

# Enhancement of Notional Interest Deduction ("NID") for 2021

## Overview

Pursuant to Article 19, Paragraphs 2-7, of the Italian Decree-Law No. 73/2021, the equity capital increases recognized for the purposes of NID in 2021 can benefit from a remuneration coefficient increased to 15%, instead of the ordinary level of 1.3%, with a €5 million limit on the amount of the increases qualifying under the law.

The tax benefit related to the so-called "Innovative NID" or "Enhanced NID" can be used either:

- | as tax-exempt income to be computed as a reduction to taxable income for the corporate income tax (IRES) purposes or the personal income tax (IRPEF);
- | as a tax credit calculated by applying to the notional return either the corporate income tax (IRES) rate or personal income tax (IRPEF) rate applicable to the taxpayer.

In the latter case, a prior communication to the Internal Revenue Agency ("Agenzia delle Entrate") is necessary. Order No. 238235/2021 of 17 September 2021 has defined the methods, the timing for presentation, and the content of the communication for the use of credit.

## Details

### Enhanced NID – calculation and application

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| <ul style="list-style-type: none"> <li>   In the tax period after the one in effect as at 31 December 2020 (2021 for "calendar-year" taxpayers), the NID percentage for the increase in equity capital compared to the balance at the previous tax period end is 15%, which has been raised when compared to the ordinary rate of 1.3%.</li> <li>   The beneficiaries of the Enhanced NID are the same persons entitled to make use of Ordinary NID, i.e. the corporate income tax (IRES) taxpayers and personal income tax (IRPEF) taxpayers under the ordinary accounting rules.</li> </ul> | <ul style="list-style-type: none"> <li>   Regardless of the date of capital payment, unlike the ordinary rules, all increases in equity are recognized starting from the first day of the tax period (an exception to the <i>pro-rata temporis</i> criterion).</li> <li>   The increase in qualifying equity capital to the rate of 15% is for a maximum amount of €5 million.</li> <li>   For the purposes of determining the Enhanced NID, the increase in equity capital is recognized regardless of the amount of net equity reported in the financial statements (exception to the net equity limit), as required by Article 19, Paragraph 2, Italian Decree-Law No. 73/2021.</li> </ul> | <ul style="list-style-type: none"> <li>   For the 2021 tax period, it will therefore be necessary to make a dual calculation of NID:           <ul style="list-style-type: none"> <li>  Enhanced NID for equity capital changes in 2021 within the €5 million limit;</li> <li>  Ordinary NID for equity capital changes spanning from 2011 to 2020, plus the 2021 change exceeding the €5 million limit.</li> </ul> </li> <li>   The Enhanced NID can be used either:           <ul style="list-style-type: none"> <li>  as a deduction against total income reported in the "Income Form" of the tax return, together with the deduction of the Ordinary NID;</li> </ul> </li> </ul> |
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- | as a tax credit determined by applying to the change in the relevant equity capital (notional return) the corporate income tax (IRES) or personal income tax (IRPEF) rates in effect for the tax period in effect as of 31 December 2020.

### Tax credit

- || Making use of the Enhanced NID in the form of a tax credit will require prior communication thereof, with notice to the Internal Revenue Agency through a special form.
- || The tax credit can be:
  - | used, without any limitations on the amount, as an offset to amounts declared as payable on the Form F24;
  - | requested as a refund;
  - | assigned, with an option of subsequent assignment to other persons, and used by the assignee with the same conditions contemplated for the assignor.
- || The tax credit is not considered in computing business income or in the computation of income for the purposes of the regional tax on productive activity (IRAP).

