trigger any particular Luxembourg tax consequences.

B.3. The tax treatment applicable to WE Finance in relation to the restructuring of its capital (step 3)

4. Upon step 3, WE Finance will increase its capital in order to reach an amount corresponding to 15% of the book value of DutchCo shares recorded by incorporation of its reserves.

5. As a result of the above the equity of WE Finance will increase from 4,1 Mio up to around EUR 12,64 Mio (i.e. around EUR 12,64 Mio corresponding to 15% of around EUR 84,27 Mio).

B.4. Tax treatment applicable to the dividend distribution declared and the capital reduction decided by Waalfin and to the conversion of the shareholder debt created in this respect into a profit participating loan (step 4)

6. Based on article 146 of the Luxembourg Income Tax Law (hereafter referred to as “LITL”), dividends distributed by a Luxembourg fully taxable company are in principle subject to 15% withholding tax.
7. However, in accordance with the special tax exempt status foreseen by the Law on billionaire Holding 1929 applicable to Waalfin, any dividends distributed by Waalfin will not be subject to the withholding tax provided by the above provision of the LITL.

8. The dividend and the capital reduction are not paid up but are left outstanding between Waalfin and its shareholder. The shareholder debt will thereafter be converted into a profit participating loan 3 (hereafter referred to as “PPL 3” – please refer to point B.8 hereafter for the tax treatment and to Appendix 5 for the detailed tax analysis).

9. As a result to the above, PPL 3 will finance all the assets of Waalfin except 15% of WE Finance shares. Concretely, it means that Waalfin will repatriate 85% of its profits under PPL 3 and 15% as dividend to its parent which will be subject to the Luxembourg withholding tax at the rate of 15%.

B.5. Waiver of the Holding 1929 status (step 5)

B.5.1. Continuity of the legal personality

10. Waalfin will waive the Holding 1929 status by a decision of the shareholders modifying the by-laws of the company. An extraordinary general shareholders meeting (“EGM”) will decide to cancel all references to the Law on Holding 1929 and consequently to renounce to the benefit of the favorable tax regime of Holding 1929 companies (we will provide you with a copy of the decision of the EGM as soon as it is available).

11. Despite the change of tax status, the form of the legal entity remains unchanged and submitted to the Law of August 10, 1915 regarding commercial companies. Therefore, the conversion of Waalfin into a Soparfi will not interrupt the legal personality of Waalfin.

12. Consequently, the conversion will not result in a disposal of the assets (shareholding in WE Finance, PPL 1 and PPL 2) held by Waalfin under Luxembourg tax or company law.

B.5.2. Tax residency

13. Within the meaning of article 159 LITL and of the tax treaties conclude by Luxembourg, a company will be regarded as tax resident in Luxembourg and thus be subject to corporation tax insofar as its statutory seat (i.e. a registered office) or its principal establishment is located in Luxembourg.

14. As a result, from its conversion into a Soparfi, Waalfin will be a fully taxable Luxembourg company and will be tax resident in Luxembourg due to the fact it has its registered office and its place of central administration in Luxembourg.
15. Moreover Waalfin may benefit from the double tax treaties concluded by Luxembourg as from its conversion into a fully taxable company.

16. Luxembourg tax authorities would, upon request, issue a certificate of tax residence providing proof of its Luxembourg tax residence.

**B.5.3. Opening tax balance sheet**

**B.5.3.1 Assets and liabilities**

17. From a Luxembourg direct tax point of view, the conversion from holding 1929 status into a Soparfi is considered as a liquidation of the existing company and a contribution to a fully taxable joint stock company.

18. At the time of the conversion, Waalfin should establish an opening tax balance sheet valuating the assets and liabilities of the company at their fair market value, disclosing all capital gains and reserves at the time of the conversion.

19. In case the valuation at fair market value leads to a revaluation gain, that gain should correspond to the difference between the actual book value of the assets and liabilities held by Waalfin and their fair market value at the time of the conversion.

20. If a revaluation gain arises, it will be considered as still realized by Waalfin under holding 1929 status (before its conversion) and will therefore benefit from the special tax-exempt status foreseen by the Law on Holding 1929.

