

## **TAX TREATMENT OF AT1 AND RT1 INSTRUMENTS ISSUED BY BANKS AND INSURERS IN CERTAIN EUROPEAN JURISDICTIONS**

This summary table is intended to provide an overview of the tax treatment of AT1 and RT1 instruments issued by banks and insurers in certain European jurisdictions following the announcement of the Dutch government to abolish the specific corporate income tax provision for Additional Tier 1 (AT1) and Restricted Tier 1 (RT1) instruments.

In our Q&A client briefing *Abolition of Dutch tax deductibility of AT1 and RT1 coupons: What does this mean for issuers and noteholders*, we discuss this announcement and the impact this may have on Dutch issuers and noteholders of AT1/RT1 instruments issued by Dutch banks and insurers. The below summary table focuses on (i) the classification of AT1 and RT1 instruments as debt or equity, (ii) tax deductibility and (iii) withholding taxes in certain European jurisdictions (including The Netherlands).

The following summary is based on the laws and practice in force as of July 2018 and is subject to any changes in law and the interpretation and application thereof, which changes could have retroactive effect. The following summary does not purport to be a comprehensive description of all the tax considerations of AT1 and RT1 instruments that may be relevant, and it does not purport to deal with the tax consequences applicable to all categories of instruments or investors, some of which may be subject to special rules.

Jurisdiction	Instrument	Classification	Tax deductibility	Withholding tax	Comments
Germany	AT1	AT1-Instruments complying with the standard terms as described in the tax decree issued by the Federal Ministry of Finance dated 10 April 2014 ("tax decree") qualify as debt.	Yes, provided the terms of the instrument comply with the conditions as laid down and in accordance with the tax decree.	No, in case of coupon payments to non-German tax resident holders (confirmed in the tax decree). In case of profit-linked instruments, German withholding tax applies. To avoid withholding tax, issuers tend to use indirect issuances (through foreign financing vehicles).	German withholding tax is imposed on AT1/RT1 instruments for German tax resident holders. However, this withholding tax of 26.375% is either equal to the final flat tax rate for German private investors or constitutes a prepayment that can be credited for German business investors.
	RT1	Generally, regulatory capital instruments of German insurers are structured as debt for German tax purposes.	Yes, provided the terms of the instrument comply with the conditions as laid down in German tax law.		The tax decree only applies to specific AT1 instruments issued in accordance with the conditions laid down by the Federal Association of German Banks and does therefore not cover the tax treatment of RT1 instruments. A separate tax decree is currently not available for RT1 issuances. From a tax perspective, the views expressed by the tax authorities in relation to <i>jouissance</i> rights ( <i>Genussrechte</i> ) should apply accordingly. There are rumors that an updated circular on <i>jouissance</i> rights will be issued by the Hessian finance ministry within the next months (confirming the view that instruments which do not provide for a profit-linked coupon and which do not confer a participation in the liquidation proceeds should be treated as debt instruments).
Italy	AT1	Debt, if it does not provide for a remuneration entirely represented by profits of the issuer or entities related to the issuer (based on article 2(22) of Decree 138/2011).	Yes, except for the portion of the remuneration represented by profits of the issuer or entities related to the issuer (based on article 2(22) of Decree 138/2011).	In principle yes, but subject to ordinary regime of listed bonds (Decree 239/1996) providing for an exemption regime in case of investors resident or established in countries allowing for an adequate exchange of information with Italy (based on article 2(22) of Decree 138/2011).	We are not aware of any concern or activity currently undertaken by the Italian government in relation to a potential requalification of these instruments as equity for tax purposes. We will continue to monitor any development in this respect to timely detect any change on the position of the Italian government.
	RT1				

Jurisdiction	Instrument	Classification	Tax deductibility	Withholding tax	Comments
Netherlands	AT1	Debt, based on article 29a(a) of the 1969 Dutch Corporate Tax Act.	Yes, based on article 8 in conjunction with 29a(a) of the 1969 Dutch Corporate Tax Act.	No, based on confirmation by Dutch State Secretary of Finance (in a letter sent to Parliament dated 26 January 2016).	This statement of the Dutch State Secretary regarding the withholding tax position assumed that these instruments qualify as equity for Dutch civil law purposes. This assumption has been debated in literature and it is doubtful whether it will uphold after article 29a of the 1969 Dutch Corporate Tax Act has been abolished. We expect that existing case law may become relevant for qualification of the AT1/RT1 instruments as debt (or deemed equity) for Dutch tax purposes after the abolition of Article 29a of the 1969 Dutch Corporate Tax Act.
	RT1	Debt, based on article 29a(b) of the 1969 Dutch Corporate Tax Act.	Yes, based on article 8 in conjunction with 29a(b) of the 1969 Dutch Corporate Tax Act.		
United Kingdom	AT1	Debt	The Taxation of Regulatory Capital Securities Regulations 2013/3209 ("Reg Cap Tax Regulations") broadly provide assurance that the various equity-like features of AT1 do not prevent it from being treated as debt for tax purposes.	No. Regulation 6 of the Reg Cap Tax Regulations exempts from duty to withhold income tax (section 874 Income Tax Act 2007) as for other listed debt.	HMRC has confirmed that it is aware of the Dutch government's abolition of tax deductibility of AT1/RT1 instruments and that the UK government's policy is unchanged.
	RT1				
Spain	AT1 (structured as preferred participations).	Debt/Equity	Yes, under Spanish Law 10/2014 (in conjunction with EU Regulation 575/2013).	No, under Spanish Law 10/2014 (in conjunction with EU Regulation 575/2013) or in case of listed debt instruments.	Spanish tax law does not make a classification on whether the instrument is considered debt or equity, nor if a coupon is tax deductible, for Spanish tax purposes. The tax treatment depends on the accounting treatment of the instrument. The general rule is that any coupon on any instrument is tax deductible if it is accounted as an expense for Spanish GAAP purposes. We are not aware of any concern or activity currently undertaken by the Spanish government in relation to a change in the tax deductibility status of these instruments.
	RT1 (structured as preferred participations).				

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