VISION: Journal of Indian Taxation
Vol. 8(1), Jan-Jun 2021, pp. 38-53
DOI: 10.17492/jpi.vision.v8i1.812103
www.journalpressindia.com/vjit
© 2021 Journal Press India

The Indian Thin Capitalisation Rules

*Akshay Saxena**

ABSTRACT

This paper focuses on the Indian thin capitalisation rules, its aim, design and possible impact on curbing debt bias and possible alternative to the thin capitalisation rules. Many empirical studies have shown that MNEs indulge in the practice of international debt shifting to save tax payments by utilizing differences in national tax rates and preferential tax rules. Therefore, to curb this debt financing most countries like India have implemented thin capitalisation rules that limit the amount of interest deductions in situations of debt financing. Although not much has been said on the economic effects of thin capitalisation, and the rules to combat them specifically, there is a relatively well established literature on the economic effects of anti-international tax planning policies. This paper summarizes the possible effects and impacts of thin capitalisation one could expect along with the possible reason for adopting earnings stripping rule against the safe harbour rule and the lacunas of Indian thin capitalisation rules. From theoretical point of view, the thin capitalisation rules could prove effective in curbing the debt bias and increasing the tax revenue of the Government. It is yet to be seen whether the introduction of the thin capitalisation rules will have any adverse effect on the economy and the economic structure.

Keywords: *Thin capitalisation; Tax avoidance; Earning stripping rules; Tax reforms.*

1.0 Introduction

Within the Indian tax framework, thin capitalisation rule was first proposed to be introduced in, now lapsed, Direct Tax Code (DTC)-2010. This was in addition to General Anti Avoidance Rule (GAAR), but the thin cap rules, as it was in DTC, was in a very limited manner. Under clause 123 (1)(f) of DTC, any arrangement entered into by a person may be declared as an impermissible avoidance arrangement and the consequences, under this Code, of the arrangement may be determined by re-characterising any equity into debt or vice versa.[1] However, the DTC bill, 2010 lapsed

**Advocate, Department of Law, Ghaziabad, Uttar Pradesh, India. (E-mail: akshay.saxena@hotmail.com)*

with the dissolution of 15th Lok Sabha. Thereafter in 2017 The Finance Act, 2017 introduced the thin capitalisation rule by inserting a new section 94B in Income Tax Act, 1961. The current rule came into force on 1st April 2018.

2.0 Features of Thin Capitalisation Rule of India

The Indian thin capitalisation introduced rule aims to counter debt shifting at corporate level through excessive interest payments, and thereby protecting its tax base.[2] The Indian rules operate to deny interest deductions claim by an entity (Indian company or a permanent establishment (PE) of a foreign company) for its payment made in relation to any debt issued to a non-resident or to a PE of a non-resident and who is an Associated Enterprise (AE). The key features of this rule are as follows[3]:

- It applies to Indian companies and PE of foreign companies;
- It applies to third party creditor where explicit or implicit guarantee has been given by an AE;
- It has an earning stripping rule so that the interest expense claimed by an entity would be restricted to the fixed limit of its EBITDA (entity's earnings before interest taxes, deductions and amortization). The interest expense is denied to the extent that:
    - The interest expense is more than 30% of EBITDA, and/or
    - Interest paid or payable to AE whichever is less;
- A *de-minimis* threshold of interest expenditure of one crore rupees (US$ 160,000) exceeding which the thin capitalisation rule would be applicable;
- A carry forward of disallowed interest expense upto 8 assessment years;
- It does not apply to banks and insurance companies due to their special nature of business.

2.1 Design and aim of thin capitalisation rules

There are normally two main approaches to thin capitalisation rules: Safe Harbour Rule and Earning Stripping Rules (Rao & Sengupta, 2014). The two-fold aims of these rules are clear: to curtail international tax planning, and consequently, to increase revenue (Dourado & Feria, 2008). The safe harbour rule is widely used among the countries having thin capitalisation regime. This rule is a ratio rule that is meant to restrict the amount of debt for which interest is tax deductible. The exact definitions of the debt measure in the numerator of the ratio and of assets or equity in its denominator vary across countries, but the most common rule is either to use a ratio

based on total debt-to-equity or internal (corporate group) debt-to-equity (Schjelderup, 2016). In debt to equity ratio, interest deductibility is restricted if a measure of the company's debt relative to its assets or equity exceeds a given level ratio. For example, if a country has set a maximum debt-to-equity ratio of 4:1 under a safe harbour rule, then a controlled enterprise located in that country could deduct all of the interest payments it makes to its parent as long as no more than 80% of the controlled enterprise's capitalisation comes from internal debt (Gresik *et al*., 2015).