21. From a practical perspective, the revaluation gain or loss realized upon the conversion should have to be reflected in the annexes of the Waalfin’s tax return along with a description of the valuation methods used for that purpose.

22. In practice, as most of the assets have been, prior the conversion, sold at their fair market value to WE Finance, a reevaluation might apply only on the WE Finance shares and on the IP. Nevertheless, in order that the tax balance sheet will correspond to the accounting balance sheet and as the assets (i.e. WE finance’s shares and the IP) will be financed by the PPL 3, no reevaluation will be done.

**B.5.3.2 Equity**

23. Waalfin should revaluate its capital in its opening tax balance sheet as a Soparfi. The revaluated capital will include the share capital, the reserves accumulated until the conversion, as well as the revaluation reserves resulting from the step-up at the moment of the conversion (see above, point B.5.3.1.).

24. From a tax point of view, the revaluated capital will be treated as “fiscal capital” in the hands of Waalfin. Any repayment (of part) of this “capital” to
Waalfin shareholders (i.e. parent company) would therefore not be subject to withholding tax in line with the provisions of article 97 (3) b LITL.

25. Nevertheless, in order that the tax balance sheet will correspond to the accounting balance sheet and as the assets (i.e. WE Finance shares and the IP) will be financed by the PPL 3, no reevaluation will be done.

B.5.4. Tax treatment applicable to WE Finance and Waalfin, further to its waiver of the Holding 1929 status

B.5.4.1. Luxembourg participation exemption regime

26. As to the 12 months holding period for the participation exemption, on dividends, capital gains and withholding tax, the conversion of Waalfin into a fully taxable company will have no impact, as there will be a continuity of the holding period (i.e. the holding period related to the participations held by Waalfin under the holding 1929 status will be continued after the conversion).

27. As a result, the historical date of acquisition of the participation will be taken into account for the computation of the 12 months holding period required by Article 166 LITL, by the Grand Ducal Decree taken in application of article 166 LITL and by Article 147 LITL.

B.5.4.2. Net wealth tax

28. After the conversion of Waalfin, converted into a fully taxable company, will be subject to net wealth tax.

29. Waalfin will however benefit from the net wealth tax participation exemption available under paragraph 60 of the Bewertungsgesetz provided the conditions of this paragraph are met.

30. The unitary value of Waalfin will be computed taking into account the value of the assets as depicted in the tax balance sheet which will correspond to the accounting one as no reevaluation will be done (see paragraphs 22 and 25).

31. Nevertheless, in the case the IP will have to be revaluated for net wealth tax purposes, since the IP will be financed by PPL 3 at the end of the restructuring and PPL 3 will be qualified as debt for tax purposes, any revaluation on the IPs computed as at 31 December, will be totally offset by a corresponding tax debt (i.e. PPL 3) equivalent to 100% of this reevaluation. Accordingly, PPL 3 directly linked to the financed IP assets, will be revaluated each year for net wealth tax purposes (if necessary).
B.6. Distribution of accumulated profits of WE Finance (step 6)

32. A dividend of an amount corresponding to the retained earnings of WE Finance after step 3 (see section B.3 above) will be declared to Waalfin (i.e. around EUR 49,2 Mio).

33. The dividend will not be effectively paid, but will increase the nominal value of PPL 2 for the same amount (i.e. around EUR 49,2 Mio).

B.7. Dividend distribution of “WE Finance dividend” from Waalfin to its parent (step 7)

34. A dividend of an amount corresponding to the dividend attributed in step 6 will be declared by Waalfin to its parent.

35. As the shares of WE Finance at the level of Waalfin will be financed partially by equity (15%) and partially by PPL 3 (85%), 85% of the dividend received from WE Finance will be offset against a variable interest charge under the PPL 3. Due to the fact that Waalfin will not have sufficient cash to pay this variable interest of around EUR 41,82 Mio (i.e. around EUR 49,2 Mio *85%), this interest charge will be accrued and capitalised with the nominal amount of PPL 3.

