

# Interest Limitation Rules in the EU

Implementation of Council Directive (EU) 2016/1164 of 12 July 2016  
Status as of 1 January 2019



# Content

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Dear reader,

On 20 June 2016, the Council of the European Union adopted the EU Anti-Tax Avoidance Directive ("the ATAD") laying down rules against tax avoidance practices that directly affect the functioning of the internal market.<sup>1</sup> The ATAD was issued to ensure a coordinated approach to the OECD work on Base Erosion and Profit Shifting ("BEPS") within the European Union and establishes certain minimum standards that EU Member States need to adhere to in the field of interest limitation, exit taxation, controlled foreign companies, general anti-abuse rules and hybrid mismatches.

The Interest Limitation Rule ("ILR") was to be adopted into national law by 31 December 2018. However, EU Member States have been allowed to grandfather existing interest limitation rules, which are equally as effective as the interest limitation rule set out in the ATAD, by 1 January 2024, at the latest. Out of the 28 EU countries, 5 countries have been appointed, so far, to apply the grandfathering rules, i.e. France, Greece, Slovakia, Slovenia and Spain. Nevertheless, France has fully implemented the ATAD regulation as of 1 January 2019 by adopting the new legislation. That notwithstanding, there are 3 countries, i.e. Austria, Germany, and Ireland, that consider their current legislation to be equally effective as the ATAD regulation and, thus, have not yet (fully) implemented the ATAD regulation into national law.

WTS Global has concluded a European WTS ILR Study regarding the implementation of the ILR in the various EU Member States.

For comparison purposes, the scope of this survey has been extended to Norway, Switzerland and the United States as well.

This ILR Study has been conducted to provide a high-level overview of the implementation, and differences in outcome, of the ILR in the aforementioned countries. The input, on which this ILR Study is based on, comes from local tax experts of the Global WTS network who are frequently dealing with ILR issues and who are, therefore, familiar with, both, the theoretical as well as the practical background.

The ATAD does not prohibit EU Member States from applying other rules in addition to the ILR which combat the deduction of interest expenses, although in another way. For the sake of completion, we note that this survey solely focuses on ILR legislation that is comparable to, or in line with the ATAD proposal and does not take into account any other base-erosion measures EU Member States may have.

Should you have any questions on ILR issues, please feel free to contact one of our colleagues in the relevant country. We will be at your service.

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<sup>1</sup> On 21 February, 2017 the EU Member States reached agreement on a Directive that will amend the Anti-Tax Avoidance Directive ("ATAD II"). ATAD II does not impact the subject of this survey, and is therefore considered irrelevant.

## Background and objective of the ILR

According to the ATAD, multi-national groups of companies have increasingly engaged in shifting profits through the use of excessive interest payments in order to reduce their global tax liability. The ILR, as laid down in the ATAD, discourages such practices by limiting the deductibility of taxpayers' exceeding borrowing costs ("EBC").

## The basic rule of the ILR

Whether the tax deductibility of EBC is indeed impacted by the ILR depends on the tax-adjusted earnings before interest, tax, depreciation and amortization ("EBITDA") of the taxpayer. In this context, article 4 (1) of the ATAD prescribes that EBC may be deductible only up to 30 percent of the taxpayers EBITDA. This wording entails that 30 percent is the absolute maximum EU Member States are allowed to apply in defining the basic rule of the ILR and it leaves it at the discretion of the EU Member States to apply a lower percentage in order to protect their tax base.

As clearly stated in the ATAD, tax exempt revenues should not be available to set off tax deductible interest expenses. Article 4 (2) of the ATAD, therefore, prescribes that taxpayers have to make certain adjustments to the EBITDA (such as excluding tax exempt income and adding back tax-adjusted amounts for depreciation and amortization) in order to arrive at the tax-adjusted EBITDA. We have encountered many differences in the definition of the tax-adjusted EBITDA by the various countries. In some countries, it is allowed to transfer (unused) EBITDA capacity within the group, whereas in other countries, certain taxable income has to be excluded from the tax-adjusted EBITDA definition. The exact definition of the tax-adjusted EBITDA in the various countries goes beyond the scope of this survey considering the level of detail that comes along with defining the tax-adjusted EBITDA for all countries.

The ILR is aimed at combating interest deduction in situations only where a taxpayer is in a net 'interest' paying position. Interest income and interest expenses should, therefore, always be settled prior to the application of the ILR without making a distinction between group debt and third-party debt. Article 2 (1) of the ATAD provides a definition of which kind of costs are in scope in order to determine whether a taxpayer is a net 'interest' paying position. According to this definition, a wide variety of cost should be considered as 'interest' cost such as the finance cost element of finance lease payments, payments under profit participating loans and certain foreign exchange gains. It follows that this wide definition of 'interest' cost could result in an administrative hurdle for taxpayers in order to determine whether they are in a net 'interest' paying position for the purpose of the ILR.

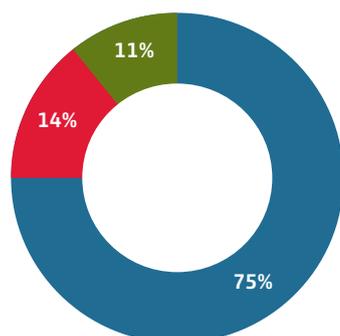
## The safe harbor rule

In order to reduce the administrative burden of the ILR for taxpayers without a 'significant' EBC, the ATAD provides for a safe harbor rule. According to this safe harbor rule, EBC of a taxpayer should always be deductible up to a certain amount regardless of the outcome when applying the EBITDA-based rule. Article 4 (3) of the ATAD prescribes that EU Member States are allowed to introduce a safe harbor rule with a maximum of EUR 3m ("the Threshold").