Recently more and more countries have started using more restricted method called 'earnings stripping rule' including India. These are rules in which there is a limit upto which an entity is permitted to deduct net interest expense on the debt based on proportion of entity's earnings before interest taxes, deductions and amortization (EBITDA). For example under the Indian thin capitalisation rules, the interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its EBITDA or interest paid or payable to associated enterprise, whichever is less.[4] The reason for more countries using earnings stripping rules has been primarily due to the perception of the ineffectiveness of safe harbour rule in restricting the debt bias. A few countries use both types of rules, whereby a subsidiary must satisfy either both or one of the rules (Ruf & Schindler, 2015).

2.2 Possible reasons for India to adopt earnings stripping rule against safe harbour rule

Since there are two approaches to thin capitalisation as mentioned above, it poses an interesting question to a country introducing this rule i.e., which approach would be effective in reducing the debt bias. Based on an empirical study, Gresik *et al.,* (2015) shows that the "optimal policy that maximizes the host country's national income is a pure earnings stripping rule with no safe harbour restriction (Rao & Sengupta, 2014)." Earnings stripping rules all but allocate profits into returns on debt and equity. While safe-harbour rules mostly focuses on internal debt, earnings stripping rules in principle target both internal as well as external debt (Mintz & Weichenrieder, 2010).

Brocke & Perez (2009) in their study believed that debt-to-equity rules were ineffective in limiting the debt bias, writing "it was very simple for companies to circumvent the limit established by debt-to-equity ratio by increasing the equity of the financed subsidiary in a manner sufficient to push down as much debt as necessary".

Earnings stripping rule is more desirable as it creates an exchange between amount of internal debt issued and the interest rate charged. Another advantage of earnings stripping rule over safe harbour rules is that unlike safe harbour rules,

earnings stripping rules confine both the amount of debt and interest rate that an affiliate pays. For the same amount of interest on internal debt, an earnings stripping rule gives multinationals an incentive to reduce its transfer price costs by lowering its interest rate below the transfer price chosen under a safe harbour rule, and increasing the amount of internal debt. Because safe harbour rules constrain the amount of internal debt issued to a subsidiary without limiting the optimal interest rate (transfer price) that is charged, the reduction in the interest rate under an earnings stripping rule has only a second-order reduction in multinational profit while the corresponding increase in internal debt generates a first-order gain. On the margin, for the same amount of interest paid on internal debt, an earnings stripping rule then generates a larger marginal return to FDI and a marginal increase in national income. Simulations suggest an increase in national income ranging from .05% to .8% if a host country switches from a safe harbour rule to an earnings stripping rule (Blouin *et* al., 2015).

Additionally, the implementation of an earnings stripping rule is also superior as compared to a safe haven debt-to-equity ratio when governments maximize tax revenues. This is because the earnings stripping rule is more effective at targeting highly productive firms. From the perspective of the government, these are just the firms that should be affected by the relaxation of the thin capitalisation rule (Mardan, 2013).

As discussed, the advantage of earning stripping rules is that, unlike the safe harbour rule, this rule targets both internal as well as external debt. Therefore it can be concurred that given the attempt of Indian Government to reduce international debt shifting, earning stripping rules was the better choice.

2.3 Economic effects of thin capitalisation rules

A study conducted by Buettner *et* al., (2006) on the effect of thin capitalisation on MNEs financing and investment decisions concluded that the amount of capital invested does not get lower in countries that have imposed a thin capitalisation rule. It did, nevertheless, find evidence of decreased tax sensitivity as a result of application of thin capitalisation rules. If thin capitalisation rules do in fact reduce tax sensitivity, then the economic impact of potential corporate tax reductions would be limited. Consequently, so too would the ability of Governments to stimulate the economy (by increasing foreign investment), through the introduction of those reductions (Ruf & Schindler, 2015).

