

Notional interest deduction – an overview



November 24 2017 | Contributed by Studio Legale Tributario Biscozzi Nobili

Corporate Tax, Italy

- 🔍 **New rates**
- 🔍 **Anti-avoidance provisions**
- 🔍 **Definitions**

The notional interest deduction (NID) regime has been in effect since the 2011 fiscal year. **(1)** Under this regime, Italian resident companies and permanent establishments of non-resident companies may deduct notional interest from their corporate income taxable base. The NID is calculated according to the equity increase (ie, new equity rate) from the end of the 2010 fiscal year, multiplied by a rate determined annually.

New rates

The NID equity rates – which were set at 4.5% for the 2015 fiscal year and 4.75% for the 2016 fiscal year – were recently reduced to 1.6% for the 2017 fiscal year and 1.5% for the 2018 fiscal year and thereafter.

The new equity rate for NID purposes is increased by contributions in cash and by setting aside profits generated in previous years (ie, positive equity adjustments). Similarly, the new equity rate is reduced by any assignment in favour of shareholders (ie, negative equity rate adjustments).

Anti-avoidance provisions

The NID regime provides detailed anti-avoidance provisions to avoid the duplication of tax relief.

Under the ministerial decree of March 14 2012, the anti-avoidance provisions included:

- cash contributions to resident companies;
- acquisitions of controlling participations in related companies;
- acquisitions of businesses by related parties;
- cash contributions from non-resident blacklisted entities; and
- loans to related companies.

The Budget Law 2017 has introduced another NID limit for non-banks and insurers companies that reduces the new equity threshold (ie, an increase of investments in securities and financial instruments, excluding participations).

On August 3 2017 the Ministry of Finance issued a decree (the new decree) with an illustrative report, which includes new regulations that amend the NID regime. The new decree broadens the scope of the parties to which the anti-avoidance rules apply by including individuals and non-resident companies.

Under the new guidelines, the anti-avoidance rules also apply to:

- cash contributions to Italian and non-Italian-related parties made starting from the 2011 fiscal year;
- acquisitions of group company shares and going concerns from non-Italian-related parties; and

- intra-group financing as of January 1 2011.

Definitions

The decree also clarifies that the definition of securities and financial instruments, as referred to under Article 1bis of Legislative Decree 58/98, includes unregulated collective investment schemes.

According to Article 1bis, 'securities and financial instruments' are securities normally dealt in on capital markets (ie, transferable securities), such as:

- government securities;
- negotiable securities;
- giving the right to acquire shares by subscription or exchange;
- depositary receipts; and
- bonds.

In addition, it has been clarified that repurchase transactions and intra-group financing through the purchase of securities issued by entities belonging to the same group fall outside the scope of the anti-avoidance rule. The treatment of investments in insurance policies has not yet been clarified.

Under Legislative Decree 58/98, insurance policies should not be considered securities or financial instruments for NID relief as they cannot be included under Article 1bis. Other commentators believe that a distinction should be made according to the nature of the policy. As a result, unit-linked insurance policies (as non-participating financial investments) should be kept up to date for NID purposes (even if not freely negotiable in the market). A clarification from the Tax Authority is expected in this regard.

Finally, the new decree contains specific rules concerning the calculation of NID according to recent amendments to the Italian accounting principles and their impact on net equity in the first financial statement of application.

For further information on this topic please contact Franco Pozzi or Simona Zangrandi at Studio Legale Tributario Biscozzi Nobili by telephone (+39 02 763 6931) or email (franco.pozzi@slta.it or simona.zangrandi@slta.it). The Studio Legale Tributario Biscozzi Nobili website can be accessed at www.slta.it.

Endnotes

(1) For further information please see "Saving Italy: tax breaks seek to support corporate taxpayers" and "Stability Law brings changes for taxpayers".

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription.



Franco Pozzi



Simona Zangrandi

