

# Rabobank tax policy statement

## Introduction

In this statement, Rabobank explains how it manages its taxes and clarifies the [country by country report](#) in the annual accounts of 2015 (Note 5: Business segments). The following subjects are covered:

### (A) Tax policy

1. How does Rabobank's tax policy come about?
2. Rabobank's relationship with the tax authorities
3. Tax planning policy
4. Policy with regard to developing countries
5. Policy with regard to clients
6. What is Rabobank's view of the international discussion regarding the tax policies of multinational companies?

### (B) Explanation of the tax information included in the annual accounts 2015

7. Effective tax rate (corporate income taxes)
8. Country by country report
9. Explanation of corporate income tax
10. Explanation of other levies

### (A) Tax policy

#### 1. How does Rabobank's tax policy come about?

Rabobank's tax policy is developed and implemented by a specialised tax department. This department is responsible for all tax matters within the entire group. This responsibility comprises, for example, providing Rabobank's clients with tax-related information, ascertaining that our products meet applicable tax regulations and ensuring that Rabobank itself complies with all its tax obligations.

In Rabobank's opinion, tax obligations do not merely exist as a result of applicable laws, but rather as an integral part of the bank's social responsibility. Consequently, Rabobank does not want to be involved in aggressive tax planning. Our tax policy, as elaborated in the subsequent paragraphs, is based entirely on this starting point.

The tax department monitors compliance with the policy.

It assesses every key product and transaction and has the final word in all tax matters: if a proposal does not match the tax policy, it does not receive approval.

#### 2. Rabobank's relationship with the tax authorities

Rabobank's relationship with the tax authorities is based on transparent communication. This means that Rabobank, in addition to describing all the facts of the case clearly and completely, will address the (intended) tax outcome and any potential points of discussion. We take this approach, because we feel that transparent communication forms an integral part of corporate social responsibility.

In respect of the horizontal supervision concept that is applied in the Netherlands, Rabobank has entered into a cooperation covenant with the Dutch Revenue.

Horizontal supervision refers to a form of cooperation between the Dutch tax authorities and the taxpayer that is based on partnership, with mutual trust and truly transparent communication as its cornerstones. These fundamentals are expressed in a covenant. The Dutch Revenue will only enter into such an agreement if the tax payer has an effective tax control framework in place, meaning that the company has solid control of its tax position and tax risks.

Rabobank has agreed similar covenants with the tax authorities in the UK and in Australia. Other countries do not apply similar instruments yet.

Rabobank has the obligation to provide the Dutch tax authorities with information on, among other things, savings and investment products. On the one hand, this enables the authorities to counteract tax evasion (for instance through undisclosed savings accounts). On the other, tax payers spend less time filing their income tax returns, because the provided data are pre-included in the form.

The obligation on banks to provide client information does not only exist domestically, but also has an international dimension.

#### **FATCA**

FATCA signifies 'Foreign account tax compliance act'. This act comprises US regulations aimed at combatting tax evasion by US persons. From 1 January 2015 onward, Rabobank has the obligation to deliver financial information concerning US persons to the Dutch tax authorities. Based on an agreement with the US, the Dutch authorities forward the information to their US counterpart. In exchange, the Dutch Revenue receives data concerning Netherlands residents that hold bank accounts in the US.

#### **CRS**

CRS signifies 'Common Reporting Standard'. This standard comprises international regulations against tax evasion. As of 1 January 2016, on the basis of CRS, Rabobank has the obligation to check whether its clients are residents of other countries than the Netherlands for tax purposes. This information, together with accounts data, is shared with the tax authorities of other participating countries. Conversely, the Dutch Revenue receives information from participating countries on Dutch residents that hold accounts in those countries.

