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# Corporate Tax Alert
## News you can count on

**28 October 2013**

## New NID regime for foreign branches and real estate

On 24 October 2013, the Council of Ministers reached an agreement upon first reading (i.e. before the State Council's advice) on the new NID regime for foreign branches and real estate.

The European Court of Justice ruled in its 4 July 2013 Argenta decision that the current regime violates European law. Under this regime, the value of net assets of a permanent establishment located in a tax treaty country has to be deducted from the NID calculation basis.

The new regime, while aligning the rules with European law, intends to limit the budgetary impact thereof to a minimum. As expected, real estate located in a treaty country follows the same treatment as assets invested in a permanent establishment in a treaty country.

The new rules, which would apply as of tax year 2014, can be described as follows:

1. The net assets that must be attributed to a permanent establishment or real estate in a treaty country are no longer excluded from the NID calculation basis;

2. This is compensated, on the one hand, by entirely excluding the NID portion calculated on the net assets and real estate in treaty countries outside the European Economic Area, on the other, by excluding the NID portion relating to the net assets and real estate in treaty countries inside the EEA, only to the extent that this portion is lower than, or equal to, the total profits attributable to these assets and real estate. Stated differently, a company would no longer lose the benefit of NID on loss-making branches or real estate in an EEA treaty country. It would only lose NID on an establishment or real estate in a treaty country inside the EEA to the extent that the locally realised profit is at least equal to the NID on the locally invested assets.

To illustrate, below are two tentative examples, involving a Belgian company with a permanent establishment in the Netherlands (treaty country located in the EEA):

**Example 1:**

Total profit 150 - total NID 40:

- Belgian establishment: profit 100 / NID 25
- Dutch establishment: profit 50 / NID 15.

*Calculation of the taxable base*:

- Before NID: 100 (the Dutch profit is exempt under the treaty)
- NID: 40-15=25 (the Dutch establishment's NID must be entirely deducted as it is lower than the Dutch

profit)

- After NID: 100-25=75.

**Example 2:**

Total profit 105 – total NID 40:

- Belgian establishment: profit 100 / NID 25
- Dutch establishment: profit 5 / NID 15.

*Calculation of the taxable base*:

- Before NID: 100 (the Dutch profit is exempt under the treaty)
- NID: 40-5=35 (the Dutch establishment's NID is only deducted for an amount equal to the Dutch profit, i.e. 5)
- After NID: 100-35=65

## Contact

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