### Internal Revenue Agency order and form for communicating tax credit

- || With its Order No. 238235/2021 of 17 September 2021, the Internal Revenue Agency defined the methods, the timing for presentation, and the content of the communication for the use of the tax credit. The order also specified the methods for the assignment of the credit and approved the form titled "Communication for the use of NID tax credit", with related instructions.
- || The aforementioned form for communicating the use of the tax credit for NID is submitted exclusively online, either directly by the beneficiary or by an authorized intermediary.
- || The form can be sent starting from 20 November 2021 until the expiry of the ordinary deadline for filing the tax return relating to the tax period subsequent to the one in effect at 31 December 2020 (deadline of 30 November 2022 for calendar-year taxpayers).
- || Within five days of the filing of the form, a receipt is issued to certify that it has either been accepted for processing or rejected. Within 30 days of submission, the Internal Revenue Agency will advise applicants of the recognition or denial of the tax credit.
- || The form may be sent with reference to one or more equity capital increases. In the event of successive increases, a form must be filed without taking into account the increases reported previously.
- || According to the law, the tax credit can be used from the day following that of the actual payment of the capital contribution in cash or from the day following the waiver or offset of credits or from the day following the shareholder resolution to allocate the annual profit, in whole or in part, to capital reserves. However, since the order subordinates the use of the tax credit to the Internal Revenue Agency's notification of recognition of the credit within 30 days, it is clear that the date of notification is the time from when the tax credit can be used.
- || Any request for a refund of the tax credit must be made by completing the "Income Form" of the tax return.
- || The assignment of the tax credit must be communicated exclusively by the assignor through the reserved area of the Internal Revenue Agency's website. The assignee must use the same features of the Internal Revenue Agency's

website to communicate acceptance.

### Recapture mechanism

- || The increases relevant for the purposes of the Enhanced NID must remain as part of equity capital for at least two fiscal years, i.e. until the tax period in effect at 31 December 2023.
- || The report accompanying the Decree-Law illustrates in details the mechanism for recapturing the benefit received should there be reductions in equity capital in the years prior to the one in effect as of 31 December 2023.
- || For the purposes of computing the increases to be compared with the amount of the increases on which the tax credit was used or with the 2021 change, the limit of net equity reported in the financial statements is not considered, so as not to take into account the effect of any losses reported in the financial statements.
- || Should the incentive be used through the option for the tax credit:
  - | It is envisaged that the tax benefit received in advance will be recaptured if, in 2021, there are decreases in the equity capital that reduce the increases that gave rise to the tax credit, and, therefore, the change in equity capital for the 2021 tax period is less than the increases effected in the same tax period;
    - | the tax credit must be recaptured in proportion to the difference between the aforementioned change in equity capital and the increases.
    - | For example, if increases amounted to 1,000 in 2021, with the use of a tax credit equal to 36, and then there are decreases of 200, the change in equity in 2021 will be equal to 800; the tax credit will be recaptured in proportion to the difference between 1,000 and 800, or for an amount equal to 7.2 ( $200: 1,000 = X: 36$ ).
    - | In 2022, should the increase in equity capital be lower than in 2021, the tax credit is recaptured in proportion to this lower amount. Continuing with the previous example, if the change in equity is equal to 800 at the end of 2021 and it falls to 500 at the end of 2022, the amount recaptured for 2022 of the credit of 36 calculated on the increase of 1,000, will be equal to 10.8 ( $(800 - 500): 1000 = x: 36$ ).
  - | If the increase in equity capital in 2023 is lower than in 2021, the tax credit is recaptured in proportion to the difference between the increase in 2023 compared to that of 2021, net of any tax credit already recaptured in the previous tax period. Taking the example again, if at the end of 2023 the change in equity capital is equal to 400, the amount recaptured for 2023 of the credit of 36, calculated on the increase of 1,000, will be equal to 3.6 ( $(800-400): 1,000 = x:36 - 10.8$ , where 10.8 is the amount of the credit already recaptured in the previous year).
- || Should the taxpayer elect the deduction from total income:
  - | The tax benefit received in 2021 will be recaptured if in 2022 there is an increase lower than that of 2021. The recapture occurs through an increase in total income equal to 15 percent of the difference between the change in 2022 and the variation in 2021, again without taking into account the losses reported in the financial statements. In addition, if there is an increase in equity capital in 2023 that is lower than that of 2021, the tax benefit received in 2021 is recaptured with an increase

in 2023 total income for an amount equal to 15 percent of the difference between the increase in equity capital 2021 and 2023, net of any increase in total income of the income tax

which was made in the previous tax period. In this case, too, for the purposes of determining the increases to be compared with one other, the limit of shareholders' equity

reported in the financial statements is not considered.

To keep in contact with us or to receive additional information, kindly write to [studio@ctep.it](mailto:studio@ctep.it)

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