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By PwC Deutschland | 03 March 2016

Interest limitation – no accumulation of minor loans from significant shareholders

The Supreme Tax Court has held – contrary to the finance ministry interest limitation decree – that the exception for interest payments to a significant shareholder of not more 10% of the company's total borrowing cost applies separately for each shareholder, rather than to all significant shareholders cumulatively.

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There are a number of exceptions to the interest limitation rule essentially limiting the annual interest deduction to 30% of EBITDA as shown in the accounts. One of these is the equity ratio rule exempting a subsidiary company from the interest limitation provided its equity ratio (ratio of shareholder's equity to the balance sheet total) is no more than two percentage points lower than that of the group and no more than 10% of its net interest cost was paid to any one significant shareholder (a shareholder owning more than 25% of the share capital). A loss-making company paying slightly less than 10% of its total net interest cost to each of two significant shareholders claimed exemption from the interest limitation as its equity ratio was better than that of the group. The tax office applied the limitation as the two significant shareholders together received more than 10% of the net interest cost. The finance ministry decree on the application of the interest limitation supports this view.

The Supreme Tax Court has now decided the case in favour of the taxpayer. The interest limitation is an exception to the general principle of taxing the net profit of a company and, as an exception, it must be clearly formulated. Given this demand for clarity, suggestions that applying the 10% limit to all significant shareholders collectively might better reflect the legislative intention have no relevance in the face of the clear wording of the statute – "one shareholder". Similarly, the same wording also excludes suggestions that each significant shareholder is a related party to all others, since the wording clearly treats each shareholder separately.

Supreme Tax Court judgment I R 57/13 of November 11, 2015 published on March 2, 2016.

Keywords

interest limitation, significant shareholder