European Tax Newsalert

A Washington National Tax Services (WNTS) Publication

Belgium

September 19, 2012

Changes to the Belgian notional interest deduction may limit benefits

In brief

A currently unpublished bill would introduce changes to the Belgian notional interest deduction (NID) regime. Under the bill, taxpayers no longer could carry forward excess NID. However, grandfathering rules could benefit existing 'stocks' of excess NID. The bill is expected to be enacted shortly.

What new provisions are in the bill?

Excess NID carryforwards would be abolished

'Excess NID' is the NID that cannot be claimed because a taxpayer has insufficient (or no) taxable income. Whereas excess NID could be carried forward for seven years in the past, the bill would abolish the carryforward of excess NID generated beginning with tax year 2013 (financial years closing between December 31, 2012, and December 30, 2013, inclusive).

Grandfathering rules for carryforward of 'stocks' of excess NID

The bill also contains grandfathering rules for current 'stocks' of excess NID. Stocks are the excess NID available to a Belgian company or branch at the end of tax year

2012 (financial years closing between December 31, 2011, and December 30, 2012, inclusive).

The existing stock of excess NID still could be used and carried forward, subject to certain limitations.

Deduction after all other tax deductions

The existing stock of excess NID could offset only profit that remains after application of all other tax deductions (dividends-received deduction, patent income deduction, current-year NID, carryforward of tax losses, and investment deduction).

60-percent limitation

The existing stock of excess NID could be deducted from the first EUR one million tranche of taxable profit remaining after application of the above deductions. If taxable profit exceeds EUR one million, an additional stock of excess NID could offset up to 60 percent of the taxable profit that remains after the first EUR one million tranche has been used.

Carryforward still possible

The existing stock of excess NID could be carried forward as under the current rules, i.e., for up to seven years. However, the portion of excess NID that could not be used because of the 60-percent limitation -- 40 percent of the taxable profit remaining after all other tax deductions and after deduction of the first EUR one million tranche of excess NID – could be carried forward indefinitely.

Entry into force: Under the bill, these changes would apply beginning with tax year 2013 (financial years closing between December 31, 2012, and December 30, 2013, inclusive). Any change made to a company's accounting reference date on or after November 28, 2011, would be disregarded.

What statutory changes already have occurred?

NID rate capped at three percent (enacted)

The NID rate for a given tax year is, in principle, based on the ten-year government bond interest rate for the calendar year two years prior to the tax year (e.g., for tax year 2012, the 2010 government bond rate). However, the NID rate previously was capped at 3.8 percent. The Act of December 28, 2011, further capped the NID rate at three percent (plus 0.5 percent for small and medium enterprises). For tax year 2013 (financial years closing between December 31, 2012, and December 30, 2013, inclusive), the effective NID rate is three percent.

Effect on all taxpayers that benefit from the NID

The foregoing amendments affect taxpayers currently benefiting from the NID as follows:

- The tax burden may increase, because of the lower NID rate.

- The changed order for deducting stocks of excess NID could result in the inability to use the stock of excess NID in time and therefore could result in forfeiture of this stock. This is true for companies that have many other tax deductions, such as tax loss carryforwards.

Effect on US GAAP and IFRS filers

Taxpayers should consider the proposed rules for purposes of deferred tax recognition (recoverability testing) in the interim period of (substantive) enactment. For Belgian legal purposes, enactment is expected in September 2012.

The tax law change could have a substantial deferred tax impact and may trigger the need for in-depth recoverability testing:

- Repositioning carried-forward NID to follow other tax attributes (subject to indefinite carryforward) may increase the lag before any tax benefit associated with the NID is realized and thus could affect the recoverability of this tax attribute, possibly triggering the need to record a valuation allowance (US GAAP) and/or reverse the deferred tax asset (IFRS) as the carried-forward balance expires.
- The 60-percent limitation on NID may limit a taxpayer's ability to realize the tax benefit of existing NID carried forward and may result in tax due in situations in which the NID previously offset the corporate income tax base.

The relevant tax law changes could affect a taxpayer's effective tax rate. PwC can help your company analyze and address the tax impact.

For more information, please contact:

Bertrand Vandepitte	*+1 646 471 8602*	*bertrand.y.vandepitte@us.pwc.com*
Axel Smits	*+32 (0)3 259 3120*	*axel.smits@be.pwc.com*
Janet Anderson	*+32 (0)2 710 4323*	*janet.anderson@be.pwc.com*
Koen De Grave	*+32 (0)3 259 3184*	*koen.de.grave@be.pwc.com*