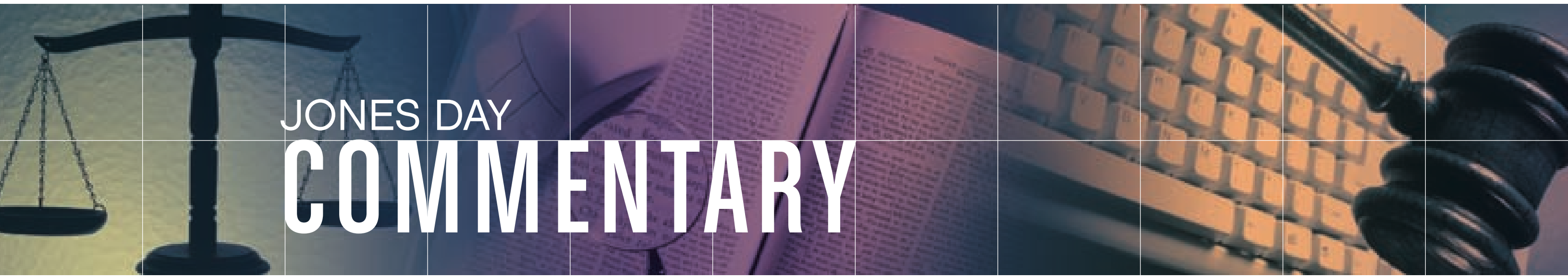
JUNE 2007



GERMAN TAX LAW: THE NEW RULES LIMITING INTEREST DEDUCTIONS

Please be aware that the new interest deduction limitation rules passed the German Bundestag *but are not yet enacted. As the legislation process is still ongoing, changes of these rules are unlikely but still possible.*

The newly introduced German income tax law, which passed the German *Bundestag* on May 25, 2007, provides for new interest deduction limitation rules to be implemented and become effective as of January 1, 2008. Although the legislative procedures continue, we believe these new rules are likely to be implemented more or less as described. Hence, even if details may still change, we thought our clients and friends should be aware of these developments, which replace the existing German thin capitalization rules. The new rules are as follows:

GENERAL RULES

The interest deduction limitation rules will apply to any form of debt financing (shareholder, related party, and/or third-party financing) made available to an entity, regardless of whether it is a corporation or a partnership. An entity could be a legal entity, a partnership, or a group of companies forming a fiscal unity (a so-called *Organschaft*).

The interest expenses are fully deductible up to an amount equal to the interest income generated by the entity in the same fiscal year. Excess interest expenses will be referred to hereafter as "Net Interest." The further deduction of Net Interest is limited to an amount of 30 percent of the EBITDA of the payer entity. EBITDA, in turn, is defined for these purposes as taxable earnings before the application of the interest deduction limitation rules, increased by the amount of interest expenses and decreased by the amount of interest income, the depreciation of business assets and any amortization of intangible assets, and taxes.

Any Net Interest in excess of 30 percent of EBITDA will not be deductible, unless one of the following exceptions (or "Escape Clauses") applies:

(i) Interest payments will be fully deductible if the annual total amount of the Net Interest does not exceed Euro 1 million, regardless of whether the actual amount exceeds the 30 percent EBITDA threshold. This exception applies regardless of whether the interest is paid to a shareholder, related party, or third party. In the case of debt financing by a shareholder or party related to a shareholder, the interest payment must also be at arm's length. If the Net Interest exceeds the Euro 1 million limit and the other exceptions referred to in (ii) and (iii) below do not apply, the entire interest expense (including the Euro 1 million threshold) will be subject to the 30 percent deduction limitation.

(ii) The interest deduction limitation does not apply if the entity does not belong to a group of companies *(Konzern)* or belongs to a group of companies but is not included in the consolidated financial statements of the group. An entity must be included in the consolidated financial statement if the group is entitled to more than 50 percent of the voting rights in the entity or defines a uniform financial and business policy of that entity and one or more other entities.

(iii) If the entity belongs to a group of companies forming a consolidated entity, the interest deduction limitation rules do not apply if the equity ratio of the entity (equity ratio in percent of total assets, see "Equity Ration Assessment" below) as of the date of the previous balance sheet is equal to or higher than the equity ratio of the consolidated group. There is some element of tolerance, however, because if the entity's equity ratio is no more than just 1 percent less than the equity ratio of the consolidated group, this will not affect the interest deduction.