36. The remaining amount of around EUR 7,38 (around EUR 49,2 Mio *15%) will be distributed as dividend to the parent and will be subject to a withholding tax of around EUR 1,1 Mio. Again, due to the lack of cash, this dividend will be left outstanding in the balance sheet of Waalfin as an ordinary interest free loan.

B.8. Profit participating loans

37. Further to the restructuring, the group investments will be financed by profit participating loans (PPL 1, PPL 2 and PPL 3, together referred to as “PPLs”) denominated in Euro currency.

38. All PPLs will be qualified as debt for both income tax purposes and net wealth tax purposes, and interest thereon will be fully tax deductible (including the variable interest element) subject to article 166 (5) of Luxembourg Income Tax Law (see Appendix 5 for the detailed analysis of the tax treatment applicable). Waalfin and WE Finance will be in an overall connected funding position with respect to both their equity investment in DutchCo and their debt investment financed by the PPLs. As a consequence, all the financing and holding activities of the Waalfin and WE Finance should normally fall outside the calculation of the 85:15 debt-to-equity ratio and no interest thereon will be reclassified as a deemed dividend (see however section B.9).
39. Interest payments under the PPLs will not be subject to the withholding tax on distributions (neither on the ground of article 146 (1) 3 LITL nor of article 146 (1) 2 LITL).

40. Considering the amounts involved and the risk profile, the taxable profit realized by the Waalfin in relation to its financial activities will be considered as appropriate and acceptable with respect to transfer pricing policy and articles 56 and 164 (3) LITL insofar as it represents at least a 0.125% margin per annum of the aggregate outstanding amount of the PPL (minimum taxable margin). Foreign withholding taxes suffered, if any, will be included as an expense for the computation of the variable interest.

41. This margin will apply on the financing activities of Waalfin (receiving/lending PPLs), and on the IP activities (i.e. being financed by PPL3 after step 4).

42. Consistent with the above, no further margin will be required at the level of WE Finance with respect to the financing and holding activities.

B.9. Additional consideration

43. After the restructuring, in order to comply with a sufficient debt-to-equity ratio of DutchCo' shares at the level of WE Finance, 15% of the book value of the DutchCo' shares will be financed by equity and the remaining total assets (including 85% of DutchCo shares) will be financed by the PPL 1 and PPL 2.

44. Consequently, any income realised or received on/from the DutchCo will be repaid as dividend (interim) from WE Finance to Waalfin up to the amount of equity financing (i.e. 15%). All other income (i.e. interest, other dividend, other capital gain and 85% of income from the DutchCo) will be repaid as variable interest under PPL 1 and PPL 2.

45. From a net wealth tax position, the equity will be in priority assigned to the financing of the shares into DutchCo.

46. At Waalfin level, all the assets are entirely financed by PPL 3 (PPL1, PPL 2, IP and WE Finance retained earnings) except for 15% of the shares in WE Finance that are currently financed by equity.

47. Concretely it means that in addition to the margin of the financing activities, 15% of dividend and capital gains from WE Finance will not be repatriated by interest payment to the parent under PPL 3 but as dividend (interim) subject to 15% of withholding tax.
Taking into account the importance of the above for our client, we would greatly appreciate your written confirmation of the above treatment.

We remain at your disposal for further information and thank you for the attention that you will give to our request.

Yours sincerely,

Alexandre Jaumotte
Partner

Frédérique-Audrey Hakkens
Senior Advisor

APPENDICES
Appendix 1 : Description of the Group
Appendix 2 : Current abbreviated chart structure
Appendix 3 : Contemplated transactions
Appendix 4 : Final abbreviated chart structure
Appendix 5 : PPLs- Detailed tax treatment

For approval

Please take note that this decision is not of general nature and is only applicable to the present case.

Le préposé du bureau d'imposition Sociétés VI
Marius Kohl

Luxembourg, 28-November-2008
- 3 DEC. 2008

This tax agreement is based on the facts as presented to PricewaterhouseCoopers Sàrl as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to any party other than the one for which it was prepared. This tax agreement was prepared with only the interests of the WE Group in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers Sàrl, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.
Description of the Group

1. The Group’s retailing activities emerged in 1962 in the Netherlands with Hij Mannenmode out of a family company which already had been operating as wholesalers for many years. The WE brand name originates from 1999 and the Group’s core activity has been grown into a retail chain with 230 stores in six European countries. The Group has incorporated its Luxembourg holding activities in 1997.

