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Global Tax Alert

News from Transfer Pricing

Hungarian regime remains attractive post-ATAD financing rules – APAs available

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Hungary's statutory flat corporate income tax rate of 9%, which applies to all types of income, has made it a favorable jurisdiction for group financing activities. For this reason, various United States (US) and non-US based multinationals have recently moved significant intra-group financing, treasury and cash-pooling functions to Hungary.

As of 1 January 2019, Hungary implemented the European Union Anti-Tax Avoidance Directive (ATAD) compliant interest deduction limitation rules. According to the new rules, excess financing costs may be deducted up to the higher of either 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) or a nominal threshold of HUF939,810,000 (approx. US$3.3 million).

In applying the new rule, only interest expense which exceeds the interest revenues of the given entity is taken into account. Accordingly, debt-funded financing activities generally do not fall under the scope of the new thin capitalization rules which further strengthens Hungary's position as an attractive jurisdiction for intra-group treasury functions.

In addition, there are various options available to achieve an effective tax rate lower than 9% with respect to equity-funded financing activities as well.

Building a better working world

To further support the Hungarian financing regime, both binding tax rulings and advance pricing agreements (APAs) are available for financing group companies.

APAs are available both for equity and debt funded group financing companies which makes it possible to effectively mitigate their long-term transfer pricing risks. Key attributes of the APAs are the following:

- Both unilateral (binding only in Hungary) and multilateral APAs are available
- APAs with binding force are issued for up to eight years (initially for five years which may be extended by an additional three years)
- APAs may also have retroactive effect for prior tax years

It is also an important factor in the context of the above planning considerations that the long-standing Hungarian binding tax ruling/APA regimes have not been challenged by the European Commission from a State aid perspective.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Advisory Ltd., Budapest

- Miklos Santa miklos.santa@hu.ey.com
- Tibor Palszabo tibor.palszabo@hu.ey.com
- Hans Kleinsman hans.kleinsman@hu.ey.com

Ernst & Young LLP, Eastern European Business Group, New York

- Gabor Kiss gabor.kiss2@ey.com

Ernst & Young LLP, Eastern European Business Group, San Jose

- Richard Kocsis richard.kocsis1@ey.com

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