



# Thin capitalisation rules in the Slovak Income Tax Act





# Income Tax Act No. 595/2003 C.L.

## Sec. 21a

- Applicable to **legal entities** and **PEs**
- **Related** party debt only + fiction of a related party
- **EBIDTA** (25%)
- **Gross** interest expense
- **Financial institutions** excluded



# ATAD Directive

## Article 4 – Interest Limitation Rule

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# Similar to BEPS – Action 4

- Action 4 -> Article 4 of ATAD
- Please note -> PPT based on Public version of EU Commission's proposal...
  - Elements
    - 30% EBITDA limitation
      - All Interest payments – irrespective whether 3<sup>rd</sup> party or related
    - Safe Harbor – Monetary Amount – X million EUR
    - Group Ratio Exceptions
    - Carry over of Excess Interest payments
    - Carry over of Unutilized EBITDA limit

# Issues?

- 3<sup>rd</sup> Party Loan Inclusion
  - Irrespective of whether legitimate or structured
    - Structured 3<sup>rd</sup> party loans -> reasonable to be included
    - Legitimate 3<sup>rd</sup> party loans ???
      - Possible outcome -> Loss situation but paying taxes
  - Mitigating the negative outcomes
    - Group ratio exclusion & Safe Harbor
      - Creates opportunity for pumping in related party loans to exploit these limits
        - » Potentially more deduction possible
        - » Tax planning opportunity -> combined with carry over...

# Structured 3<sup>rd</sup> party loans?

- Back-to-back arrangements
- Loans granted to entities in high-tax jurisdictions
  - Passing on the funds to other jurisdictions
    - Equity -> generating dividends -> Exempt Income
    - Financing exempt income activities (including foreign PE)
- Solution and discussion?
  - Compensate for narrower scope with targeted rules and general principles?