We have recognized a wide variety in the implementation of the safe harbor rule in the various countries. The differences in implementation, however, do not only relate to the amount which is sheltered against the application of the ILR (as depicted below), but also relate to the interpretation of safe harbor rule in case the EBC of the taxpayer exceeds the amount of threshold. In some countries, such as Germany, the outcome is that the threshold, in that case, no longer applies ("all-or-nothing approach"). This implies that the taxpayer always has to rely on the EBITDA based rule in situations where EBC exceeds the threshold. Another interpretation of the threshold is that EBC

are always deductible up to the amount of the threshold. This approach has the significant upside that in case of a negative EBITDA, or a very limited EBITDA, the EBC remains deductible up to the amount of the threshold.

Based on 28 EU countries under review



- Countries that have a regulation in force that is in line with ATAD as from 01 January 2019 onwards.
- Countries appointed (to use) and actually using the grandfathering rule under Art. 11 para 6 of the ATAD until 01 January 2024
- Countries not appointed (to use) but have not yet fully implemented the ILR according to ATAD

## The alternative methods

Article 4 (5) of the ATAD allows EU Member States to implement alternative methods for calculating whether the EBC are in scope of the ILR. According to these alternative methods, taxpayers are allowed to fully deduct their EBC provided that the equity ratio (equity over total assets) are similar or higher than the equivalent ratio of the group ("equity escape"). In addition, the ATAD allows EU Member States to implement a rule based on which a taxpayer is allowed to, basically, rely on the EBITDA ratio of the group.

## Other exemptions

The ATAD provides for a wide list of exemptions (both subjective and objective) that may be implemented by the EU Member States in the context of the ILR. As an example, considering such entity is not able to shift profits by excessive interest payments within the group, 'stand-alone' entities (i.e. a taxpayer not part of a consolidated group and has no associated enterprise or permanent establishment) may be excluded from the scope of the ILR. The ATAD further allows to grandfather certain existing loan arrangement concluded prior to 17 June 2016, provided that these loan arrangements have not been modified afterwards and allows to exempt loans concluded in the context of long-term public infrastructure projects.

## Final remarks

Some countries already had an ILR in place which is comparable, or in line with the ATAD proposal. In most cases, these countries have opted to grandfather their existing regulation. Most countries, however, had to amend their existing legislation or implement an ILR for the first time. Only a few of the countries under review have not yet had their final legislation enacted to implement the ILR into domestic law. In some of these countries, the legislation is still in a draft phase and, therefore, subject to further amendments. For the purpose of this survey, we have used this draft legislation as if it were final.

The following only gives an overview, and therefore, is not complete. It should be seen as a work in progress due to the ongoing amendments in the domestic legislation of the relevant countries. The information in this survey reflects the status of legislation as of 1 January 2019 onwards.



Austria



Belgium

Legislation			
Status of legislation in the relevant country	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	No <sup>2</sup>	Yes <sup>4</sup>
	Current status of ATAD-conform legislation:	No draft legislation has been published <sup>5</sup>	Legislation enacted
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
1 Subjective scope of application concerning the legal status of the taxpayer	Corporations resident in the relevant country	N/A	Yes
	Corporations subject to limited taxation in the relevant country	N/A	No <sup>5</sup>
	Partnerships resident in the relevant country	N/A	No
	Individuals with economic activity resident in the relevant country	N/A	No
	Permanent establishments of corporations non-resident in the relevant country	N/A	Yes
	Permanent establishments of partnerships non-resident in the relevant country	N/A	No
	Permanent establishments of individuals non-resident in the relevant country	N/A	No
2 Subjective scope of application concerning the business purpose of the taxpayer	Are qualifying stand-alone entities exempted?	N/A	Yes
	Are qualifying financial undertakings exempted?	N/A	Yes
	Are qualifying real estate undertakings exempted?	N/A	Yes
	Are there other exemptions concerning the business purpose of the taxpayer?	N/A	No

1 The matrix does not foresee any updates published after 01 January 2019.

2 Austria has a regulation in place that aims at the limitation of interest expense deduction. As this regulation is not an EBITDA based regulation, we do not further describe it in this study.

3 According to commission notice 2018/C 441/01 of 07 December 2018, Austria is not among those Member States whose interest limitation rules are considered equally effective by the European Commission. The Austrian Ministry of Finance, however, still considers the current regulation to be equally effective as the ATAD regulations. So far, no plans of the Austrian Ministry of Finance have been announced to introduce new interest limitation rules before 2024.

4 The rules are applicable to financial years starting on or after 01 January 2019.

5 Certain investment vehicles subject to a derogating tax regime are excluded.



Austria



Belgium

		Austria	Belgium
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	N/A	Yes
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	N/A	Yes
	Are there other exemptions regarding particular kinds of loan agreements?	N/A	No
<b>4 Threshold</b>	What is the amount of the threshold?	N/A	EUR 3 million <sup>6</sup>
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	N/A	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	N/A	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	N/A	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	N/A	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	N/A	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	N/A	Yes, unused interest capacity <sup>7</sup>
	Are there other group aspects?	N/A	For the purpose of calculating the amount of exceeding borrowing costs or the EBITDA, interest paid to or received from affiliated Belgian companies or PE's must be eliminated.
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	N/A	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	N/A	No
	Can an unused interest capacity be carried forward?	N/A	No
	Can an unused interest capacity be carried back?	N/A	No

<sup>6</sup> The threshold is to be allocated proportionally amongst all affiliated Belgian companies and permanent establishments.

<sup>7</sup> A company with excess interest capacity will be able to 'grant' (all or part of) its unutilised excess interest capacity to the affiliated entity bearing the funding cost; such transfer of unutilized interest capacity is subject to a (tax-neutral) payment being made by the group entity benefitting from the interest capacity transfer to compensate for the resulting tax saving.

**Bulgaria****Croatia**

<b>Legislation</b>			
<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Legislation enacted	Legislation enacted
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	Yes	Yes
	Partnerships resident in the relevant country	Yes	Yes
	Individuals with economic activity resident in the relevant country	Yes	Yes
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	Yes	Yes
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	No	Yes
	Are qualifying financial undertakings exempted?	Yes	Yes
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.