2. After a couple of acquisition, the Group now operates two additional retail formulas and a portfolio of fashion brand:
   - Beldona, an upscale lingerie chain with 70 stores in Switzerland which since last year has been started in Austria;
   - Setpoint, a men’s fashion chain with 36 stores in the Netherlands;
   - Waalwear Men and Waalwear Kids with brands like Bad Boys, Van Gils, Jaguar, Cakewalk, and many more; and
   - O’Neill Europe, the producer and distributor of the O’Neill active sportswear and life style products.

3. Under the roof of its Ronstreet Properties division, the Group owns 71 mostly retail properties in the following countries:
   - 55 in the Netherlands;
   - 10 in Belgium; and
   - 6 in Switzerland.

4. The Group further operates support companies: two sourcing and merchandizing companies in Hong Kong, a management company in Belgium and a finance company in the Netherlands. It further invests in private equity and holds minority participations on the WE Finance level.
Current abbreviated chart structure of WE Group

Appendix 2

BVI

Waalfin Holding SA Holding 1929 (Luxembourg)

Hong-Kong Company n°1

Hong-Kong Company n°2

WE Finance and Services (Luxembourg) Sàrl

DutchCo Finance (Netherlands)

DutchCo (Netherlands)

Belgium Service Company (Belgium)
Restructuring steps and abbreviated structure

In order to achieve the reorganisation of the Luxembourg holding and financing structure of the Group, the following steps will be carried out (only steps relevant for a full understanding of the Luxembourg tax analysis are described):

- Simplified balance sheet of Waalfin prior the envisaged transactions:

<table>
<thead>
<tr>
<th>Waalfin Holding SA (in K€)</th>
<th>Holding 1929</th>
</tr>
</thead>
<tbody>
<tr>
<td>IP</td>
<td>7,735</td>
</tr>
<tr>
<td>Particip. WE Finance</td>
<td>4,107</td>
</tr>
<tr>
<td>Other Particip.</td>
<td>2,286</td>
</tr>
<tr>
<td>Receivables WE Finance</td>
<td>213,171</td>
</tr>
<tr>
<td>Other receivables</td>
<td>11,770</td>
</tr>
<tr>
<td>Other assets</td>
<td>15,791</td>
</tr>
<tr>
<td>Cash</td>
<td>4,042</td>
</tr>
<tr>
<td>Other</td>
<td>0,020</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>258,924</strong></td>
</tr>
</tbody>
</table>

- Simplified balance sheet of WE Finance prior the envisaged transactions:

<table>
<thead>
<tr>
<th>WE Finance and Services Sàrl (in K€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Particip. DutchCo</td>
</tr>
<tr>
<td>Other Particip.</td>
</tr>
<tr>
<td>Receivables</td>
</tr>
<tr>
<td>Other assets</td>
</tr>
<tr>
<td>Cash</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

- **Step 1**

Waalfin sells all its assets at market value to WE Finance, except for the IP, its participation in WE Finance and its receivables towards WE Finance, in consideration of a Profit Participating Loan (PPL 1).

- Simplified balance sheet of Waalfin after step 1:

<table>
<thead>
<tr>
<th>Waalfin Holding SA (in K€)</th>
<th>Holding 1929</th>
</tr>
</thead>
<tbody>
<tr>
<td>IP</td>
<td>7,735</td>
</tr>
<tr>
<td>Particip. WE Fin</td>
<td>4,107</td>
</tr>
<tr>
<td>Receivables WE Fin</td>
<td>213,171</td>
</tr>
<tr>
<td>PPL 1</td>
<td>33,910</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>258,924</strong></td>
</tr>
</tbody>
</table>
**Step 2**

WE Finance converts its debts towards Waalfin (including the accrued interests) into a Profit Participating Loan (PPL 2).

