


International Tax Review

Current information on
international tax developments
provided by Ernst & Young



Tax deductibility of interest paid on debt to refinance the acquisition of participations - Independent Fiscal Senate redefines "interest" and enhances tax deductibility

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Under Art. 11/1/4 Austrian CIT Act interest paid on debt to refinance the acquisition of participations has been tax deductible since 2005 (from 2011: limited to third party acquisitions). The Austrian tax authorities are of the opinion (para. 1204 of Austrian CIT Guidelines) that the interest deduction is only applicable for interest in the narrow sense of the word and that other debt financing costs (e.g. service fees, stamp duties, etc.) are not tax deductible.

The Independent Fiscal Senate (IFS) disagreed in a recent ruling (RV/1351-L/10 dated 16 November 2011) and defines interest in the context with Art. 11/1/4 Austrian CIT Act as all payments provided by the borrower to the creditor as consideration for the allocation and utilization of capital. Hence, according to the IFS besides interest in the narrow sense of the word also all other debt financing costs are tax deductible (e.g. service fees and other payments to the creditor and/or third parties such as brokers, notaries, lawyers etc.).

It must be considered that this ruling could still be subject to a possible future appeal by Austrian tax authorities to the Austrian Administrative Court.

Regardless of the definition of interest the Austrian Administrative Court considers foreign exchange losses in connection with foreign-currency loans as tax deductible arguing that there is no connection with the refinancing source (VwGH 28. October 2009, 2008/15/0051), unless a foreign exchange loss was agreed upon beforehand.

Revised Bill 2012 amending Austrian Tax Acts

Income Tax Corporate Income Tax

The Revised Bill for amendments to the Austrian Tax Acts ("Budgetbegleitgesetz 2012") was approved by the Austrian Parliament and published in the Federal Gazette on 07 December 2011 (BGBl. I Nr. 112/2011).

As outlined in our International Tax Review No. 11/2011 published on 24 October 2011, the premium that can be claimed for certain research & development (R&D) expenses was amended in 2010 leading to an increase in the premium for internal research projects and the premium for research projects sourced out to research institutions (outside research) from 8% to 10%. The premium for outsourced research was limited to expenses not exceeding EUR 100.000,00 per year.

The Draft Bill 2012 provided for the abolishment of that threshold. However, the threshold of EUR 100.000,00 per year was reintroduced in the Revised Bill 2012.

Recent decision of the Independent Fiscal Senate: requirements for invoices of small amounts concerning VAT refund for EU-businesses

Value-added Tax

According to a recent decision of the IFS (RV/0344-G/11 dated 19 September 2011) it is necessary for the acceptance of an application for VAT refund by an EU-business via the portal of the country of establishment that all specifications as stated in Article 8, 9 and 11 of the Directive 2008/9/EC are provided in the application.

According to IFS these specifications are also necessary for invoices of small amounts (less than 150 EUR). Thus, the business has to state the VAT-ID number of the supplier in the refund application also in case of an invoice of small amount. Although under Art. 11 Austrian VAT law it is not required to provide the VAT-ID number of the supplier on invoices of small amounts, it is still possible that the VAT refund from invoices of small amounts will not be granted for EU-businesses in the input VAT refund process.

Further, the IFS states that it is not possible to combine invoices of small amounts in one sequence number in the application for VAT refund.

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EU Developments

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