Bulgaria



Croatia

		Bulgaria	Croatia
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	No	Yes
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million <sup>8</sup>	EUR 3 million <sup>9</sup>
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	No	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	Yes, for 3 years
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	No	No
	Can an unused interest capacity be carried back?	No	No

8 For better readability, amounts are stated in EURO. The equivalent in local currency is BGN 5,867,490.

9 For better readability, amounts are stated in EURO. The equivalent in local currency is HRK 22.5 million.



Cyprus



Czech Republic

<b>Legislation</b>			
<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Draft legislation has been published	Draft legislation has been published <sup>10</sup>
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	Yes	Yes
	Partnerships resident in the relevant country	No	Yes
	Individuals with economic activity resident in the relevant country	No	No
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	Yes	Yes
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	Yes	Yes
	Are qualifying financial undertakings exempted?	Yes	Yes
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

1 The matrix does not foresee any updates published after 01 January 2019.

10 Legislation adopted but not yet enacted (expected to enter into force on 01 of April 2019).



Cyprus



Czech Republic

		Cyprus	Czech Republic
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	Yes	Yes
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	No
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million	EUR 3.1 million <sup>11</sup>
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, for 5 years	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	Yes, for 5 years	No
	Can an unused interest capacity be carried back?	No	No

<sup>11</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is CZK 80 million.



Denmark



Estonia

Legislation			
Status of legislation in the relevant country	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Legislation enacted	Legislation enacted
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	Yes	Yes
	Partnerships resident in the relevant country	Yes	No <sup>12</sup>
	Individuals with economic activity resident in the relevant country	No	No
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	Yes	Yes
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	No	Yes
	Are qualifying financial undertakings exempted?	Yes	Yes
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

1 The matrix does not foresee any updates published after 01 January 2019.

12 The interest limitation rule is not applicable to contractual partnerships as these are treated as transparent for tax purposes. However, general and limited partnerships established under Estonian law are non-tax-transparent entities, to those the interest limitation rules are applicable to.



Denmark



Estonia

		Denmark	Estonia
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	No	Yes
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million <sup>13</sup>	EUR 3 million
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	Yes
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	Yes	Yes
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	Yes, for 5 years	No
	Can an unused interest capacity be carried back?	No	No

<sup>13</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is DKK 22,313,400.

**Finland****France**

<b>Legislation</b>			
<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Legislation enacted	Legislation enacted <sup>14</sup>
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	Yes <sup>15</sup>
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	Yes	Yes
	Partnerships resident in the relevant country	Yes	Yes <sup>16</sup>
	Individuals with economic activity resident in the relevant country	No	No
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	No	No
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	Yes	No
	Are qualifying financial undertakings exempted?	Yes	No
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

1 The matrix does not foresee any updates published after 01 January 2019.

14 France has been authorized by the EU Commission to grandfather already existing regulations until 01 January 2024. However, a new interest limitation regulation in line with ATAD has been implemented as of 01 January 2019.

15 EU commission notice 2018/C 441/01 of 07 December 2018.

16 Applicable at the level of the partners who are subject to corporate income tax.



Finland



France

<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	Yes	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	No	Yes
	Are there other exemptions regarding particular kinds of loan agreements?	Interest payments on subsidized loans for certain housing construction projects are exempt.	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million <sup>17</sup>	EUR 3 million <sup>18</sup>
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	25 percent of the taxpayer's EBITD	30 percent of the taxpayer's EBITDA <sup>18</sup>
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	Yes <sup>19</sup>
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	No	Yes
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	Yes
	Are there other group aspects?	No	Yes
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	No	Yes, for 5 years
	Can an unused interest capacity be carried back?	No	No

<sup>17</sup> A separate threshold amounting to EUR 0.5 million for interest expenses paid to affiliated companies is applicable.

<sup>18</sup> Special rules apply for companies thinly capitalized, i.e. if the tested party's debt-to-equity ratio exceeds 1.5:1.

<sup>19</sup> An additional deduction equal to 75% of the net financial expenses not deducted pursuant to the above limitation is granted if the entity's equity-to-assets ratio remains equal to or higher than the equity-to-assets ratio of the consolidated group to which the tested entity belongs. However, this regulation is not applicable to companies thinly capitalized, i.e. if the tested party's debt-to-equity ratio exceeds 1.5:1.



Germany



Greece

<b>Legislation</b>			
<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	No	N/A
	Current status of ATAD-conform legislation:	No draft legislation has been published <sup>20</sup>	N/A
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	Yes <sup>22</sup>
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	Yes	Yes
	Partnerships resident in the relevant country	Yes	Yes
	Individuals with economic activity resident in the relevant country	Yes	Yes
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	Yes	Yes
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	Yes <sup>21</sup>	No
	Are qualifying financial undertakings exempted?	No	Yes
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

1 The matrix does not foresee any updates published after 01 January 2019.

20 According to commission notice 2018/C 441/01 of 07 December 2018, Germany is not among those Member States whose interest limitation rules are considered equally effective by the European Commission. However, no amendments have been published yet.

21 With regard to corporations applicable only if certain requirements are met.

22 EU commission notice 2018/C 441/01 of 07 December 2018.



Germany



Greece

		Germany	Greece
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	No	No
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million	EUR 3 million
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	All-or-nothing	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	Yes, for 5 years	No
	Can an unused interest capacity be carried back?	No	No



Hungary



Ireland

**Legislation**

<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	No <sup>23</sup>
	Current status of ATAD-conform legislation:	Legislation enacted	No draft legislation has been published <sup>24</sup>
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No

**The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup>**

<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	N/A
	Corporations subject to limited taxation in the relevant country	Yes	N/A
	Partnerships resident in the relevant country	No	N/A
	Individuals with economic activity resident in the relevant country	No, unless the activity is performed via a so-called 'individual firm'	N/A
	Permanent establishments of corporations non-resident in the relevant country	Yes	N/A
	Permanent establishments of partnerships non-resident in the relevant country	Yes	N/A
	Permanent establishments of individuals non-resident in the relevant country	No	N/A
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	No	N/A
	Are qualifying financial undertakings exempted?	Yes	N/A
	Are qualifying real estate undertakings exempted?	No	N/A
	Are there other exemptions concerning the business purpose of the taxpayer?	No	N/A

1 The matrix does not foresee any updates published after 01 January 2019.

23 Ireland has a regulation in place that aims at the limitation of interest expense deduction. As this regulation is not an EBITDA based regulation, we do not further describe it in this study.