### **3. Tax planning policy**

The tax laws of a country determine which revenues are taxable and which costs are deductible. These regulations are mandatory. Rabobank applies all relevant tax regulations in a reasonable manner and will always take the legislator's intentions into account. A reasonable application of the law does not allow for artificial reductions of the effective tax burden. As a consequence, Rabobank does not engage in such planning. Rabobank agrees with the international consensus that a company's tax obligations should follow its actual activities. In our view, a consistently applied transfer pricing policy (i.e. the pricing of intra-group transactions) is a means of applying this principle. Transfer pricing is not intended as a tool to shift income at will, as is sometimes assumed in the international discussion.

Transfer pricing relates to the pricing of (often cross-border) transactions that are concluded within a group of companies. Companies need to apply arm's length prices and conditions to the internal trading of products, provision of services and lending of money. Transfer pricing regulations are a way of ensuring that the conditions applied do justice to the activities, responsibilities and risks connected with the various parts of the group.

Tax wise, this function of transfer pricing is important because it results in a situation where the tax obligations of a group of companies follow the actual activities. Groups are legally bound by transfer pricing regulations. They are not free to adjust transfer prices with a view to shift tax obligations, for example to a low-tax jurisdiction.

The definition of terms such as 'fair share' and 'a reasonable application of the law' will always be liable to discussion. Where one person observes sufficient 'economic substance' in a transaction, another person may not see enough. For this reason, Rabobank transparently presents the choices it has made and any potential points of doubt to the tax office in the Netherlands, as well as in all other countries where similar options to communicate with the authorities exists. Rabobank will ensure that the authorities are given adequate time to express their views and will factor these views into its decision making process.

Banks are involved in complex financial transactions on a regular basis. Such transactions may be difficult to understand and may have substantial financial consequences for the parties involved. In these situations, Rabobank applies specific and long-standing policy procedures to ensure it complies with the aim of the law. Where a transaction entails a tax advantage within the intention of the law, that is fine with us. Rabobank is not willing to participate in transactions of which tax reductions are the main purpose. Equally, we expect the tax office to apply the law reasonably and to do justice to the rights of Rabobank as a taxpayer.

Nationally and internationally, there are frequent discussions on holding, financing and flow-through companies. The question is usually what the required critical mass (substance) of these entities should be. Trust companies are often raised in this discussion.

We define trust activities as the management and administration of companies on behalf of third parties.

The Netherlands are a popular location for (intermediate) holding and financing companies. This is partly based on a number of characteristics of the Dutch tax system which are of importance to such companies, such as the participation exemption and the absence of withholding taxes on interest and royalty payments. In order to qualify for application of the Dutch tax regulations, companies located in the Netherlands face requirements concerning their 'substance' (critical mass).

Rabobank does not conduct trust activities. This does not mean we principally object to clients using trusts, but in the light of the discussion referred to above we will review these cases carefully.

#### **4. Policy with regard to developing countries**

By making investments in and showing commitment to local financial institutions, Rabobank aims to make a positive contribution to the economies of developing countries.

The same applies to the charitable activities of the Rabobank Foundation. Rabobank does not want to be involved in structures that use developing countries with the intention to reduce taxes.

#### **5. Policy with regard to clients**

Where necessary, Rabobank will provide well-substantiated tax information to its clients, but it does not give tax advice. Rabobank takes the position that its clients are responsible for their own decisions regarding tax. We do count on our clients' integrity. This does not mean that Rabobank expects customers to apply the same tax norms and values as the bank itself, but it does entail an assumption that each client complies with generally accepted social norms. Actions that are commonly viewed as fraud (tax evasion) are not acceptable to Rabobank. In addition, Rabobank expects customers to be transparent towards the bank, as well as the tax authorities. Rabobank will for example not engage in a transaction in case of doubt on the tax intentions of its counterpart.

This policy ties in with one of the themes on the agenda of the Dutch Central Bank (DNB) for the coming years: client tax integrity. DNB expects all banks in the Netherlands to take a view on their clients' attitude towards tax matters. In this context, Rabobank will continue emphasising the critical importance of its clients' general interests and privacy in particular.

