New interest limitation rule in Austria

Restrictions on the deductibility of borrowing costs from 2021

December 2020

The new interest limitation rule

LIMITATION ON THE DEDUCTIBILITY OF BORROWING COSTS FROM 2021

New limitation on deductibility

With effect from 1 January 2021, Austria will fully implement the EU Anti-Tax Avoidance Directive and introduce a new interest limitation rule. This will cap the deduction of borrowing costs (net interest expenses) at 30% of the taxable result (the tax-relevant EBITDA). The new interest limitation rule covers all borrowing costs, irrespective of whether these are incurred in relation to unrelated third parties or within a group, and irrespective of the level of taxation of interest revenues by the recipient.

Nevertheless, taxpayers can make use of numerous exceptions, which can ensure tax deductibility (fully or partially) in individual cases, despite the 30% threshold having been exceeded. Within a tax group, it is important to note that the interest limitation rule only applies on group level, and exceptions should also only be applied on this level.

Impact on Austrian companies

To avoid increased taxation in future, Austrian companies need to examine their existing and future financing structures. With detailed forward planning, the impacts of the interest limitation rule can be assessed and appropriate measures introduced to ensure deductibility.

Understanding the potential impacts of the interest limitation rule will play a decisive role when analysing possible alternative arrangements, in particular when raising debt financing or in relation to acquisitions.

General rule

- Deductible net interest expense capped at 30% of tax-adjusted EBITDA
- Applies on the level of individual entities
- Special rules for tax groups

Exceptions

- €3m de minimis
- Stand-alone entities
- Loans prior to 17 June 2016
- Equity test based on consolidated accounting

Carry-forwards

- Indefinite carry-forwards for interest
- EBITDA carry-forwards limited to 5 years

Our services

COMPREHENSIVE SUPPORT OFFERED BY OUR EXPERTS

The new rules present significant challenges in navigating the complexities of calculating the amount of non-deductible interest. We have the right tools and resources to offer reliable and detailed analysis of the expected impact.

As the financing structure is a key part of steering the business, the impact of the interest limitation rule should be assessed in conjunction with other, related considerations impacting the financing arrangements – both external and intercompany.

Such considerations may include the minimum taxation-based interest limitation rules already applicable in Austria, the OECD's recent guidance on pricing of intercompany financing transactions, and the impact of the LIBOR and other base-rate transitions. In addition, given the current economic uncertainties and the many unknowns of the post-COVID economic landscape, potential scenarios of financial performance should be considered in any forward-looking modelling and planning.

Tax analysis and model calculations

We can support you by:

- Identifying the financing structures affected by the new interest limitation rule, as well as determining the amount of non-deductible borrowing costs for existing loans and financial planning
- Considering the interplay between the new interest limitation rule and existing restrictions on the deduction of interest expenses
- Taking account of adjustments of the arm's length interest rate, the impacts of market developments, investments, changes in the group's equity ratio, or changes in the corporate structure
- Setting up the tax compliance process to obtain the business data required for calculations relevant to interest limitation

(Re-)structuring of financing arrangements

We can support you by:

- Analysing potential restructuring alternatives and existing financing arrangements, as well as designing new financing arrangements and optimising your group structure
- Putting in place financing (external or intercompany) at different corporate levels, repaying or refinancing existing debt at different terms, and/or adjusting the tax group structure
- Considering the relevant transfer pricing principles when analysing or documenting the arm's length nature of intra-group financing arrangements

Dynamic modelling solutions allow non-deductible borrowing costs to be factored into business decisions. This data can also be taken into account when designing suitable financing arrangements and group structures.