Contrary to theoretical predictions, Ruf & Schindler (2015) did not find clear empirical evidence for reduced investment due to the imposition of thin capitalisation rules. It was observed that this might be due to there being too few empirical studies

investigating the effect of thin-capitalisation rules on investment. Another explanation could be the fact that multinationals rely on some loopholes in the regulation (such as, the preference for holding companies- Germany thin capitalisation rule) allowing them to work around thin-capitalisation rules and leading to the false impression that the regulation has been very effective.

There has not been a consensus on the economic effect of thin capitalisation rules. Although, there are well established literature on economic effects of anti-international tax policies, not much empirical evidence has been written on the effects of thin capitalisation rules on the economy.

2.4 Lacunas of Indian thin capitalisation rules

As previously discussed, thin capitalisation erodes corporate base of a country and hence it is no surprise that many number of countries have opted to reduce interest deductions. Although, the implementation of these rules have exponentially increased, leading commentator, De Mooij (2011) is of the opinion that such restrictions on deductions do not eliminate debt bias altogether, and they bring considerable new complexities and opportunities for tax avoidance. Further, he criticised the design of thin capitalisation and stated:

"Measures that put a cap on interest deductibility have had some effect on debt ratios, but create new complexities and problems. Thin capitalisation rules, introduced in several countries, seem to have reduced debt ratios most likely the levels of intracompany debt to which many of these rules apply. Yet, they seem to have also reduced investment. Moreover, these rules are only imperfect solutions to the problem of debt bias and come along with other costs. In fact, they are usually ad-hoc, not well targeted, and are often avoided by firms that can exploit hybrid instruments and international differences in definitions of debt and equity. Closing loopholes generally leads to refinements and complexities of tax laws."

2.4.1 Ad hoc nature

As pointed by De Mooij (2011), thin capitalisation rules are generally ad-hoc in nature. No two countries have identical rules and the differences among these rules is remarkable. Further, interest limitation rules appear to be rather unstable – most countries have rewritten theirs at least once (Burnett, 2014).

Domestically, existing thin capitalisation rules are blunt rules that are neither industry nor entity specific. It is therefore questionable that they can be considered suitable proxies for ascertaining whether the borrowing company is truly geared with the motivation of engaging in debt shifting (Rao & Sengupta, 2014). Interestingly, thin

capitalisation rules work in an assumption that interest rate can be estimated for all entity and for all industries within one jurisdiction (Rao & Sengupta, 2014). In reality, customising thin capitalisation rules to specific industries and deciding on specific ratio for an industry would be nearly not possible. Even if this were administratively feasible, it would be difficult to assign firms to specific industries if they operated across multiple industries (Klostermann, 2007).

Leading commentator Brown (2012) suggests that interest limitation rules "are not 'targeted anti abuse rules' but structural changes intended to mitigate the effects of the deduction for interest on debt", and observes that it is unfortunate that they are "cloaked in anti-abuse language". There has been a criticism of thin capitalisation rule regarding appropriateness of single interest rate of a subsidiary or even a workable range of ratios (Rao & Sengupta, 2014). Empirical studies have found that the thin capitalisation rule is only effective in reducing the internal debt to asset ratios and that MNEs make use of loopholes and have increased external debt to asset ratios (Ruf & Schindler, 2015).

2.4.2 Complexity in using EBITDA

As per the newly introduced section 94B of the Income Tax Act, company's profitability would be calculated using Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA). As per the section, interest deduction by a company would be restricted to 30% of EBITDA.

As per (OECD, 2016), EBITDA is a robust approach against tax planning. The OECD states that: "measuring economic activity using earnings should be the most effective way to ensure that the ability to deduct net interest expense is matched with the activities that generate taxable income and drive value creation."

EBITDA is a financial measure for equity valuation, credit analysis , and value of business. EBITDA of a company is calculated by taking the net income of the company and adding interest, taxes, depreciation and amortization back. It is used to analyse the profitability of the company before non-operational expenses and non-cash charges.

OECD suggests that EBITDA is a useful function in finding the ability of an entity to meet its obligation to pay interest. Moreover, for entities operating in different sectors and countries as EBITDA takes into account intangible assets along with tangible assets which sometimes are group's most valued assets and as such OECD recommends EBITDA as a measure for economic activity.

But even after praise of EBITDA by the OECD, it has been prone to criticism and scepticism as the perfect measure for economic activity of an entity. Moody's

Investors Service issued a global credit research paper in June 2000, which included the following observations and concerns about relying on EBITDA (Stumpp, 2000): "EBITDA can easily be manipulated through aggressive accounting policies relating to revenue and expense recognition, asset write downs and concomitant adjustments to depreciation schedules, excessive adjustments in deriving "adjusted pro-forma EBITDA," and by the timing of certain "ordinary course" asset sales."

