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Mr. Achim Pross
Head International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
OECD
2, rue André Pascal
75775 Paris Cedex 16
Per e-mail: interestdeductions@oecd.org

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A.149/JBR

Public Discussion Draft – BEPS Action 4: Interest Deductions and Other Financial Payments

Dear Mr. Pross,

The Swiss Bankers Association (SBA) is the leading professional organisation of the Swiss financial centre. Its main purpose is to maintain and promote the best possible framework conditions for the Swiss financial centre both at home and abroad. The SBA was founded in 1912 in Basel as a trade association and today has 317 institutional members and approximately 18'500 individual members.

The SBA would like to thank the OECD for the opportunity to comment on the discussion draft on Action 4: interest deductions and other financial payments.

Banks act as financial intermediaries, allowing amongst others financing through terms and interest translations, which benefits the economy as a whole. Hence, for the financial sector and in particular for banks, considering their role, interest represents a key element, which also relates to their ability to generate revenue. In this respect the banking industry cannot be compared to other sectors of the economy. In addition, banks are highly regulated and have therefore to comply with capital requirements imposed on them in order to safeguard financial stability. The public discussion draft rightly recognizes that banks present particular issues that do not arise in other sectors (see XIII. Considerations for groups in specific sectors, in particular paragraphs 203 - 213). As a consequence, in the case of banks, it is not appropriate to make a simple link between interest deductions and base erosion.

1. General remarks

The discussion draft ignores arm's length tests (paragraph 21) as part of the consultation process on interest deductions. We regret that such a basic and well established principle is simply not considered. The consequences of ignoring arm's length tests are straightforward: deductions might be disallowed even though the related payments fully reflect market conditions.

2. Particular features of the banking industry

a) Base erosion due to interest deduction in the banking industry

Since the banking industry is highly regulated, it should be first established by the competent tax administrations that interest deduction actually leads to base erosion in this industry.

If tax authorities identify abuses in this respect, these should be adequately addressed.

b) Studies highlighting the base erosion did not consider the banking industry

The studies mentioned in paragraph 28 of the discussion draft establishing that groups leverage more debt in subsidiaries located in high tax countries, do not consider the banking industry. We could not find in these studies any evidence that their conclusions were also applicable to the banking industry. This is not surprising, since for banks international debt shifting can only take place within the strict framework set by the prudential regulators.

c) Group-wide approach is not appropriate for the banking industry

We come to the conclusion that a group-wide approach is not appropriate for the banking industry. The main reasons for which we do not consider a group-wide approach as appropriate are also addressed by the discussion draft:

- Group-wide approaches are difficult to implement for the business and difficult to assess for the tax administrations among others for the following reasons:
  - tax rules differ across jurisdictions
  - local GAAPs differ across jurisdictions (definitions differ and financial ratios might not be comparable, consolidation rules might not lead to the same outcome).
- Group-wide approaches might lead to double taxation if the matching of third party interest expenses with intra-group loan agreements are not possible.
- Any rule referring to measures of earnings such as EBIT or EBITDA are not appropriate for the banking industry since in general interest represents income and not charges for banks.
- Rules referring to asset values as a measure of economic activity across a group are not adequate for the banking industry, since the economic activity depends less on the location of the physical assets than on the volume of transactions in the different markets.

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The Swiss Bankers Association is therefore of the opinion that limitation on interest deductions should not apply to regulated entities, since these entities have to comply with requirements set by prudential regulators, in order to safeguard financial stability. Adding additional requirements of non prudential nature might create a risk for such entities to be confronted with conflicting rules.

The SBA thanks the OECD for taking due account of these comments.

Yours sincerely,
Swiss Bankers Association

Regula Häfelin   Jean Brunisholz