



Beratungs- und Prüfungsgesellschaft mbH
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Interest Stripping Rules in Germany

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Basic Principle / General (1)

- According to Sec. 4h ITA and Sec. 8a CITA interest stripping rules apply to all kind of enterprises (sole proprietor, business partnerships, companies and fiscal units)
- The interest stripping rules limit the tax deductibility of net interest expenses to 30% of tax EBITDA
- Definitions:
 - ◆ Net interest: interest expense in excess of interest income
 - ◆ Tax EBITDA: Earnings before interest, tax, depreciation and appreciation
- Carry forwards are possible in the following extent:
 - ◆ Interest carry forward: non deducted interests can be carried forward and deducted in following five fiscal years
 - ◆ EBITDA carry forward: unused EBITDA can be carried forward also for five fiscal years
 - ◆ Forfeit of carry forwards in case of termination of business or certain reorganizations
 - ◆ Usage of carry forwards takes place in chronological order

Basic Principle / General (2)

- Rules apply to all kind of interest, not just those paid to shareholders
- In detail complicated rule with numerous amounts of special regulations
- The interest stripping rules replace the former thin capitalization rules which effect from January 1, 2008. In case of non-calendar fiscal years the new rules apply with effect from fiscal year starting in 2008
- During 2008 and nowadays several changes took place which lowered the burden of deducting interest expenses. In most cases these adjustments are established with respect to the worldwide financial crisis
- In case of fiscal unit all members of the unit are treated as one business

Exemptions

- The interest stripping rules do not apply where ...
 - ◆ ... interest expense exceeds positive interest income by less than EUR 3 m (**de minimis threshold**)
 - ◆ ... the business is not a member, or is only a proportional member, of a controlled group (**group clause**)
 - ◆ ... businesses forming part of a controlled group satisfy the conditions of the equity ratio **escape clause**: to qualify for the escape clause, the taxpayer must prove that the equity ratio of the business in question is not more than 2 percentage points less than that of the controlled group as a whole (equity ratio pursuant to IFRS, alternatively GAAP of an EU member state or US-GAAP)
- Note: No carry forwards can be built-up in fiscal years from which one of the above mentioned exemptions apply

Example

- **Figures**
 - ♦ Fiscal year 01:
 - Tax EBITDA of company A amounts to 100
 - Net interest expenses of 20 incurred
 - ♦ Fiscal year 02:
 - Tax EBITDA of company A amounts to 50
 - Net interest expenses of 20 incurred

- **Conclusion 01:**
 - ♦ Net expenses of 30 can be deducted
 - ♦ Since the interest expenses in fiscal year only amount to 20, an amount of 10 can be carried forward for EBITDA purposes (latest utilization in fiscal year 06)

- **Conclusion 02:**
 - ♦ Net expenses of 15 can be deducted
 - ♦ Additional interest expenses of 5 can be deducted by using the EBITDA carry forward, the difference of 5 can again be carried forward for EBITDA purposes.

Summary


- In principle net interest expenses are deductible up to 30% of EBITDA
- Exemptions in the following cases:
 - ♦ De minimus threshold of EUR 3 m
 - ♦ The business is not or just proportional member of a controlled group
 - ♦ Equity ratio of group member is not less than 2 percentage points than that of the controlled group as a whole
- Not used EBITDA and non deducted interests can both be carried forward for 5 years

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