**Step 3**

WE Finance will increase its capital by incorporation of its reserves in order to reach an amount corresponding to 15% of EUR 84.27 Mio.
Step 4

Waalfin will declare a dividend (equal to the sum of the profits brought forward and the profits of the year) to BVI and will reduce its subscribed capital to an amount equal to 15% of the share in WE Finance. The amounts outstanding will however not be settled, but accounted for as a shareholder debt, which will be converted to a Profit Participating Loan (PPL 3) which will finance the IP, 85% of the shares of WE Finance + PPL 1 and PPL 2.

- Simplified balance sheet of Waalfin after step 4:

<table>
<thead>
<tr>
<th>Waalfin Holding SA (in K€) Holding 1929</th>
</tr>
</thead>
<tbody>
<tr>
<td>IP</td>
</tr>
<tr>
<td>Particip. WE Fin</td>
</tr>
<tr>
<td>PPL 1</td>
</tr>
<tr>
<td>PPL 2</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Step 5

Waalfin is converted into a fully taxable company.

- Simplified balance sheet of Waalfin after step 5:

<table>
<thead>
<tr>
<th>Waalfin Holding SA (in K€) Soparfi</th>
</tr>
</thead>
<tbody>
<tr>
<td>IP</td>
</tr>
<tr>
<td>Particip. WE Fin</td>
</tr>
<tr>
<td>PPL 1</td>
</tr>
<tr>
<td>PPL 2</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Step 6

WE Finance will distribute its retained earnings to Waalfin. The amounts outstanding are however not paid, but accrued and capitalised with the nominal value of PPL 2.

- Simplified balance sheet of Waalfin after step 6:

<table>
<thead>
<tr>
<th>Waalfin Holding SA (in K€) Soparfi</th>
</tr>
</thead>
<tbody>
<tr>
<td>IP</td>
</tr>
<tr>
<td>Particip. WE Fin</td>
</tr>
<tr>
<td>PPL 1</td>
</tr>
<tr>
<td>PPL 2</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
- **Simplified balance sheet of WE Finance after step 6:**

<table>
<thead>
<tr>
<th>WE Finance and Services Sàrl (in K€)</th>
<th>Particip. DutchCo 84.274</th>
<th>Capital 12.641</th>
<th>Particip. 4.506</th>
<th>Result 0.000</th>
<th>Receivables 199.974</th>
<th>Other debt 23.596</th>
<th>Other assets 38.276</th>
<th>PPL 1 33.910</th>
<th>Cash 5.494</th>
<th>PPL 2 262.377</th>
<th>Total 332.524</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>332.524</td>
<td><strong>Total</strong></td>
<td>332.524</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Step 7**

Waalfin will declare dividend to its parent. The amount outstanding is however not paid, but accounted for 85% as a shareholder debt which is converted into a Profit Participating Loan (i.e. accrued and capitalised the nominal amount of PPL 3) and 15% as an ordinary interest free loan.

- **Simplified balance sheet of Waalfin after step 7:**

<table>
<thead>
<tr>
<th>Waalfin Holding SA (in K€) Soparfi</th>
<th>IP 7.735</th>
<th>Capital 0.816</th>
<th>Particip. WE Fin 4.107</th>
<th>Result 0.000</th>
<th>PPL 1 33.910</th>
<th>Accruals 0.194</th>
<th>PPL 2 262.377</th>
<th>PPL 3 299.939</th>
<th>IFL* 7.381</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>308.129</td>
<td><strong>Total</strong></td>
<td>308.129</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*IFL = Interest Free Loan towards its parent corresponding to 15% of the dividend declared by WE Finance*
Appendix 4

Final abbreviated chart structure

- BVI
  - Waalfin S.A. (Luxembourg)
    - WE Finance and Services (Luxembourg) Sàrl (Luxembourg)
      - DutchCo (Netherlands)
      - DutchCo Finance (Netherlands)
      - Hong-Kong Company n°1
      - Hong-Kong Company n°2
    - Operational group companies
  - Belgium Service Company (Belgium)
PPLs – Detailed tax treatment

1  Characterisation as debt

   1  According to the commentaries to the LITL (commentaries included in “Project de Loi N°571” (1955)) on the former article 114 LITL (now article 97 LITL) on income from participation, where a profit participating loan bears a minimum fixed interest rate, payable even when the company is in a loss position, and provided the principal amount of the loan is repayable before the reimbursement of the company’s share capital, the profit participating loan should continue to be treated as a debt for Luxembourg tax purposes.