In Strumpp's view, EBITDA (i) ignores changes in working capital and overstates cash flow and periods of working capital growth, (ii) can be a misleading measure of liquidity, (iii) does not consider the amount of required reinvestment – especially for companies with short lived assets, (iv) says nothing about the quality of earnings, (v) is an inadequate standalone measure for comparing acquisition multiples, (vi) ignores distinctions in the quality of cash flow (not all revenues are cash), (vii) is not a common denominator for cross-border accounting conventions, (viii) offers limited protection when used in indenture covenants, (ix) can drift from the realm of reality and, (x) is not well suited for the analysis of many industries because it ignores the unique attributes.

Another potential problem is EBTIDA fails to take into account the volatility of the industries. This makes it difficult for the management to anticipate the permissible net interest expense (Elliffe, 2017). As (Hey, 2014) suggests, an EBITDA restriction on deductible interest could "damage cyclic industries and start-ups and business in an economic crisis."

2.4.3 Explicit or implicit guarantee

Under Section 94B of the Indian Income Tax Act, a deeming fiction has been introduced whereby debt issued by third-party creditor to a subsidiary of an associated enterprise would be considered as a debt issued by an Associated Enterprise (AE) if it has given explicit or implicit guarantee to the third party creditor.

Third-party debt of a subsidiary which is guaranteed by an AE is economically equivalent to debt of the AE which is then invested by the AE in the subsidiary. The third party creditor is usually satisfied in giving loans to subsidiary as long as it has recourse to the parent's assets. Therefore, guaranteed debt can be seen as mobile and able to be shifted depending on tax conditions (or other conditions, although usually tax reasons have the biggest cash impact). It is for this reason that many interest limitation regimes treat guaranteed third-party debt like intra-group debt (Rao & Sengupta, 2014).

A more difficult situation arises when a third-party debt is provided to a subsidiary which is not expressly guaranteed by the parent. A particular area of intra-

group financing that has received a lot of attention lately is the concept of 'implicit support' in relation to intra-group financial transactions (Ledure *et al*.,). Implicit support can be defined as "…an incidental benefit from the taxpayer's passive association with the multinational group, its parent or another group member (Taxation Institute of Australia, 2008)." This phenomenon of implicit support has been recognized by the credit rating agencies. Well known credit rating agencies, Moody and Standard and Poor have both provided with guidance on how they account for implicit support. Moody's basically starts with a stand-alone credit rating and may then adjust the credit rating one or more notches depending on the impact of implicit support (Breggen *et al*., 2007). Standard & Poor's characterizes the parent-subsidiary relationship on a spectrum from being an investment to being an integral part of the group. On that basis, the incentives of the parent to support its subsidiary in the event of default is evaluated from ratings equalization on one end to no help from the parent on the other end (Standard & Poor, 2013).

However, it should be noted that an implicit guarantee generally cannot be regarded as providing the same value as an explicit guarantee arrangement from the parent. (*General Electric Capital Canada v The Queen,* 2009). While a formal guarantee arrangement creates a legal obligation for the parent to provide financial support, an implicit guarantee is an extrapolation of an opinion that economic incentives would cause a parent to act without any legal obligation to do so (*General Electric Capital Canada v The Queen,* 2009). Absent a formal guarantee, creditors have no recourse to the parent if it chooses not to aid its subsidiary (Mattsson, 2010).

Further, distinguishing implicit guarantee from tax reason to non- tax reason is quite difficult as implicit guarantee has a gradation effect of being a strong implicit guarantee to weak or no implicit guarantee. Sometimes a parent company taking certain risks into account, which are not motivated by tax, choose to finance its subsidiary with third party debt. As such, argument can be raised that tax deduction should be allowed as the third party debt was for non-tax reasons.

There is no easy way to distinguish that situation from one in which tax considerations have played a material role in the location of third-party debt. Because of implicit support, a third-party lender may be content to lend to a subsidiary rather than to the parent company, even without a parent guarantee. It may, through a choice of law clause, nominate the law of a country with high levels of creditor protection, but this will not impact on tax deductibility. In the face of relative indifference on the part of the lender, therefore, the group can select the location in which interest deductions are maximized (Rao & Sengupta, 2014).