24 According to commission notice 2018/C 441/01 of 07 December 2018, Ireland is not among those Member States whose interest limitation rules are considered equally effective by the European Commission. However, Ireland has asserted, and remains of the view, that it is entitled to a derogation from the introduction of the ATAD interest limitation rule until 01 January 2024. Nevertheless, work has commenced to examine options to bring forward transposition of the ATAD rule into Irish law and a (public) consultation on the matter was opened in November 2018. The Irish Government will then use the consultation to assist in shaping their submissions to the European Commission on the matter.



Hungary



Ireland

		Hungary	Ireland
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	Yes	N/A
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	N/A
	Are there other exemptions regarding particular kinds of loan agreements?	No	N/A
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million <sup>25</sup>	N/A
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	N/A
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	N/A
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	N/A
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	N/A
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	No <sup>26</sup>	N/A
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	N/A
	Are there other group aspects?	No	N/A
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	N/A
	Can exceeding borrowing cost be carried back?	No	N/A
	Can an unused interest capacity be carried forward?	Yes, for 5 years	N/A
	Can an unused interest capacity be carried back?	No	N/A

<sup>25</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is HUF 939.81 million.

<sup>26</sup> The interest limitation rule is to be applied at the level of each tax group member separately. However, the tax group member needs to consider the EUR 3 million threshold in a ratio of its exceeding borrowing costs pro-rated to total exceeding borrowing costs on tax group level.



Italy



Latvia

**Legislation****Status of legislation in the relevant country**

Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?

Yes

Yes

Current status of ATAD-conform legislation:

Legislation enacted<sup>27</sup>

Legislation enacted

Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?

No

No

**The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup>****1 Subjective scope of application concerning the legal status of the taxpayer**

Corporations resident in the relevant country

Yes

Yes

Corporations subject to limited taxation in the relevant country

Yes

Yes

Partnerships resident in the relevant country

No

Yes

Individuals with economic activity resident in the relevant country

No

No

Permanent establishments of corporations non-resident in the relevant country

Yes

Yes

Permanent establishments of partnerships non-resident in the relevant country

Yes

Yes

Permanent establishments of individuals non-resident in the relevant country

No

Yes

**2 Subjective scope of application concerning the business purpose of the taxpayer**

Are qualifying stand-alone entities exempted?

No

No

Are qualifying financial undertakings exempted?

Yes

No

Are qualifying real estate undertakings exempted?

Yes

No

Are there other exemptions concerning the business purpose of the taxpayer?

Holding entities of financial undertakings

No

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.

<sup>27</sup> A Legislative Decree officially implementing the ATAD through changes to some of the prior provisions (already largely consistent with the ATAD) was published in the Official Gazette n.300 of 28 December 2018.

		 Italy	 Latvia
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	No
	Are there other exemptions regarding particular kinds of loan agreements?	No	Certain loans are exempt (e.g. loans from credit institutions, state institutions, etc.)
<b>4 Threshold</b>	What is the amount of the threshold?	N/A	EUR 3 million <sup>29</sup>
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	N/A	All-or-nothing
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	Yes, both can be transferred to the fiscal unit	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	No
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	Yes, for 5 years <sup>28</sup>	No
	Can an unused interest capacity be carried back?	No	No

<sup>28</sup> The new rule applies since tax year 2019, prior unused interest capacity cannot be carried forward (unless in specific cases provided by the new rules).

<sup>29</sup> The threshold is applicable only if, in addition, a 4:1 debt-to-equity ratio is met.

**Lithuania****Luxembourg**

<b>Legislation</b>			
<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Legislation enacted	Legislation enacted
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	Yes	Yes <sup>30</sup>
	Partnerships resident in the relevant country	Yes	No <sup>31</sup>
	Individuals with economic activity resident in the relevant country	No	No
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	No <sup>31</sup>
	Permanent establishments of individuals non-resident in the relevant country	No	No
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	Yes	Yes
	Are qualifying financial undertakings exempted?	Yes	Yes
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

1 The matrix does not foresee any updates published after 01 January 2019.

30 Most of the corporations, subject to limited taxation, qualify as financial undertakings (SIF, SICAR, regulated Securitization vehicle, UCITs, etc.) and are therefore not really impacted by the ILR under ATAD.

31 Answer is "yes", if the calculation is made at the level of the partner.



Lithuania



Luxembourg

		Lithuania	Luxembourg
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	Yes
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	Yes
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million	EUR 3 million
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	Yes
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	Yes (upon request and under conditions)
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	Yes, for 5 years
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	No	Yes, for 5 years
	Can an unused interest capacity be carried back?	No	No

**Malta****Netherlands**

<b>Legislation</b>			
<b>Status of legislation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Legislation enacted	Legislation enacted
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	No	Yes
	Partnerships resident in the relevant country	Yes	No
	Individuals with economic activity resident in the relevant country	No	No
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	No	No
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	Yes	No
	Are qualifying financial undertakings exempted?	Yes	No
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.



