

Tax Flash | 14 November 2011

Amendments to the proposed restriction of interest deduction in respect of acquisition debt

In our [Tax Flash of September 16, 2011](#), we informed you on the Tax Bill for 2012. The Tax Bill proposed a further restriction of interest deduction in respect of excessive acquisition debt. On November 11, 2011, the Dutch government simplified this proposal by introducing a different method to determine whether an acquisition is financed with excessive debt (thereby retaining in the proposal also a threshold deductible amount of € 1,000,000, as described in our [Tax Flash of September 16, 2011](#)).

In the original proposal an acquisition was financed with excessive acquisition debt if in any year a debt-to-equity test exceeded 2-to-1 on a tax consolidated basis. The new proposal is more a 'transaction based' test to determine whether or not the acquisitions of a particular year are financed with excessive debt. Under the now new proposed test, acquisitions will not be considered to be financed with excessive debt if the acquisition loans do not amount to more than 60% of the acquisition price of the target companies at the end of the year in which the target companies are included in the tax consolidation. In subsequent years, for acquisition loans to be considered not excessive in respect of those acquisitions, the applicable percentage is reduced by five percent points per year until 25% (which implies that 25% of the acquisition debt may thus remain outstanding also in later years without resulting in excess acquisition debt). It is proposed that this new test will be applied (annually) to all (partially) debt-financed acquisitions of a particular year and to the overall amount of acquisition debts related to such acquisitions of a particular year. Hence, all the (partially) debt-financed acquisitions of a particular year should be evaluated jointly but acquisitions of preceding or subsequent years should be evaluated on their own merits in respect of their (excessive) debt financing.

The benefits of this new proposed test include that the taxpayer has a simpler test, based on elements which are known upon the moment of acquisition and tax consolidation.

Although parliamentary discussions indicate that there is some debate on amending the transitional rules, limiting the scope of grandfathering, no amendments (if any) have been proposed yet. The second chamber of parliament is expected to further debate and decide on the proposals by November 17, 2011. Thereafter, the legislative proposals still have to be submitted to the first chamber of parliament. It is anticipated that the legislation enters into effect per January 1, 2012.

Should you require any further information, please contact us.

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