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New Tax Form Addresses Tax Groups' Interest Deduction Limitations

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COUNTRY DIGEST

New Tax Form Addresses Tax Groups' Interest Deduction Limitations

Italy's tax administration on January 27 issued the new consolidated corporate income tax return form (and instructions) for 2009; the instructions address the new rules for interest deductions in tax-consolidated groups.

The 2008 Finance Law repealed the thin capitalization rules and enacted new provisions on limitation of interest deductions for business and corporate taxpayers. Under the new rules, interest expenses exceeding interest income are deductible up to 30 percent of the borrower's gross accounting profit or earnings before interest, taxes, depreciation and amortization. Excess interest (interest expenses exceeding the 30 percent threshold for a year) and excess limitation (the excess of 30 percent limitation over net interest expenses for a year) can be carried over to and deducted in future tax years up to the limitation amount available in those years. (For prior coverage of the 2008 Finance Law, see *Tax Notes Int'l*, Jan. 28, 2008, p. 307, *Doc 2008-1046*, or *2008 WTD 14-2*.)

In tax-consolidated groups, excess interest and excess limitation can be transferred among the members of the group, enhancing the ability to deduct interest expenses within the group.

The new tax form and instructions for 2009 confirm that each member of the group computes its own interest deductions and excess interest and limitation amounts and that any excess interest or excess limitation of any member of the group can be transferred to the parent, which would calculate the additional interest deduction and adjust the taxable income of the group accordingly.

For example, if group member A has excess interest of 100, group member B has excess interest of 50, and group member C has excess limitation of 120, the parent can deduct an additional 120 of interest by using the excess limitation of group member C to offset the excess interest of group member A and B.

It is still not clear whether the transfer of excess limitations and excess interest is mandatory or elective, or whether it should be done proportionally or for the entire amount.

With a proportional rule, 80 of excess interest would be transferred from group member A and 40 of excess interest would be transferred from group member B; a total of 120 excess interest would be offset with a total excess limitation of 120 transferred from group member C, and excess interest of 40 and 10 would be carried over to future years individually by group members A and B, respectively.

With an all-inclusive rule, the excess interest of the group that the parent would carry over and deduct in future years would be 30.

In general, the new rules as implemented in the new tax form for 2009 facilitate the deduction of interest expenses within a tax consolidated group. For this purpose, the group includes foreign subsidiaries that meet the domestic tax consolidation requirements. ◆

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