

Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market

CHAPTER II

**MEASURES AGAINST TAX AVOIDANCE**

*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.

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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:

- (i) 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
- (ii) [F<sup>1</sup>all assets and liabilities are valued using the same method as in the consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State;]

or

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:

- (i) 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
- (ii) 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
- 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.

[F<sup>18</sup> For the purposes of paragraphs 1 to 7, the taxpayer may be given the right to use consolidated financial statements prepared under accounting standards other than the International Financial Reporting Standards or the national financial reporting system of a Member State.]

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#### **Textual Amendments**

- F1** Substituted by [Council Directive \(EU\) 2017/952 of 29 May 2017 amending Directive \(EU\) 2016/1164 as regards hybrid mismatches with third countries.](#)