SPECIAL RULES FOR CORPORATIONS

With respect to corporations that are subject to either unlimited or limited tax liability in Germany, the Escape Clauses are restricted:

(i) In the cases referred to in "General Rules" (ii) above, the 30 percent-of-EBITDA-limit does not apply except where the interest expense paid to any of the following parties exceeds not more than 10 percent of the Net Interest of the entity: a shareholder with a direct or indirect substantial participation of more than 25 percent; any related party to the shareholder; or a third party that may take recourse against the shareholder or the related party. A party is related to the shareholder if the shareholder directly or indirectly holds at least 25 percent of the participation or exercises control over the party or vice versa. The legislator has indicated an intent that the test of whether a third party may have recourse against the shareholder (or a related party) is to be interpreted broadly. According to the preamble of the draft law, such a recourse will be presumed if the shareholder or related party will be de facto responsible for the debt granted to the corporation.

(ii) In the cases referred to in "General Rules" (iii) above, the 30 percent-of-EBITDA-limit does not apply except where the interest expense paid by the corporation or any other consolidated company to any of the following parties exceeds not more than 10 percent of the Net Interest of the entity, provided the debt of the entity is recorded in the consolidated statements. These parties include: a shareholder with a direct or indirect substantial participation of more than 25 percent but less than 50 percent in the corporation or any other consolidated corporation; any related party to the shareholder; or a third party that may have recourse against the shareholder or the related party.

In addition, if a corporation holds, directly or indirectly, an interest of more than 25 percent but less than 50 percent in a commercial partnership within the meaning of German income tax law, the restrictions to the above Escape Clauses will apply to such a partnership.

EQUITY RATIO ASSESSMENT

The equity ratio referred to by the new interest deduction limitation rules is defined as the percentage of the equity in relation to the value of total assets.

The group equity ratio is based on the consolidated financial statement of the group, whereas the entity equity ratio is based on its own financial statement. Approved accounting options must be exercised consistently in both the consolidated and entity financial statements.

The entity's equity ratio is increased by the goodwill of the entity included in the consolidated financial statement and by 50 percent of an untaxed special reserve (*Sonderposten mit Rücklageanteil*), and it is reduced by the equity representing nonvoting rights except for preferred shares, participations in other group companies, and the balance of capital contributions to the equity within the last six months before the balance sheet date, minus withdrawals from equity or (constructive) dividend distributions within the first six months after the balance sheet date. The total amount of assets of the entity will be reduced by receivables that are not shown in the consolidated financial statement, provided that the receivables are compensated by liabilities at least in the same amount.

Business assets related to the business of a commercial partnership and owned by a co-entrepreneur (*Sonderbetriebsvermögen*) must be allocated to the business of the commercial partnership, provided that the assets are regarded as business assets of the group.

The equity ratio is to be based on the annual financial statements prepared in accordance with International Financial Reporting Standards ("IFRS"). Financial statements drawn up in accordance with the commercial law of an EU Member State may also be used, provided that no consolidated financial statement in accordance with IFRS is defined under the relevant law and no consolidated financial statements prepared under IFRS existed the last five years.

The equity ratio can also be based on a financial statement according to U.S. Generally Accepted Accounting Principles ("GAAP"), subject to there being no consolidated financial statements prepared under IFRS or in accordance with the commercial laws of an EU Member State. The consolidated financial statements must be in accordance with the principles applicable to the such statements that are based on German commercial law or accepted by and comparable to German commercial law.

If the financial statements of the entity are not in accordance with IFRS, the equity ratio of the entity must be determined by means of an offsetting and reconciliation accounting.

NET INTEREST CARRY-FORWARD

Any Net Interest that is not deductible in one year can be carried forward and used in following years. These carry-forwards increase the interest expenses, but not the EBITDA, for the following years. There is no time limitation set on the use of Net Interest carry-forwards.

In the case of a sale of partnership interests or a liquidation of a partnership, the Net Interest carry-forward can no longer be used. If a co-entrepreneur of a partnership leaves the partnership, the amount of the Net Interest carry-forward allocated to that co-entrepreneur can no longer be used.

If, directly or indirectly, more than 25 percent of the capital stock, the participation rights, or the voting rights of a corporation are transferred to an acquirer, or a party related thereto, within a five-year period or a comparable situation to such a transfer occurs, the Net Interest carry-forward of a corporation allocated to the transferred participation rights can no longer be used. If more than 50 percent are directly or indirectly transferred, or a comparable situation occurs within a five-year period, the total Net Interest carry-forward can no longer be used.

LAWYER CONTACTS

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