



Luxembourg News

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CHRONICLE OF A DEATH FORETOLD: THE DEBT TAX BIAS

The EU Commission published its already much-debated DEBRA proposal on 11th May 2022, in her move to re-vamp again the tax environment in which corporate taxpayers try to navigate. It seeks to reduce the tax incentive supposed to result from interest tax deduction, in order to reduce indebtedness of corporate entities and reinforce their financial sanity.

The move is two-fold and consists in

- (i) an additional limitation of tax-deductibility of interests payable, and
- (ii) a notional interest deduction proportionate to equity invested.

This new set of rules is purported to enter into force as early as 1st January 2024 and apply to taxpayers subject to corporate income tax in one or more EU Member State(s).

A. Notional Deduction

A deductible expense will be allowed, computed as the 10-year risk-free interest of the relevant currency (€ (EUR), лв (BGN), kn (HRK), Kč (CZK), Ft (HUF), zł (PLN), lei (RON), kr (SEK), kr (DKK)) and increased by a risk premium of 1%, applied on the difference between the net equity at the end of the tax year and the net equity at the end of the previous tax year. Any increase in the net equity will therefore result in an allowance, limited however to maximum 30% of the EBITDA for 10 consecutive years, corresponding to the rules of the interest limitation deduction under ATAD 2 Directive. Specific Anti-Abuse provisions will also apply.

B. (New) Interest Deduction Limitation

It is proposed that 15% of the excess borrowing costs (i.e., the positive difference between interest payable and interest income) will NOT be deductible. This new limitation creates added complexity as it needs to be combined with the 30% of EBITDA interest deduction limitation resulting from the ATAD 2 Directive. The carry-forward of “unused” interests as a result of the limitation are also be addressed.

The next step will be the vote by the EU Council and the implementation into domestic law no later than 31st December 2023.

Should you want to know more on this particularly hot topic, please do not hesitate to reach out our tax experts in Luxembourg or Brussels.



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