BEPS – Implementation Interest and Royalties

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Austrian Anti - „BEPS“ actions: Subject to tax clauses interest and license fees

- New provision on deductibility of intra-group interest/royalty payments as of 2014
- **Background:**
  - Working program of the Austrian government 2013-2018
  - OECD-BEPS report
  - Limit base erosion via interest deductions & other fin. payments
  - Neutralise the effects of hybrid mismatch arrangements
- **Goal:**
  - Prevention of profit-shifting through interest/royalty payments
  - To finance companies in tax havens
  - To companies benefitting from interest/patent box regimes
  - To companies benefitting from hybrid mismatches
Scope of new provision (Sec 12/1/10 CITA)

- Interest or royalty payments
- Concept follows the definitions of the interest and royalty directive

Recipient of interest/royalties is

- A domestic or foreign legal person under private law and (i.e. private or public limited companies, foundations)
- An associated entity of the payer and (in the sense of Sec. 15 Stock Corporation Act [AktG])
- The beneficial owner of the interest or royalties and (Following beneficial ownership concept in interest/royalty directive & domestic concept of income attribution)
- Low taxed
Low Taxation:

- Personal or objective tax-exemption
- (Nominal) tax rate lower than 10%
- Effective tax burden lower than 10% due to a tax relief (e.g. notional deductions; partial exemptions)

Calculation never is clear??? Gross or net income to be considered?
Summary and conclusions:

• The law, a first shot is not very clear,
• but the taxpayers concerned need to „move“ or repay? There will be a positive impact on the tax base! How to bypass the provisions?

What we „get“:

• Hybrid mismatches (interest/dividend)
• US-Check the box company schemes, including qualification conflicts
• Interest and royalty boxes (also EU), general low tax regimes
• The „Malta“ - royalty schemes
• Domestic schemes using a foreign „Finance P.E.“
Austrian Anti - „BEPS“ actions: Personal remarks

- Application of 1.65 TPG: why should we try to price a transaction which does not occur between third parties?? Ignore it!
- Distortion due to inter-company contracts! Key entrepreneurial functions become simply a service! Solution: Application of AOA on intercompany transactions, only actual dealings!! – at least efficient in terms of equity/debt allocation
- Deduction of (too high amounts) of interest: it is not an unavoidable „fate“ – see German „Trade Tax“, disallow interest deductions at all, and give a notional interest deduction on actual investments in fixed assets
- Why allow interest deductions on the one hand and waive source country withholding taxes on the other hand?
Thank you for your attention, madloba,

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