



# Interest on equity and debt, limitations on interest deductibility on a national and international level – input on Austrian status

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## Limitations on interest deduction in Austria

- **No deduction for interest from debt-financed acquisition of shares from related parties** (§ 11 para 1 nr 4 and § 12 para 1 nr 9 Corporate Income Tax Act)
- **No deduction for low-taxed interest paid to group companies** (§ 12 para 1 nr 10 Corporate Income Tax Act)
- **ATAD interest limitation rule** (§ 12a Corporate Income Tax Act)
- **ATAD anti-hybrid rule** (§ 14 CIT-Act)
- **Transfer pricing rules** (§ 6 nr 6 Income Tax Act, § 8 para 2 Corporate Income Tax Act)
- **Case law on hidden equity**
- **Case law on debt-financed repayments of shareholder contributions and hidden profit distributions**
- **Case law on debt-financed distributions of partnerships**



## Rule for low-taxed interest (and license fees) paid to group companies

- **Recipient has to be company (no application for recipients that are individuals) - beneficial ownership decisive (criteria?)**
- **Recipient has to be group company or common control over payer and recipient**
- **No or low taxation of interest at recipient-level**
  - no taxation due to exemption
  - tax rate < 10%
  - effective level of taxation < 10% due to tax incentive (not: utilization of tax losses)
  - taxation < 10% due to tax refund
  - flexible view in case of foreign group taxation systems, hybrid entities
  - In case of refinancing: taxation of interest margin relevant (but: beneficial ownership?)
- **Extent of evidence required by taxpayer?**



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## ATAD interest limitation rule – Austrian implementation

- **Austrian implementation does not go beyond ATAD minimum requirements**
- **30% threshold of tax-EBITDA for exceeding borrowing costs (interest expense less interest income)**
- **EUR 3 Mio allowable deduction in any case**
- **5 year EBITDA carry forward and unlimited interest carry forward**
- **Exemption for stand-alone companies, interest from “old” loans and long-term public infrastructure projects**
- **Application for whole tax group (at group parent level) if there is an Austrian tax group**
- **Equity escape available**
  - Two versions for equity escape (single entity vs tax group)
  - Only limited adjustments for tax-purposes required
  - Also available for groups with Austrian headquarter
  - Some details in practical application to be determined



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