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## Dutch Bank Funded U.S. Tax Shelters

**Rabobank Supplied  
Cash for Structures  
Under Investigation**

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A low-profile Dutch bank has played a major role helping U.S. companies save huge sums on their taxes.

Rabobank Group's involvement in U.S. corporate tax-paring has gone on largely outside public view. But its role has been extensive, involving billions of dollars in financing for transactions that generated tax benefits for the likes of **General Electric Co.**, **Merck & Co.** and others.

### TAKING SHELTER

- **Background:** A long-running investigation in the U.S. has focused on marketers of possibly abusive tax shelters.
- **The News:** Dutch bank Rabobank financed elements of over 100 shelters, saving companies huge amounts of tax, bank documents show.
- **Where It Goes Now:** Many of these transactions are under review by tax authorities.

Some of the companies Rabobank aided have come under assault for the tax maneuvers the bank's financing made possible. GE and Merck have been forced to give up some tax savings. Other tax deals Rabobank funded are being reviewed by the Justice Department as part of a broader tax-shelter investigation, the bank confirms. The Internal Revenue Service is scrutinizing a Rabobank-funded deal that provided tax savings for drug wholesaler **Cardinal Health Inc.**

The IRS heard about Cardinal and other tax transactions from a former Rabobank finance specialist, Joseph Insinga. In a "whistleblower" claim that seeks a share of any federal recovery, he told U.S. tax authorities last year that Rabobank had financed more than 100 shelters on behalf of U.S. companies and others between 1997 and 2004.

Calling Rabobank one of the "leading enablers" of corporate tax schemes, Mr. Insinga gave the IRS a draft of a Rabobank internal audit, done in 2005, that also cited more than 100 transactions. The draft audit called some of these "aggressive" tax-wise. Rabobank financed entities that helped companies save at least \$1.46 billion in U.S. taxes, and likely much more, based on Mr. Insinga's claim, on court records and on U.S. securities filings.

Rabobank hasn't been accused of any wrongdoing by U.S. prosecutors or the IRS. A spokeswoman for the bank said it first faced a U.S. subpoena in 2004 and "has been cooperating fully" with the Justice Department.

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Mr. Insinga's notion that Rabobank is a leading enabler of tax schemes is "untrue and without foundation," the bank said in a prepared statement. "Rabobank takes seriously its code of conduct, which provides that the bank will not engage in any activities that are designed to mislead governmental agencies, tax authorities or third parties." The bank declined to comment on specifics of Mr. Insinga's claim or its internal audit, citing an ongoing U.S. investigation of tax shelters.

Tax shelters are the focus of a long-running U.S. investigation, mostly concerned with those who market them rather than banks that finance elements of the shelters. Legal experts say that whether a bank that funds a tax shelter has done anything improper or illegal hinges on a number of factors. One is whether it has crossed the line from financier to promoter of a shelter found to be abusive. Another is whether the bank knew a deal had no real business purpose but was designed to avoid taxes.

### The 'Actual Purpose'

Rabobank's audit, in discussing two varieties of transactions it financed, said that their "actual purpose seems to have been predominantly avoidance of taxes, which must have been known...or at least must have been suspected" by Rabobank's finance unit in New York.

As the Rabobank case shows, European banks have often been involved in financing entities used to help U.S. companies reduce taxes. Their status as non-U.S.-taxpayers helped them operate outside the gaze of U.S. authorities. But this is changing. German bank **HVB Group** struck a deal with the U.S. Justice Department in 2006 to avoid prosecution for conspiring to defraud the IRS, agreeing to pay nearly \$30 million.

The U.S. also is scrutinizing **Deutsche Bank AG** and Swiss-based **UBS AG** in connection with a criminal case against former officials of accounting firm KPMG LLP, according to documents filed in the proceeding and to people familiar with the matter. Other documents in the case reveal a Rabobank role in financing some of the entities at issue there. KPMG itself settled a tax-shelter prosecution in 2006, agreeing to pay \$456 million.

Founded in 1898 as a farm lender, Rabobank, based in Utrecht, the Netherlands, ranks among the world's 25 largest banks by assets. In 1993 it placed its U.S. corporate-finance unit under a banker named Johannes den Baas. At his previous employer, Mr. den Baas had helped cut the tax bills of three U.S. companies through deals later found to be abusive shelters.

Mr. Insinga worked with Mr. den Baas at Rabobank from 1994 until 2003, then was let go. Rabobank said it eliminated his position. Mr. Insinga, then 52, said he was fired for complaining of facing age discrimination. He sued, alleging retaliation for his complaint, and later won a multimillion-dollar judgment against Rabobank.

Mr. den Baas himself left Rabobank in mid-2005, resigning shortly after prosecutors from the U.S. attorney's office in New York interviewed him. According to the Rabobank audit, what was discussed during that interview led to Mr. den Baas's departure, contributed "to our already damaged reputation," and triggered a new federal subpoena.

Mr. den Baas said it would be "very hard for me to discuss transactions that Rabo does have or doesn't have on its books anymore."

The new subpoena concerned Rabobank dealings with a New York firm that helps clients reduce taxes, called Diversified Group Inc. Diversified developed and marketed a shelter that was used in 47 cases to "manufacture over \$1 billion" in "fraudulent tax losses," the Justice Department stated in a filing in New York federal court. The filing was aimed at forcing Diversified to turn over records in a tax case, which it eventually did. Diversified hasn't faced any charges.

