

Newsalert

EU Direct Tax Group

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Belgian Notional Interest Deduction: European Commission requests Belgium to extend the regime

On 19 February 2009, the European Commission addressed a "letter of formal notice" to Belgium requesting, in substance, the Belgian Government to extend the notional interest deduction ("NID") regime.

The NID regime

Under the NID regime, Belgium introduced a *sui generis* corporate tax deduction, i.e. Belgian corporate income taxpayers are for tax purposes allowed to claim a NID reflecting the economic cost of the use of capital, equal to the cost of long-term, risk-free financing.

In practice, the NID is equal to the multiplication of two factors: the "NID basis" and the "NID rate".

- The "NID rate" is determined by making reference to the average interest rate on 10-year Belgian government bonds (i.e. set at 4,473% for financial year 2009).
- The "NID basis" is determined based on the company's share capital plus retained earnings as per the last year-end date. Afterwards, certain adjustments are made (to avoid abuse of the NID or double exemptions): the accounting equity as per the last year-end date is reduced a.o. by the net book value of assets allocated to a PE in treaty countries and by the net book value of real estate located in treaty countries (i.e. where the income is in principle exempted in Belgium based on a double tax treaty).

The Commission's point of view

The Commission considers that these adjustments should not be applied with respect to PEs and real estate located within the EEA as it might otherwise dissuade Belgian companies from carrying on activities and investing in such countries.

Comments

The Belgian Minister of Finances already announced that in the case where the adjustments detailed above would be recognised as incompatible with the EU freedoms, then a solution could indeed be the extension of the NID regime to assets allocated to PE and to real estate in EEA Countries, thereby increasing of as much the NID available to Belgian resident companies and Belgium's attractiveness.

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