#### **6. What is Rabobank's view of the international discussion regarding the tax policies of multinational companies?**

There is a growing public interest in the tax policies of multinational companies. This is clear from parliamentary debate, investigations of various institutions in the area of corporate social responsibility and critical publications in the media. In addition, both on the national and the international level, multiple legislative initiatives have been started.

An example of international cooperation is the OECD initiative regarding base erosion and profit shifting (BEPS), potentially leading to the adjustment of national tax laws. Rabobank acknowledges the importance of this initiative, which aims to achieve a more balanced approach to taxation through international coordination. This improved balance comes down to the elimination of both double taxation and double non-taxation. With its Anti Tax Avoidance package, the EU has drafted a similar agenda and it has the additional focal point of introducing a common consolidated corporate income tax base (CCCTB).

Rabobank agrees that an open and constructive public discussion about taxes is essential, specifically where tax ethics are involved. We consider it increasingly important that existing legislation and generally accepted principles of international taxation are recognised as valuable starting points to this debate.

The European Commission takes the view that a number of national governments, including the Netherlands government, has provided unlawful state aid in the form of favourable tax rulings to multinational companies. The Netherlands have indicated not to accept this interpretation. In the banking context, the discussion is focussed on the tax treatment of payments made on additional tier 1 instruments. Rabobank regularly issues various forms of debt in order to meet its funding needs. Its actions in this regard are not primarily driven by the possibility to deduct payments, but by its financing need at that point in time.

Rabobank takes the view that a meaningful discussion on socially responsible tax planning should be based on principles such as transparent communication, due attention to the spirit of the law and the consistent application of individual companies' own tax policies. The latter point refers to the fact that a business should not merely draft thorough tax policies, for example regarding transfer pricing, but should also implement these policies effectively.

## **(B) Explanation of the tax information included in the annual accounts 2015**

### **7. Effective tax rate (corporate income taxes)**

The effective tax burden that is stated in the annual accounts exclusively concerns income taxes, including Dutch corporate income tax. Globally, the effective tax rate in 2015 amounted to 23% of gross income.

### **8. Country by country report**

The 2015 accounts contain an overview of the income tax burden per country (so-called [country by country reporting](#), see Note 5 of the consolidated financial statement). This is a (compulsory) list of countries in which Rabobank is active. Per country, certain key information is stated, including the corporate income tax burden in 2015. This report has the aim of demonstrating that the tax obligations of the company follow its actual activities. As mentioned in paragraph 3 above, Rabobank agrees with this principle.

Below we provide a brief background on some locations from the country by country report.

#### **Curaçao**

The company in Curaçao was founded in 1978 as Rabobank's first office abroad, with a view to executing transactions with South American clients. The company is subject to the local, low tax rate. As a result of reorganisations in the South American region, the activities of the Curaçao office will decrease.

#### **United States**

Rabobank holds several dozen companies in the US that have been incorporated under the laws of the state of Delaware. These companies are used in recovery situations where clients are in financial trouble (special asset management), to raise funds by means of market issues, for securitisation purposes, for joint ventures with other parties and for some other transactions that do not require a banking license.

The use of Delaware entities makes a lot of sense in the US, because company law in this state is very well developed and flexible. The choice is not motivated by tax considerations: these companies are subject to US tax and do not receive special treatment.

#### **Cayman Islands**

Both of Rabobank's Cayman offices, which never were material, ended their activities in 2015. The income generated by these offices was ordinarily taxed in the US and Brazil, respectively.

#### **Ireland**

In Ireland, Rabobank engages in banking activities through in a broad sense, through various entities: retail, wholesale, leasing and direct banking are all included. ACC, an Irish retail bank that Rabobank acquired in 2002, is the largest of the entities. ACC's size has decreased substantially, however, as a result of structural losses.

### **9. Explanation of corporate income tax**

There are many differences between accounting and tax regulations. As a result, the income for accounting purposes (the income as stated in Rabobank's annual financial accounts) diverges from the income for taxation purposes. The size of these differences is unpredictable, but in the case of a company like Rabobank may be considerable.