Mr. Insinga told the IRS that Diversified's president, James Haber, had close ties to Rabobank bankers and brought them tax-shelter deals. Mr. Haber didn't return calls for comment.

One variety of these shelter deals, according to Mr. Insinga's claim and the Rabobank audit, created an intermediary between the buyer and seller of a company or its assets. "Midcos," these intermediaries are called in tax lingo. The Rabobank audit said the bank funded 94 midco intermediaries between 1998 and 2004.

Midcos are a type of transaction that the IRS, in 2001, labeled as abusive tax shelters.

They work this way: Someone selling a company usually prefers to sell all of its stock, instead of all of its assets, in order to pay only capital-gains tax and avoid a possible tax bill at the corporate level too. But buyers prefer to buy assets, not stock, in order to maximize their future depreciation. A midco deal makes both sides happy. The midco intermediary acquires the company's stock and then sells its assets to the final buyer.

Just a month ago, a federal court in Houston ruled that the purpose of a midco transaction that Rabobank had funded was "the avoidance or evasion of Federal income tax," and disallowed the tax benefits stemming from the deal. The IRS is currently challenging two other Rabobank-financed midcos in tax court in Boston and Chicago. Rabobank is not a party to the suits.

Another tax-related transaction Rabobank financed is known as a "premium loan" deal. Six that Rabobank financed were "quite aggressive," its 2005 draft audit said. Premium-loan deals can create bogus losses that are used to offset real gains, thus minimizing taxes, according to the draft audit and court records.

The 2005 audit quoted Rabobank's global head of corporate finance at the time as saying its midco and premium-loan transactions didn't "fall within the set business model" of Rabobank. The official, who wasn't named, was quoted as blaming "a certain opportunism that existed within the bank at the time."

Rabobank also participated in a third type of tax transaction, in which a U.S. company sells accounts receivable to a non-U.S. special-purpose vehicle at a discount. In these deals, the U.S. company takes a tax deduction for the discount. Cash left over in the vehicle after paying off the funder isn't taxed in the U.S., so long as the U.S. company doesn't control the vehicle. The usual claim is that it's controlled by whoever funded it.

Tax professionals say the tax benefits are questionable if whoever funded the vehicle has so much downside protection that the investment is less like equity than like a loan. If so, the funder wouldn't truly control it.

In 2003 the IRS, without mentioning a specific deal, issued an alert classing similar accounts-receivable deals as "abusive offshore tax avoidance schemes."

Rabobank funded non-U.S. vehicles that bought accounts receivable from Cardinal Health and **Newell Rubbermaid** Inc., according to Mr. Insinga and another person familiar with the transactions. They were among what Mr. Insinga told the IRS were eight "highly questionable structured finance transactions in which Rabobank participated" that he said were "consummated solely for tax avoidance purposes." After filing his complaint, Mr. Insinga was interviewed by four IRS agents investigating the Cardinal matter, according to his attorney, Andrew R. Carr Jr. of Memphis, Tenn.

A Rabobank-funded company provided \$650 million to a vehicle that bought Cardinal's accounts receivable, Mr. Insinga said. Cardinal's federal filings describe a similar transaction, without naming Rabobank. Its accounting treated the funder of the vehicle as its majority owner.

### 'Thorough Review'

Cardinal acknowledged that the transaction had a tax benefit but said it was mainly a way to use receivables to get low-cost financing. A spokesman said the arrangement "received a thorough review from our internal finance organization and our external accounting and tax advisers." Cardinal declined further comment, citing the IRS's review of the transaction.

At Newell Rubbermaid, a spokesman said: "Accounts receivable financing transactions are a common and accepted method of accessing capital, and this transaction provides favorable financing for Newell Rubbermaid. In addition, every company has a duty to shareholders to structure transactions to optimize all financial benefits, including taxes."

An IRS spokesman declined to comment on either transaction. The spokesman, Bruce Friedland, said accounts-receivable deals "can be used in connection with schemes to avoid the provisions of law to currently tax" certain types of income.

Société Générale also was a Rabobank client. The Rabobank audit and Mr. Insinga say the big French bank used Rabobank to help create something called a "Financial Asset Securitization Investment Trust," or Fasit.

Congress authorized Fasits in 1996 to facilitate issuance of securities backed by loans. But tax planners soon found a way to use Fasits to avoid taxes, said Congress's Joint Committee on Taxation, in a 2003 report. Citing the tax abuses, Congress abolished Fasits in 2004.

Rabobank helped fund a Fasit for Société Générale in 2002, according to the Rabobank audit. Although the credit application said the deal was meant to help Société Générale benefit from a French tax exemption, the audit said, the "actual reason" was to let it take advantage of prior tax losses to pare its U.S. tax bill.

"So far, the actual rationale has not been correctly disclosed in the annual credit reviews," the internal audit said.

The audit warned Rabobank could have a "formal tax liability" to the IRS under Fasit rules. Rabobank obtained an agreement from Société Générale to indemnify it against tax liabilities. The audit concluded that entering into the Fasit deal with Société Générale had created "tax risk," "operational risk" and "reputation risk" for Rabobank.

Rabobank had no comment, nor did Société Générale.

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