Putting everything together, Indian thin capitalisation rule might prove

effective in curbing debt bias although there are certain ambiguities that are needed to be clarified to make sure that intended aim of thin capitalisation rule is achieved.

3.0 Possible Alternate Regulation and Fundamental Reforms

Thin capitalisation rules aim to prevent tax base erosion of a particular country. However, this can also have an effect negatively on the MNEs investment decision in that country. As previously discussed, there are some challenges to implement an effective thin capitalisation rule without complexity and administrative challenges. Therefore, a brief discussion can take place regarding possible alternate regulations of Controlled-Foreign Company (CFC) Rules and fundamental tax reforms towards Allowance for Corporate Equity (ACE) and Comprehensive Business Income Tax (CBIT).

3.1 Controlled-foreign company rules

A well-known theoretician of international taxation, Lars Eric Venehead, has elaborated a general rule concerning CFC: "If a company from one country is controlled by residents of another country who at the same time are members of this company, these persons will pay a tax on the full profit of the company if this profit has been handed to them with the purpose of tax evasion" (cited by: Andersson, 2006). CFC Rules aim at taxation in the parent company's jurisdiction, of profits which are placed in other jurisdictions in foreign affiliate companies in low or no tax jurisdictions (Kakade & Putiani, 2015). CFC Rules have the consequence of imputing the income of low-taxed controlled subsidiaries to the jurisdiction of their parent company (Gregor, 2016).

3.1.1 United States

The US adopted the CFC rules in 1964 which was introduced as Subpart F within the IRS. Subpart F Rules impose current US tax on undistributed earnings of a CFC. The Rule defines a CFC as a foreign corporation of which more than 50 per cent of the voting power or the total value is owned directly or indirectly by one or more US shareholders.[5] Additionally, to the requirement of 50% of the total voting power, a US shareholder has to own at least 10% of voting power.[6]

3.1.2 Germany

Germany soon followed and implemented CFC rules in 1972 (called as "Hinzurechnungsbesteuerun" in §§7 to 14 in the Foreign Tax Act). For so-called

"passive income", earned in affiliates of German MNCs, German CFC rules prevent the application of the tax-exemption principle and lead to the passive income immediately being included in the corporate tax base of the MNC's headquarters, if (i) the MNC holds at least 50% of the voting rights (directly or indirectly) in the foreign corporation, (ii) this income stems from non-active activities (*e.g.*, interest income in affiliates without a banking license, earned on capital not raised from unrelated third parties), and (iii) the affiliate faces a tax rate below 25% (Ruf and Weichenrieder, 2012).

3.1.3 Impact of CFC rules

CFC rules, which are designed to curb the tax revenue losses due to the outflow of passive investments into low-tax countries, are part of the international tax systems of most developed countries. A study by Ruf & Weichenrieder (2012), finds German CFC rules very effective in curbing passive investments by German MNEs in low or no tax jurisdictions. CFC rules have proven to be highly relevant for the investment decisions of corporations (Altshuler & Hubbard, 2003). Ruf & Weichenrieder (2012) further find that on the basis of a comprehensive database of German FDI, offshore tax-haven countries like, the Cayman Islands, Barbados etc. were not able to attract major amounts of passive investment or a large number of financing subsidiaries. CFC rules have a negative effect on an affiliate's total debt-to-asset ratio and an increase in strictness of CFC rules is associated with a further decrease in leverage (Mozule & Rezevska, 2016).

Compared to thin capitalisation rules, binding CFC rules only apply to domestic multinationals and do not affect domestic affiliates of foreign MNCs. As such to protect the national tax base, it is better to implement thin capitalisation rule (Haufler *et al.*, 2014).

3.2 Fundamental reforms: ACE and CBIT

The distinction given to debt over equity in traditional corporate tax regimes can hardly be justified on economic grounds. In order to remove this distortion, two polarized reforms were designed, ACE and CBIT. The CBIT was developed by the US Treasury Department (1992) whereas the ACE was elaborated by the Institute of Fiscal Studies (1991).

The CBIT eliminates the debt bias by denying existing debt deductibility or any financing cost, thereby affording no tax deductions for either debt or equity financing and having both return on equity and interest in debt taxed at corporate tax rate. This scheme of corporate tax reform achieves neutrality between debt and equity

finance (Brekke *et al*., 2014). An ACE reform system will also eliminate debt bias by allowing deduction for equity finance which is in addition to debt deduction and thus equalising both debt and equity with regard to tax. This system also, like CBIT, achieves neutrality between debt and equity finance (Brekke *et al*., 2014).