Malta



Netherlands

		Malta	Netherlands
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	Yes	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	No
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 3 million	EUR 1 million
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	Yes
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	Yes, for 5 years	No
	Can an unused interest capacity be carried back?	No	No

		 Poland	 Portugal
<b>Legislation</b>			
<b>Status of legis- lation in the relevant country</b>	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	Yes	Yes
	Current status of ATAD-conform legislation:	Legislation enacted	Draft legislation has been published
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	No	No
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	Yes
	Corporations subject to limited taxation in the relevant country	No	Yes
	Partnerships resident in the relevant country	Yes	No
	Individuals with economic activity resident in the relevant country	No	No
	Permanent establishments of corporations non-resident in the relevant country	Yes	Yes
	Permanent establishments of partnerships non-resident in the relevant country	Yes	Yes
	Permanent establishments of individuals non-resident in the relevant country	No	Yes
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	No	No
	Are qualifying financial undertakings exempted?	Yes	Yes
	Are qualifying real estate undertakings exempted?	No	No
	Are there other exemptions concerning the business purpose of the taxpayer?	No	No

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.

		 Poland	 Portugal
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	Yes	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	No
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 0.7 million <sup>32</sup>	EUR 1 million
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	Optional
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, for 5 years	Yes, for 5 years
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	No	Yes, for 5 years
	Can an unused interest capacity be carried back?	No	No

<sup>32</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is PLN 3 million.

**Romania****Slovakia****Legislation****Status of legislation in the relevant country**

Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?

Yes

N/A

Current status of ATAD-conform legislation:

Legislation enacted

N/A

Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?

No

Yes<sup>33</sup>**The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup>****1 Subjective scope of application concerning the legal status of the taxpayer**

Corporations resident in the relevant country

Yes

Yes

Corporations subject to limited taxation in the relevant country

Yes

No

Partnerships resident in the relevant country

No

Yes

Individuals with economic activity resident in the relevant country

No

No

Permanent establishments of corporations non-resident in the relevant country

Yes

Yes

Permanent establishments of partnerships non-resident in the relevant country

Yes

No

Permanent establishments of individuals non-resident in the relevant country

Yes

No

**2 Subjective scope of application concerning the business purpose of the taxpayer**

Are qualifying stand-alone entities exempted?

Yes

No

Are qualifying financial undertakings exempted?

No

Yes

Are qualifying real estate undertakings exempted?

No

No

Are there other exemptions concerning the business purpose of the taxpayer?

No

No

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.<sup>33</sup> EU commission notice 2018/C 441/01 of 07 December 2018.



Romania



Slovakia

		Romania	Slovakia
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	No
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 1 million <sup>34</sup>	N/A
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	N/A
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	25 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	No	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	No
	Are there other group aspects?	No	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	No
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	No	No
	Can an unused interest capacity be carried back?	No	No

<sup>34</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is RON 4,658,100.



Slovenia



Spain

Legislation			
Status of legislation in the relevant country	Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?	N/A <sup>35</sup>	N/A
	Current status of ATAD-conform legislation:	N/A	N/A
	Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?	Yes <sup>36</sup>	Yes <sup>37</sup>
<b>The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup></b>			
1 Subjective scope of application concerning the legal status of the taxpayer	Corporations resident in the relevant country	N/A	Yes
	Corporations subject to limited taxation in the relevant country	N/A	Yes
	Partnerships resident in the relevant country	N/A	No
	Individuals with economic activity resident in the relevant country	N/A	No
	Permanent establishments of corporations non-resident in the relevant country	N/A	Yes
	Permanent establishments of partnerships non-resident in the relevant country	N/A	Yes
	Permanent establishments of individuals non-resident in the relevant country	N/A	Yes
2 Subjective scope of application concerning the business purpose of the taxpayer	Are qualifying stand-alone entities exempted?	N/A	No
	Are qualifying financial undertakings exempted?	N/A	Yes
	Are qualifying real estate undertakings exempted?	N/A	No
	Are there other exemptions concerning the business purpose of the taxpayer?	N/A	Interest limitation rule not applicable in year of liquidation, unless liquidation is part of a restructuring transaction

1 The matrix does not foresee any updates published after 01 January 2019.

35 Slovenia has a regulation in place that aims at the limitation of interest expense deduction. As this regulation is not an EBITDA based regulation, we do not further describe it in this study.

36 EU commission notice 2018/C 441/01 of 07 December 2018.

37 EU commission notice 2018/C 441/01 of 07 December 2018.



Slovenia



Spain

		Slovenia	Spain
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	N/A	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	N/A	No
	Are there other exemptions regarding particular kinds of loan agreements?	N/A	No
<b>4 Threshold</b>	What is the amount of the threshold?	N/A	EUR 1 million
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	N/A	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	N/A	30 percent of the taxpayer's EBITDA
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	N/A	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	N/A	No
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	N/A	Yes
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	N/A	No
	Are there other group aspects?	N/A	No
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	N/A	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	N/A	No
	Can an unused interest capacity be carried forward?	N/A	Yes, for 5 years
	Can an unused interest capacity be carried back?	N/A	No



Sweden



United Kingdom

**Legislation****Status of legislation in the relevant country**

Is there a regulation in line with ATAD in force as from 01 January 2019 onwards?

Yes

Yes

Current status of ATAD-conform legislation:

Legislation enacted

Legislation enacted

Has your country been appointed to make use of the grandfathering rule under art. 11 para. 6 of the ATAD until 01 January 2024?

No

No

**The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup>****1 Subjective scope of application concerning the legal status of the taxpayer**

Corporations resident in the relevant country

Yes

Yes

Corporations subject to limited taxation in the relevant country

Yes

Yes

Partnerships resident in the relevant country

Yes<sup>38</sup>

No

Individuals with economic activity resident in the relevant country

No

No

Permanent establishments of corporations non-resident in the relevant country

Yes

Yes

Permanent establishments of partnerships non-resident in the relevant country

Yes

Yes

Permanent establishments of individuals non-resident in the relevant country

No

No

**2 Subjective scope of application concerning the business purpose of the taxpayer**

Are qualifying stand-alone entities exempted?

No

No

Are qualifying financial undertakings exempted?

No

No

Are qualifying real estate undertakings exempted?

No

Yes

Are there other exemptions concerning the business purpose of the taxpayer?

