

## Case Study V:

### Intra-group Financing – Debt Financing and potential limitations (e.g. thin Cap rules)

#### Modul 5

#### Facts:

**Food** Group is a listed company with Group Holding/Headquarter domiciled in Switzerland. **Food** Group has business activities in most markets and operates in those markets by a number of legal entities per country (grouped under country/regional holdings). Tax rates of operating companies are between 25 - 40%.

**Note: Swiss Group holding is tax exempted for dividends and capital gains and low taxed on interest income (approx. 8%) (current Swiss holding regime).**

**Food Group`s debt: equity ratio is 40 : 60** i.e. This is the target to ensure an **A rating by S+P** for the Food Group.

**Food** uses **Finance companies** located in different countries partly to have access to important capital markets (so called borrowing entities) and partly to benefit from low tax jurisdictions. The **Treasury Center** (main unit) is located in the **Netherlands**. Intra group borrowings and lendings are provided by such Center, not by other Finance companies.

**Food** uses intra-group debt financing for its subsidiaries to the extent possible under business and tax requirements

You are asked to comment on tax issues related to the **structuring of debt/loan financings** within the **Food Group**.

## The questions:

1. What **types of limitations** on the deductibility of interest in case of intra- group debt financing/loans are possible? What do we mean with “Thin cap” rules and the like? Are those rules based on the Arm`s length principle (ALP) or based on anti-avoidance/misuse rules?
2. Does **Austria** have such **limitation rules**? What tax rules limit tax effects of interest deductions currently?
3. How are such limitations under “Thin cap rules”, “earnings limitations” and the like defined? What criteria to the limit the tax deductions are used, e.g, debt to equity rules, interest cover rules - **please list the examples under BEPS Action 4, the EU ATAD and the German tax rules (3 examples)**.
4. How do such limitations work in a concrete case?  
Please use for the description the example for Germany (“Zinsschranke”) below.

Income (§ 4 h EStG, § 8 a KStG) 10 Mio €  
 Interest expense 15 Mio €  
 Interest income 1 Mio €  
 Depreciation 4 Mio €  
 Taxation of A-GmbH with Thin cap (k€):

	Thin cap		Tax basis
Interest expenses	15 Mio		
Interest income	./. 1 Mio		
Interest net	14 Mio	14 Mio	
Depreciation	4 Mio		
income	10 Mio		10 Mio
„EBITDA“	28 Mio		
deductible 30%	8,4 Mio	8,4 Mio	
Non deductible –carry forward		5,6 Mio	5,6 Mio
taxable			15,6 Mio
Taxes KSt/SolZ/GewSt (29,83%)			4,65 Mio

5. What impact has the **interest and royalty directive** in the EU on such intra group loan limitations?

## Literature:

- Skript Modul 5 Thin cap Regelungen
- VPR Tz 87- 101
- **EY, OECD releases final report on limitations on interest deductions under Action 4**, [https://www.ey.com/...Action\\_4/.../2015G\\_CM5822\\_OECD%20r](https://www.ey.com/...Action_4/.../2015G_CM5822_OECD%20r).
- **Hülshorst/Tenberge/Kuzmina/Hoss/Westermeier**, Transfer Pricing Implications of Action 4 under the OECD`s BEPS initiative, in ITPF 2016, 128 ff
- **Vertiefung: Fross Andreas**, Earnings Stripping and Thin Cap Rules: Maintaining an Arm's Length Distance, in European Taxation 2013, 507 ff