As per (Sørensen & Johnson, 2009), if the CBIT is accompanied by a lower statutory tax rate, domestic business tax revenue would become less vulnerable to international profit shifting through transfer pricing and thin capitalisation. Though this broadening of tax base would also increase the capital costs as suggested by the IMF (Fiscal Affairs Department, 2009). With the increase in capital cost, firms with profitable investment will be lower which in turn will result in less investment and can cause economy-wide capital decumulation (Kumar, 2015).

Theoretical and empirical literature give evidence that an ACE system successfully eliminate debt bias at corporate level (Devereux & Freeman, 1991). An ACE system is also assumed neutral regarding marginal investment, as (Sørensen & Johnson, 2009) observe "it only taxes economic rents (in excess of normal profits), without distorting marginal investment decisions". However, for a balanced budget, an ACE system needs to have a higher corporate tax rate or other tax rates (Ruf & Schindler, 2015). With respect to thin capitalisation, Gammie observe that "ACE clearly reduces thin capitalisation issues" (Gammie, 1991), as debt and equity will be the same with regard to corporate tax rate. Leading commentators De Mooij & Devereux went to out and said that "the ACE makes thin capitalization rules redundant" (De Mooij & Devereux, 2011). Hence both tax systems can be an efficient alternative to thin capitalisation rules.

4.0 Conclusion

This paper summarises the aim and design of thin capitalisation rules and the theoretical and empirical evidence of effects and impacts of thin capitalisation rules. The paper seeks to answer, whether thin capitalisation rule will be effective in curbing the debt bias in India. From a theoretical point of view, thin capitalisation rules are expected to reduce the debt bias and profit shifting by MNEs. Though, this comes at a cost of reduced investment domestically as domestic cost of capital will increase with thin capitalisation rules and country's international position for mobile capital can be adversely affected. Although, the decrease in debt bias does increase tax revenue for the government. Therefore, the overall effect of thin capitalisation rules remains ambiguous.

Empirical studies on the German thin capitalisation rules have shown to have a

positive effect on the internal debt bias. But such studies have also shown that MNEs often use loopholes in the thin capitalisation rules and increase their external debt to equity ratios. This overall effect a clear picture for a reduced investment in the studies.

This paper focuses on the Indian thin capitalisation rules which has a complex EBITDA method. EBITDA has been criticised as it can be easily manipulated by the MNEs. Although, to mitigate the adverse effect of volatility, the Indian thin capitalisation rules have allowed carry forward of disallowed interest.

As has been shown in this paper, on the matter of implicit support within intra-group financial transactions or to a third party lender, the Indian legislation is ambiguous. Without detailed explanation to rely upon, tax administrations and national courts are left to interpret the ambit of implicit support which can lead to uncertainty and insecurity among the tax payers.

A potential alternative to curbing debt bias is to rely on CFC rules. Empirical and theoretical literature has shown that CFC is effective in reducing international debt shifting and thus increasing revenue for the government. However it harms domestic firms in relation to competition with foreign firms.

In the event of a fundamental tax reform, ACE and CBIT both are good options in eliminating debt bias and thin capitalisation. Unlike CBIT, ACE actually has empirical literature on reduced firms' leverage. Although, to implement any of the two system requires may other aspects to be taken into account which is not the subject of this paper and the issue is still open for debate.

Endnotes

1. PRS,'The Direct Tax Codes Bill (2010)' http://www.prsindia.org/billtrack/direct-taxes-code-bill-2010-1268/.
2. Indian Finance Act, 'Limitation of interest deduction in certain cases' (2017).
3. Ibid.
4. Indian Finance Act, (2017) Section 43
5. (TITLE 26—INTERNAL REVENUE CODE 1986) § 957(a).
6. (TITLE 26—INTERNAL REVENUE CODE 1986) § 951(b).

References

Andersson, S. (2006). *CFC rules and double tax treaties: The OECD and UN model tax conventions* (Dissertation, Jönköping University, Jönköping International Business School). Retrieved from http://urn.kb.se/resolve?urn=urn:nbn:se:hj:diva-581.