No

No

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.

<sup>38</sup> Not applicable to the extent that the partnership is held, directly or through another partnership, by individuals.



Sweden



United Kingdom

		Sweden	United Kingdom
<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are there grandfathering rules in force for certain loan arrangements which were already existing before the implementation of the regulation?	No	No
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	No	Yes
	Are there other exemptions regarding particular kinds of loan agreements?	No	No
<b>4 Threshold</b>	What is the amount of the threshold?	EUR 0.5 million <sup>39</sup>	EUR 2.2 million <sup>40</sup>
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	Allowance	Allowance
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA	30 percent of the taxpayer's EBITDA <sup>41</sup>
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	No
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	Yes
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	No	No
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	Yes, exceeding borrowing cost	No
	Are there other group aspects?	No	Applied at company level; the group can elect in which company to apply the interest limitation rule
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, for 6 years	Yes, without limitation in time
	Can exceeding borrowing cost be carried back?	No	No
	Can an unused interest capacity be carried forward?	No	Yes, for 5 years
	Can an unused interest capacity be carried back?	No	No

<sup>39</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is SEK 5 million.

<sup>40</sup> For better readability, amounts are stated in EURO. The equivalent in local currency is GBP 2 million.

<sup>41</sup> As opposed to a company-by-company basis, the interest limitation rule applies on a consolidated worldwide group basis.

# Interest Limitation Rules comparable to Article 4 of Council Directive (EU) 2016/1164 of 12 July 2016 in selected non-EU countries



Norway



Switzerland

**The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup>**

		Norway	Switzerland
<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	N/A
	Corporations subject to limited taxation in the relevant country	Yes	N/A
	Partnerships resident in the relevant country	Yes	N/A
	Individuals with economic activity resident in the relevant country	No	N/A
	Permanent establishments of corporations non-resident in the relevant country	Yes	N/A
	Permanent establishments of partnerships non-resident in the relevant country	Yes	N/A
	Permanent establishments of individuals non-resident in the relevant country	Yes	N/A
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	Yes	N/A
	Are qualifying financial undertakings exempted?	Yes	N/A
	Are qualifying real estate undertakings exempted?	No	N/A
	Are there other exemptions concerning the business purpose of the taxpayer?	Entities active in the petroleum, shipping or power business	N/A

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.

**Norway****Switzerland**

<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are grandfathering rules in force for certain loan arrangements already existing before the implementation of the regulation?	No	N/A
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	No	N/A
	Are there other exemptions regarding particular kinds of loan agreements?	No	N/A
<b>4 Threshold</b>	What is the amount of the threshold?	NOK 25 million <sup>2</sup>	N/A
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	All-or-nothing	N/A
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	25 percent of the taxpayer's EBITDA	N/A
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	Yes	N/A
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	Yes	N/A
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	N/A
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	N/A
	Are there other group aspects?	No	N/A
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, for 10 years	N/A
	Can exceeding borrowing cost be carried back?	No	N/A
	Can an unused interest capacity be carried forward?	No	N/A
	Can an unused interest capacity be carried back?	No	N/A

<sup>2</sup> Applies for the Norwegian part of the group.



## United States

The following interest limitation regulation will be in force as from 01 January 2019<sup>1</sup>

<b>1 Subjective scope of application concerning the legal status of the taxpayer</b>	Corporations resident in the relevant country	Yes	
	Corporations subject to limited taxation in the relevant country	Yes	
	Partnerships resident in the relevant country	Yes	
	Individuals with economic activity resident in the relevant country	Yes	
	Permanent establishments of corporations non-resident in the relevant country	Yes	
	Permanent establishments of partnerships non-resident in the relevant country	Yes	
	Permanent establishments of individuals non-resident in the relevant country	Yes	
<b>2 Subjective scope of application concerning the business purpose of the taxpayer</b>	Are qualifying stand-alone entities exempted?	No	
	Are qualifying financial undertakings exempted?	No	
	Are qualifying real estate undertakings exempted?	Yes	
	Are there other exemptions concerning the business purpose of the taxpayer?	Small businesses with less than USD 25 million in annual gross receipts, electing real property business or farming business, certain utilities, taxpayers incurring floor plan financing interest	

<sup>1</sup> The matrix does not foresee any updates published after 01 January 2019.



## United States

<b>3 Objective Scope of application: Types of loan agreements that are exempt</b>	Are grandfathering rules in force for certain loan arrangements already existing before the implementation of the regulation?	No	
	Are loans concluded in the framework of qualifying public private infrastructure projects exempt?	Yes	
	Are there other exemptions regarding particular kinds of loan agreements?	No	
<b>4 Threshold</b>	What is the amount of the threshold?	N/A	
	Is the threshold meant as an allowance or as a limit ("all-or-nothing")?	N/A	
	To what extent are exceeding borrowing costs deductible if the threshold is exceeded?	30 percent of the taxpayer's EBITDA <sup>3</sup>	
<b>5 Group aspects</b>	Are taxpayers allowed to rely on a group-equity-rule?	No	
	Are taxpayers allowed to rely on an earnings-based worldwide group-ratio-rule?	No	
	With regard to tax groups, is the interest limitation rule to be applied at the level of the (consolidated) group?	Yes	
	Is either an amount of exceeding borrowing cost or an unused interest capacity transferrable to another group company?	No	
	Are there other group aspects?	An election is available which allows excess taxable income from CFCs owned in the U.S. group to be used to increase the amount of interest deductible in the U.S.	
<b>6 Utilization of non-deductible interest expenses and non-used interest capacity</b>	Can exceeding borrowing cost be carried forward?	Yes, without limitation in time	
	Can exceeding borrowing cost be carried back?	No	
	Can an unused interest capacity be carried forward?	No	
	Can an unused interest capacity be carried back?	No	

<sup>3</sup> For tax years beginning on or after 01 January 2022, the limitation is reduced to 30% of EBIT.