   2  Consequently, the PPLs (i.e. PPL 1, PPL 2 and PPL 3) will be qualified as debt for both net wealth tax and income taxes purposes, and interest thereon will be deductible under the same conditions as apply to fixed interest debt.

2  Characterisation of PPL interest payments

   3  Authors have examined the question whether the definition of “dividend" given by the Luxembourg income tax law could include payments accounted for as interest\(^1\). The key criteria to qualify a payment as dividend rather than interest are:

      • Entitlement to the ongoing profit (including the profit reserves); and
      • Entitlement to the liquidation proceeds.

   4  Under this interpretation, the payment of an amount neither directly relating to the entire profit of the borrower, nor to the liquidation proceeds, need not be considered as a dividend.

   5  In the case at hand and since the participating loan interest will be dependent on the income realised before Luxembourg tax and variable interest, and not profit after tax, the loan interest should be qualified as interest rather than dividend.

3  Tax regime of the profit participating interest

   6  Article 146 (1) 3 provides for the application of a withholding tax upon payment of interest arising from participating bonds or other similar securities. Interest payment may be subject to a 15% withholding tax in Luxembourg if the following conditions apply:

      • The loan is structured in the form of a bond or other similar security; and,

\(^1\) A. Steichen, “Précis de droit fiscal de l’entreprise”, Editions Saint Paul, § 701 et seq., p. 343 et seq
• Aside from the fixed interest, a supplementary interest varying according to the amount of distributed profits is paid, unless the supplementary interest is linked to a corresponding decrease in the fixed interest.

7 On the contrary, interest payments related to participating loans are not subject to a specific withholding tax.

8 In the present case, the debt instrument is structured as a profit participating loan (and not as a profit participating bond), and the participating interest does not depend on distributed profit.

9 Furthermore, interest payment under the PPLs will not be subject to withholding tax by virtue of articles 97(1)-2 and 146 (1)-2 LITL (i.e. “Stille Gesellschaft”, “baileur de fonds” or “silent partnership”). Indeed, there is no intention to create such partnership in the case at hand as there is no “afectio societatis” by the PPLs holder and no intention to establish a company in the sense of article 1832 of the civil Law Code.

10 Consequently, no withholding tax will be due on any interest paid under any of the PPLs.

4 Deductibility of the remuneration paid to PPL holders

11 100% of all interest paid on the PPLs will, in principle, be tax deductible in accordance with article 45 (1) LITL, unless article 45 (2) LITL or article 166 (5) LITL is applicable.

5 Debt to equity ratio

12 Generally, according to Luxembourg practice, a debt to equity ratio of 85:15 needs to be respected by a company investing in participations. Any interest paid in excess of the applicable ratio should be qualified as dividends and subject to a 15% withholding tax for the purpose of article 146 LITL.

13 However in the case at hand, the overall equity and debt investments made by Waalfin and WE Finance and financed by the PPLs will be regarded as connected with the PPLs. This is economically speaking clearly the case: if the investments made by Waalfin and WE Finance do well, Waalfin and WE Finance pay out a very significant element of their income as interest on the PPLs, and if the investments do badly, only fixed interest has to be paid on the PPLs. Furthermore, the PPLs granted provide for limited recourse by the lenders against the assets financed by the PPLs. The principal amount of the PPLs outstanding will also be reimbursed in case of exit from or of the investments financed. Waalfin and WE Finance will therefore, from an economic point of view, be in a connected position between the PPLs and all the equity and debt investments financed by the PPLs.
As a consequence, the entire financing activities of Waalfin and WE Finance will fall outside the calculation of the 85:15 debt to equity ratio. Hence, none of the interest paid by Waalfin and WE Finance on the PPLs will be re-characterized as a deemed dividend. As a result, all the interest paid by Waalfin and WE Finance on the PPLs will, in principle, be fully deductible for income taxes purposes and will not be subject to any dividend withholding tax.