As an example: the gain from the sale of shares in a subsidiary is included in accounting income, but under Dutch law is not taxable. Since this tax exemption is mandatory, the taxpayer does not have the option to decline it. There are various other differences with the opposite effect: the exemption concerning the sale of shares, mentioned above, does not only apply to gains, but also in case the transaction entails a loss. In that case, taxable income actually exceeds accounting income. Another difference, as an example, is the Dutch bank tax which is an accounting expense, but not tax deductible.

In addition, the income according to the annual accounts refers to all activities of the entire Rabobank Group. This aggregated result was obtained in many different countries and Rabobank has to file tax returns in each country. The filing process is subject to local regulations, which vary widely from jurisdiction to jurisdiction. The tax policy principles that Rabobank applies are the same everywhere, however (see paragraph 1 above).

In summary: the 2015 group income of 2.2 billion euro is not directly related to the income tax that Rabobank has to pay in the Netherlands. For 2015, Dutch taxable income will be positive, but as the income is offset by losses of past years, the will be no payment of corporate income tax in the Netherlands.

### ***10. Explanation of other levies***

Both the country by country data mentioned above and the information on the effective tax rate in the annual accounts exclusively refer to corporate income tax. However, this is only one of the levies that affect Rabobank. In 2015, Rabobank made the following contributions, among others:

- non-recoverable VAT 286 million euro;
- payroll taxes 1.15 billion euro;
- bank tax 168 million euro;
- guarantee fund contributions 172 million euro.

Further taxes paid by Rabobank, but not mentioned in this list, include city taxes, transfer tax and insurance premium tax.

#### ***Explanation of non-recoverable VAT***

Entrepreneurs may reclaim VAT that is charged to them by other parties (their suppliers) from the (Dutch) tax office. Consequently, in most cases, VAT is not a cost to entrepreneurs. An important condition to this recovery right is that VAT is also chargeable in respect of the entrepreneur's own services. Most services provided by banks are, however, exempt from VAT. Lending, services with respect to securities and intermediary financial services all fall under this exemption. This can be seen, for instance, from the fact that no VAT is charged on interest. Rabobank predominantly provides VAT exempt services to its clients. For this reason, Rabobank may only recover a limited part of the VAT charged to it by suppliers. The remaining VAT that Rabobank pays to supplying parties is a cost.

#### ***Explanation of payroll taxes***

This item refers to Dutch wage tax and social insurance premiums in relation to salaries paid. The amounts are withheld on employees' gross wages. Payroll taxes are a cost to Rabobank.

#### ***Explanation of bank tax***

The Dutch bank tax is a levy which was introduced as a result of the economic crisis, in particular because the Dutch government provided financial support to various financial institutions (not including Rabobank). This tax can be seen as a kind of insurance premium that financial institutions pay because the government is effectively guaranteeing their debt obligations. The tax is calculated for each institution individually on the basis of outstanding debt, excluding obligations covered by the deposit guarantee system.

This levy is non-deductible for corporate income tax purposes.

#### ***Explanation of guarantee fund contributions***

Dutch banks have to date funded the national depository guarantee system on a retroactive basis. Starting in 2016, a prospectively financed depository guarantee fund will exist. This fund will ultimately equal 0.8% of the total amount of covered deposits. The contribution of individual banks will be determined by its share in this total amount, potentially increased by a mark-up that depends on its risk profile.

In addition, both nationally and on the European level, so-called resolution funds are being set up. These are intended to enable the resolution of banks that are in trouble, and aim to avoid the need of using tax payers' money. In 2015, Rabobank has contributed to the Dutch national resolution fund and it will contribute to the European fund in 2016. The European fund will have a size equalling 1% of all covered deposits on a European level. The contribution of individual banks is (roughly) calculated on balance sheet total minus capital and covered deposits. The bank's risk profile is also factored in.