Further regulations that particularly aim at the limitation of interest expense deduction (EU countries)

Are there any further regulations (other than the one described in the matrix) that particularly aim at the limitation of interest expense deduction?<sup>1</sup>

 <b>Austria</b>	Interest payments to related parties may be non-deductible if on the recipient side it is taxed at a rate of less than 10%.	 <b>Estonia</b>	N/A
 <b>Belgium</b>	A debt-to-equity-ratio rule of 5:1 may be applicable.  Specific rules on the deductibility of payments on low taxed recipients can also apply.	 <b>Finland</b>	N/A
 <b>Bulgaria</b>	Under certain conditions, the thin capitalization regulations may be applicable.	 <b>France</b>	The deduction of interest on loans to related parties may be subject to a maximum interest percentage.  The so-called 'Charasse Amendment' (anti-debt pushdown provision within a French tax consolidation) may be applicable.
 <b>Croatia</b>	A debt-to-equity-ratio rule of 4:1 may be applicable.  The deduction of interest on group loans is subject to a maximum interest percentage.	 <b>Germany</b>	For trade tax purposes, basically, 1/4 of the interest expense may be non-deductible.
 <b>Cyprus</b>	N/A	 <b>Greece</b>	The deduction of interest on third-party loans is subject to a maximum interest percentage, except for bank loans.
 <b>Czech Republic</b>	A debt-to-equity-ratio rule of 4:1 (resp. 6:1 for banks and insurance companies) may be applicable.	 <b>Hungary</b>	A debt-to-equity-ratio rule of 3:1 may be applicable in respect of loan agreements subject to the grandfathering rule.  On the basis of anti-avoidance laws, as a general principle, an expense (over a net amount of HUF 200 000, approx EUR 600) is not considered to be incurred in the course of business-like and revenue generating activities if being contrary to the concept of 'reasonable management'.
 <b>Denmark</b>	A debt-to-equity-ratio rule of 4:1 may be applicable.  Exceeding borrowing cost are deductible only up to 2.7% of the tax value of qualifying assets at year-end.	 <b>Ireland</b>	Various interest limitation rules may be applicable.

<sup>1</sup> Only regulations are mentioned here that directly and particularly aim at the limitation of interest expense deduction (transfer pricing regulations, debt to equity recharacterizations, principal-purpose-test, hybrids etc. have to be considered as well).

Are there any further regulations (other than the one described in the matrix) that particularly aim at the limitation of interest expense deduction?<sup>1</sup>

 <b>Italy</b>	Interest expenses in relation to profit participating loans (and other financial instruments) may not be deductible.	 <b>Poland</b>	N/A
	Interest expenses related to immovable properties that do not constitute assets used for the performance of the business activity or assets whose production or exchange is the direct business activity of the company are not deductible.	 <b>Portugal</b>	N/A
		 <b>Romania</b>	N/A
		 <b>Slovakia</b>	N/A
		 <b>Slovenia</b>	A debt-to-equity-ratio rule of 4:1 may be applicable.
 <b>Latvia</b>	A debt-to-equity-ratio rule of 4:1 may be applicable.		The deduction of interests on group loans is subject to a maximum interest percentage.
 <b>Lithuania</b>	A debt-to-equity-ratio rule of 4:1 may be applicable.		
	Furthermore, the following interest expenses may be not deductible: (i) interest expenses linked with profit, income turnover or other similar criteria and (ii) interest expenses due under agreements entitling the lender to exchange the right to interest for a right to participate in profits of a borrower.	 <b>Spain</b>	Financial expenses relating to acquisition debt may be deductible only up to 30% of the acquirer's EBITDA.
			Financial expenses arising from intra-group debt used for (i) the acquisition of other group entities or (ii) contributions to equity of other group entities may be non-deductible unless there are valid economic reasons.
 <b>Luxemburg</b>	N/A		
 <b>Malta</b>	Various interest limitation rules may be applicable.	 <b>Sweden</b>	Various interest limitation rules may be applicable which basically target the deduction of interest related to intra-group debt or profit participation loans.
 <b>Netherlands</b>	Various interest limitation rules may be applicable which basically target the deduction of interest related to exempt income (acquisition debt, dividend distributions and repayment of capital).	 <b>United Kingdom</b>	A principal purpose test specific to loan relationships may be applicable.

<sup>1</sup> Only regulations are mentioned here that directly and particularly aim at the limitation of interest expense deduction (transfer pricing regulations, debt to equity recharacterizations, principal-purpose-test, hybrids etc. have to be considered as well).

Further regulations that particularly aim at the limitation of interest expense deduction (selected non-EU countries)

Are there any further regulations (other than the one described in the matrix) that particularly aim at the limitation of interest expense deduction?<sup>1</sup>

	Norway	N/A		United States	Interest expenses on related party loans can only be deducted if the interest expense is actually paid (as opposed to accrued).
	Switzerland	A thin capitalization rule may be applicable that requires a minimum equity ratio for each asset class.			The U.S. has existing debt-equity recharacterization, transfer pricing, and economic substance rules which may also apply.

<sup>1</sup> Only regulations are mentioned here that directly and particularly aim at the limitation of interest expense deduction (transfer pricing regulations, debt to equity recharacterizations, principal-purpose-test, hybrids etc. have to be considered as well).

### Article 2, Definitions

For the purposes of this Directive, the following definitions apply:

- 1 'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance as defined in national law, including, without being limited to, payments under profit participating loans, imputed interest on instruments such as convertible bonds and zero coupon bonds, amounts under alternative financing arrangements, such as Islamic finance, the finance cost element of finance lease payments, capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules where applicable, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;
- 2 'exceeding borrowing costs' means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other economically equivalent taxable revenues that the taxpayer receives according to national law;
- 3 'tax period' means a tax year, calendar year or any other appropriate period for tax purposes;
- 4 'associated enterprise' means:
  - a an entity in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 25 percent or more or is entitled to receive 25 percent or more of the profits of that entity;

- b an individual or entity which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 25 percent or more or is entitled to receive 25 percent or more of the profits of the taxpayer;

If an individual or entity holds directly or indirectly a participation of 25 percent or more in a taxpayer and one or more entities, all the entities concerned, including the taxpayer, shall also be regarded as associated enterprises.

