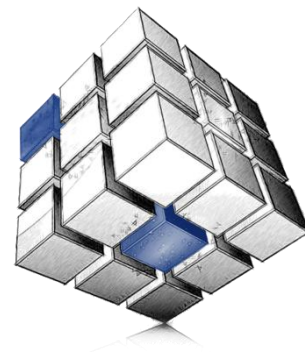


TAX ALERT

9/2014



Essential changes to thin capitalization to take effect on 1 January 2015

AMENDEMENT

On 17 September 2014, President Bronisław Komorowski signed an act amending the income tax acts (the text has not been published yet). The act implements some essential changes involving the application of thin capitalization rules. The changes are to take effect on 1 January 2015.

1. Expanding the scope of entities to fall under the provisions

The amendment broadens the scope of the term "significant shareholder" providing loans subject to a restricted possibility of recognizing interest as tax costs. Starting from 1 January 2015, the following entities shall be considered "significant shareholders":

- entities which, either directly **or indirectly** own no less than 25% of the taxpayer's shares,
- entities which jointly extended a loan to the taxpayer, where the aggregate amount of the taxpayer's shares owned by them either directly or **indirectly** is at least 25%,
- entities in which min. 25% of shares are owned directly **or indirectly** by a third party which also owns directly or indirectly at least 25% of the taxpayer's shares.

This means that the scope of entities whose loans will be subject to thin capitalization restrictions was expanded to include indirect shareholders and entities that have the same indirect shareholders as those of the taxpayer.

2. "Total debt" notion defined more precisely

The amendment provides a more precise definition of the notion of the "total debt" owed to significant shareholders. Pursuant to the new wording of Article 16 par. 1. 60 and 1.61 of the CIT Act, the total debt shall "also include debts resulting from loans". The total debt will thus be calculated as all the entity's liabilities towards its significant shareholders, taking into account both trade transactions (e.g. unpaid invoices) and loans provided. This way of interpreting the notion of the "total debt" in the light of thin capitalization regulations, was previously used by administrative courts, but it has not been literally expressed in this way in an act. However, according to the new Article 16 par. 7g of the CIT Act, the total debt will be reduced by the value of loans granted to related entities. Thus, if an entity takes a loan in

TAX ALERT

9/2014

order to extend a further loan to another entity, the thin capitalization effects will be eliminated.

3. Change of the date for total debt calculation

The change to Article 16 par. 1. 60 and 1.61 of the CIT Act encompasses designation of a new date for calculating the total debt of an entity. So far, the amount of the debt has been determined on the interest payment date, and taxpayers can disregard the debt repaid until this date in their calculations. Starting from 1 January 2015, the amount of the total debt will be calculated on the last day of the month preceding the interest payment month.

4. New way of calculating interest excluded from tax costs

The manner of calculating interest that cannot be recognized as deductible costs will be changed. At the moment, such interest could not be recognized as costs where the total debt amounted to at least three times the entity's share capital. In this situation, interest could not be recognized as costs in the part in which the loan (credit) exceeded the permissible amount of the total debt.

From 1 January 2015, interest will not be recognized as costs if the total debt exceeds the value of the entity's equity. Once the condition is fulfilled, interest cannot be recognized as costs in proportion equal to the ratio of the value of debt exceeding the entity's equity to the overall value of debt from significant shareholders as at the last day of the month preceding the month of interest payment on the loans.

The new Act does not provide a definition of "equity". Pursuant to Article 16 par. 7h of the CIT Act, the following was excluded from the scope of the term:

- revaluation capital,
- equity from subordinated loans received,
- the value of share capital which was not transferred to capital or was covered with debts to be repaid to shareholders by the entity from loans and interest accruing on such loans,
- intangible assets which are not subject to depreciation write-downs pursuant to Article 16a-16m of the CIT Act.

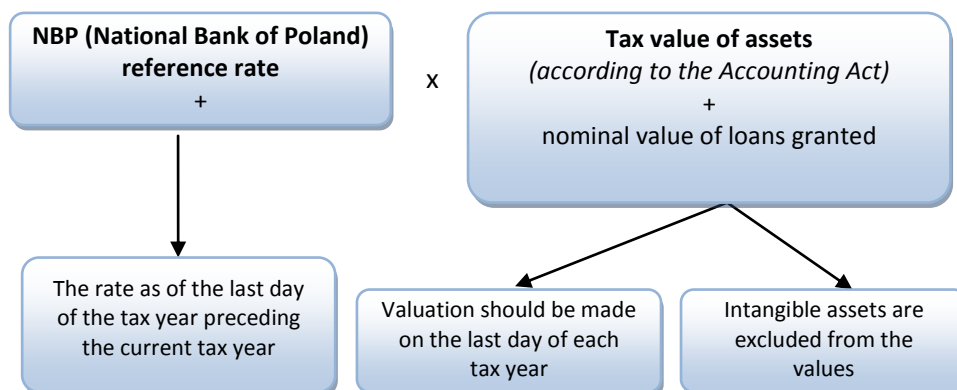
5. Alternative method of recognizing interest as costs

The amendment implements an alternative method of thin capitalisation calculation providing for the possibility not to apply the rules stipulated in Article 16 par. 1. 60 and 1.61 of the CIT Act. This method of calculation can be used after a written statement has been submitted to the head of the fiscal office.

With this method, interest up to a certain limit can be recognized as tax costs, with no verification of lenders. The maximum sum of interest to be recognized as costs will be determined on the basis of the following formula:

TAX ALERT

9/2014



If the NBP reference rate is changed during a tax year, the limits should be determined for recognizing loans as costs for each month, and subsequently they should be summed up.

When deciding to apply the alternative method, taxpayers must remember that the value of interest on loans to be recognized as deductible costs in a tax year must not be higher than the value corresponding to 50% of operational profit, determined for a given tax year according to the Accounting Act. If a taxpayer does not recognize interest on loans as deductible costs in a tax year, such deduction can be made in the following 5 successive tax years.

* * *

CONTACT

If you wish to be provided with additional information in this respect, please contact us:

KSP contact :

Magdalena Patryas
Partner
T: +48 32 731 68 53
E: magdalena.patryas@ksplegal.pl

Michał Wilk
Counsel
T: +48 32 731 68 69
E: michal.wilk@ksplegal.pl

KSP Legal & Tax Advice

ul. Chorzowska 50
40-121 Katowice

T: +48 32 731 68 50
F: +48 32 731 68 51
E: kancelaria@ksplegal.pl
www.ksplegal.pl
www.taxblog.ksplegal.pl

We hope the above information proves useful. The information is not a legal opinion or advice. Please contact us if you wish to obtain complete information or legal advice. If you do not want to receive email with the Newsletter in the future, please let us know by sending us an email with the word NO at the address: kancelaria@ksplegal.pl

© 2014 All rights reserved