



BDO Seidman, LLP
Accountants and Consultants

International Tax Alert

ISSUE:

PROPOSED THIN CAP RULES FOR DUTCH COMPANIES

EFFECTIVE DATE:

Proposed effective date for new rules would be January 1, 2004.

EFFECTING:

All Dutch companies, especially U.S. companies with shareholder loans to Dutch affiliates.

DETAILS:

The Dutch Ministry of Finance proposal to Parliament, submitted in response to the recent Bosal case, has a number of elements, including a new thin cap rule applying to all Dutch companies. The proposed thin capitalization rule would affect all Dutch companies with debt-to-equity greater than 3:1, as defined in the new rules. If debt-to-equity exceeds 3:1, interest greater than EUR 500,000 would be disallowed. Interest paid on third party loans would not be limited and taxpayers would have the option to evaluate their debt-to-equity ratio on a consolidated group basis. If the consolidated ratio is higher, the latter could be used. The details of the bill are subject to change, as the proposal has not yet been adopted by the Dutch Parliament.

IMPLICATIONS:

While the new rules do invite diligence with respect to your existing Dutch company's facts and circumstances, it is believed that the Netherlands will ultimately be a more attractive country for holding companies, because, among other things, the new debt-to-equity rules do not limit payment of interest to third parties and provide for a relaxation if the consolidated group accounts show a higher ratio than 3:1. In addition, other favorable elements of the new rules may allow for (1) tax deductibility of all costs related to foreign subsidiaries, including FX losses. (2) Also, loss restrictions are only relevant for loss carry forwards and carry backs. Within the year no restrictions apply. (3) Finally, profits from qualifying participations are still exempted from tax.

RECOMMENDED ACTION:

Immediate review of your Dutch subsidiary\European Holding Company related tax profile.

HOW BDO SEIDMAN CAN HELP:

BDO Seidman, LLP and the BDO International member firm in the Netherlands will work with you to determine the opportunities associated with the prospective new regime.

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