For the purposes of Article 9 and where the mismatch involves a hybrid entity, this definition is modified so that the 25 percent requirement is replaced by a 50 percent requirement.

- 5 'financial undertaking' means any of the following entities:
  - a a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council or an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council or an undertaking for collective investment in transferable securities (UCITS) management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council;
  - b an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council;
  - c a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;
  - d an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of

the Council, unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive or the delegate of an institution for occupational retirement provision as referred to in Article 19(1) of that Directive;

- e pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council and Regulation (EC) No 987/2009 of the European Parliament and of the Council as well as any legal entity set up for the purpose of investment of such schemes;
  - f an alternative investment fund (AIF) managed by an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU or an AIF supervised under the applicable national law;
  - g UCITS in the meaning of Article 1(2) of Directive 2009/65/EC;
  - h a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council;
  - i a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council.
- 6 'transfer of assets' means an operation whereby a Member State loses the right to tax the transferred assets, whilst the assets remain under the legal or economic ownership of the same taxpayer;
- 7 'transfer of tax residence' means an operation whereby a taxpayer ceases to be resident for tax purposes in a Member State, whilst acquiring tax residence in another Member State or third country;

- 8 'transfer of a business carried on by a permanent establishment' means an operation whereby a taxpayer ceases to have taxable presence in a Member State whilst acquiring such presence in another Member State or third country without becoming resident for tax purposes in that Member State or third country;
- 9 'hybrid mismatch' means a situation between a taxpayer in one Member State and an associated enterprise in another Member State or a structured arrangement between parties in Member States where the following outcome is attributable to differences in the legal characterisation of a financial instrument or entity:
- a a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in another Member State ('double deduction'); or
  - b there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion for tax purposes of the same payment in the other Member State ('deduction without inclusion').

## Article 4, Interest limitation rule

- 1 Exceeding borrowing costs shall be deductible in the tax period in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA).

For the purpose of this Article, Member States may also treat as a taxpayer:

- a an entity which is permitted or required to apply the rules on behalf of a group, as defined according to national tax law;
- b an entity in a group, as defined according to national tax law, which does not consolidate the results of its members for tax purposes.

In such circumstances, exceeding borrowing costs and the EBITDA may be calculated at the level of the group and comprise the results of all its members.

- 2 The EBITDA shall be calculated by adding back to the income subject to corporate tax in the Member State of the taxpayer the tax-adjusted amounts for exceeding borrowing costs as well as the tax-adjusted amounts for depreciation and amortisation. Tax exempt income shall be excluded from the EBITDA of a taxpayer.
- 3 By derogation from paragraph 1, the taxpayer may be given the right:
  - a to deduct exceeding borrowing costs up to EUR 3 000 000;
  - b to fully deduct exceeding borrowing costs if the taxpayer is a standalone entity.

For the purposes of the second subparagraph of paragraph 1, the amount of EUR 3 000 000 shall be considered for the entire group.

For the purposes of point (b) of the first subparagraph, a standalone entity means a taxpayer that is not part of a consolidated group for financial accounting purposes and has no associated enterprise or permanent establishment.

- 4 Member States may exclude from the scope of paragraph 1 exceeding borrowing costs incurred on:
  - a loans which were concluded before 17 June 2016, but the exclusion shall not extend to any subsequent modification of such loans;
  - b loans used to fund a long-term public infrastructure project where the project operator, borrowing costs, assets and income are all in the Union.

For the purposes of point (b) of the first subparagraph, a long-term public infrastructure project means a project to provide, upgrade, operate and/or maintain a large-scale asset that is considered in the general public interest by a Member State.

Where point (b) of the first subparagraph applies, any income arising from a long-term public infrastructure project shall be excluded from the EBITDA of the taxpayer, and any excluded exceeding borrowing cost shall not be included in the exceeding borrowing costs of the group vis-à-vis third parties referred to in point (b) of paragraph 5.

- 5 Where the taxpayer is a member of a consolidated group for financial accounting purposes, the taxpayer may be given the right to either:
  - a fully deduct its exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group and subject to the following conditions:

- the ratio of the taxpayer's equity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer's equity over its total assets is lower by up to two percentage points; and
  - all assets and liabilities are valued using the same method as in the consolidated financial statements referred to in paragraph 8;
- or
- c to carry forward, without time limitation, exceeding borrowing costs and, for a maximum of five years, unused interest capacity, which cannot be deducted in the current tax period under paragraphs 1 to 5.

7 Member States may exclude financial undertakings from the scope of paragraphs 1 to 6, including where such financial undertakings are part of a consolidated group for financial accounting purposes.

8 For the purpose of this Article, the consolidated group for financial accounting purposes consists of all entities which are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State. The taxpayer may be given the right to use consolidated financial statements prepared under other accounting standards.

b deduct exceeding borrowing costs at an amount in excess of what it would be entitled to deduct under paragraph 1. This higher limit to the deductibility of exceeding borrowing costs shall refer to the consolidated group for financial accounting purposes in which the taxpayer is a member and be calculated in two steps:

- first, the group ratio is determined by dividing the exceeding borrowing costs of the group vis-à-vis third-parties over the EBITDA of the group; and
- second, the group ratio is multiplied by the EBITDA of the taxpayer calculated pursuant to paragraph 2.

6 The Member State of the taxpayer may provide for rules either:

- a to carry forward, without time limitation, exceeding borrowing costs which cannot be deducted in the current tax period under paragraphs 1 to 5;
- b to carry forward, without time limitation, and back, for a maximum of three years, exceeding borrowing costs which cannot be deducted in the current tax period under paragraphs 1 to 5; or

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