Altshuler, R., & Hubbard, R. (2003). The effect of the tax reform act of 1986 on the location of assets in financial services firms. *Journal of Public Economics, 87*(1), 109 127.

Blouin, J, Huizinga, H., Laeven, L. & Nicodème, G. (2014). Thin capitalisation rules and multinational firm capital structure. *IMF Working Paper No. WP/14/12*. Retrieved from https://www.imf.org/external/pubs/ft/wp/2014/wp1412.pdf

Brekke, K. R., Pires, A., Schindler, D., & Schjelderup, D. (2014). Capital taxation and imperfect competition: ACE vs. CBIT. *Journal of Public Economics, 147*, 1-15.

Breggen, V. d. M., Dennis, B., Diakonova, I., Rafiq, A., Rogers, J., Serokh, M., & Yohana, B. (2007). Does debt matter? The transfer pricing perspective. *The Bureau of National Affairs, 16*(6) 200-206.

Brocke, K. V., & Perez, E. G. (2009). Group financing: From thin capitalization to interest deduction limitation rules. *International Transfer Pricing Journal, 16*(1), 29-35.

Brown, P. (2012). General report: The debt-equity conundrum. *Cahiers de Droit Fiscal International, 97b*.

Buettner, T., Overesch, M., Schreiber, U., & Wamser, G. (2006). The impact of thin-capitalization rules on multinationals' financing and investment decisions. *Institute for Federalism and Intergovernmental Relations, Working Papers* 2006-06. DOI: https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.537.3718&rep=rep1&type=pdf.

Burnett, C. (2014). Intra-group debt at the crossroads: Stand-alone versus worldwide approach. *World Tax Journal, 6*(1), 40-76.

Devereux, M., & Freeman, H. (1991). A general neutral profits tax. *Fiscal Studies, 12*(3), 1-15.

De Mooij, R., & Devereux, M. (2011). An applied analysis of ACE and CBIT reforms in the EU. *International Tax and Public Finance, 18*(1), 93-120.

De Mooij, R. (2011). Tax biases to debt finance: Assessing the problem, finding solutions. *Fiscal Studies, 33*(4), 489-512. DOI: http://www.jstor.org/stable/24440192.

Dourado, A. P., & Feria, R, (2008). Thin capitalization rules in the context of the CCCTB. *Oxford University Centre for Business Taxation*, *Working Papers* 0804.

Elliffe, C. (2017). Interest deductibility: Evaluating the advantage of earnings stripping regimes in preventing thin capitalisation. *New Zealand Law Review, 2*, 257-284.

Gammie, M. (1991). Corporate tax harmonization: An "ACE" proposal: Harmonizing european corporate taxation through an allowance for corporate equity. *European Taxation Journal, 31*(8), 238-242.

General Electric Capital Canada v The Queen. (2009). TCC (Tax Court of Canada), p.563.

Gregor, A. (2016). *The New EU CFC Rules (Council Directive (EU) 2016/1164) and The US Subpart F Rules; A Comparative Study* (Master's Thesis, International Business Taxation LLM, Tilburg University, Netherlands). Retrieved from https://arno.uvt.nl/show.cgi?fid=142847.

Gresik, A. T., Schindler, D., & Schjelderup, G. (2015). Immobilizing corporate income shifting: Should it be safe to strip in the harbour? *Journal of Public Economics, 152*, 68-78. DOI: https://doi.org/10.1016/j.jpubeco.2017.06.001.

Haufler, A., Mardan, M., & Schindler, D. (2014). An economic rationale for controlled-foreign corporation rules. *Annual Conference 2014 of German Economic Association*. Retreived from https://www.econstor.eu/bitstream/ 10419/100405/1/ VfS_2014_pid_973.pdf.

Hey, J. (2014). Base erosion and profit shifting and interest expenditure. *Bulletin for International Taxation, 68*(6/7), 332.

IFS. (1991). Equity for companies: A corporation tax for the 1990s. Commentary 26, Institute for Fiscal Studies (London).

IMF Fiscal Affairs Department. (2009). Debt bias and other distortions: Crisis-related issues in tax policy. *International Monetary Fund Study, 2009*(095), 40 DOI: http://dx.doi.org/10.5089/9781498335928.007

Klostermann, M. (2007). The consequences of hybrid finance in thin capitalization situations: An analysis of the substantive scope of national thin capitalization rules

with special emphasis on hybrid financial instruments. *SFB International Tax Coordination Discussion Paper No. 22*, DOI: https://dx.doi.org/10.2139/ssrn.1137591.

Kakade, P. R., & Putiani, P. (2015). Analysis of BEPS action plan 3 – Strengthening CFC rules. *International Taxation, 13*(24), 314-324.

Kumar, A. K. (2015). Thin capitalisation rules: A second-best solution to the cross-border debt bias? *Australia Tax Forum*, *30*(2), 99-355.

Ledure, D., Bertrand, P., Van der Breggen, M., & Hardy, M. (2010). Financial transactions in today's world: Observations from a transfer pricing perspective. *Intertax 38*(6/7), 350-358.

Mardan, M. (2013). The effects of thin capitalization rules when firms are financially constrained. *8th Norwegian-German Seminar on Public Economics*. Seminar presented at the meeting of CESifo in Munich, Germany. Retrieved from https://www.cesifo-group.de/dms/ifodoc/docs/Akad_Conf/CFP_CONF/ CFP_CONF _2013/Conf-ngs13\Koethenbuerger/Paper/ngs13_Mardan__19101482_en.pdf.

Mattsson, J. (2010). *Implicit support within intra-group financing : A comparative study of the transfer pricing treatment in Sweden, Canada and the United Kingdom* (Dissertation, Jönköping University, Jönköping International Business School). Retrieved from http://urn.kb.se/resolve?urn=urn:nbn:se:hj:diva-14478.

Mintz, J., & Weichenrieder, A. (2010). *The Indirect Side of Direct Investment: Multinational Company Finance and Taxation.* Cambridge, Massachusetts; London, England: The MIT Press. DOI:10.2307/j.ctt5hhc6c.

Mozule, L., & Rezevska, L. (2016). D*evelopment and effectiveness of controlled-foreign-company rules empirical evidence from European multinational companies* (Master Thesis, Norwegian School Of Economics, Bergen, Norway). Retrieved from https://openaccess.nhh.no/nhh-xmlui/bitstream/handle/11250/2403882/masterthesis.pdf?sequence=3&isAllowed=y.

OECD. (2016). Limiting base erosion involving interest deductions and other financial payments, Action 4 - 2016 update: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project. *OECD Publishing*, DOI: https://doi.org/10.1787/9789264268333-en.

Rao, R. K., & Sengupta, D. P. (2014). Action plan on base erosion and profit shifting: An Indian perspective. *National Institute of Public Finance and Policy*, *Working Papers* 14/133.

Ruf, M., & Schindler, D. (2015). Debt shifting and thin-capitalisation rules – German experience and alternative approaches. *Nordic Tax Journal,* (1), 17-33.

Ruf, M., & Weichenrieder, A. J. (2012). The taxation of passive foreign investments: Lessons from German experience. *Canadian Journal of Economic, 45*(4), 1504–1528.

Schjelderup, G. (2016). The tax sensitivity of debt in multinationals: A Review. *International Journal of the Economics of Business*, *23*(1), 109-121, DOI: 10.1080/13571516.2015.1115661.

Sørensen, P. B., & Johnson, S. (2009). Chapter 9: Taxing capital income– Options for reform in Australia. *Melbourne Institute, Australia's Future Tax and Transfer Policy Conference*, 179-235. Retrieved from https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.630.9827&rep=rep1&type=pdf.

Standard & Poor. (2013). Corporate ratings criteria. Retrieved from http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/ StandardAndPoors_Corporate_Ratings_Criteria.pdf.

Stumpp, P. M. (2000, June). Putting EBITDA in perspective: Ten critical failings of EBITDA as the principal determinant of cash flow. Retrieved from https://community.bus.emory.edu/club/GIM/Shared%20Documents/Putting%20EBITDA%20Into%20Perspective.pdf.

Taxation Institute of Australia. (2008, July 29). Intra-group finance guarantees and loans: Application of Australia's transfer and thin capitalisation rules. Retrieved from https://www.taxinstitute.com.au/submissions/intra-group-finance-guarantees-and-loans-application-of-australia-s-transfer-pricing-and-thin-capitalisation-rules.

Treasury Department. (1992). Report of the Department of the Treasury on Integration of the Individual and Corporate Tax Systems: Taxing Business Income Once.' (Jan. 1992) (Treasury report). Retrieved from https://www.treasury.gov/resource-center/tax-policy/documents/report-integration-1992.pdf