对利用利息扣除和其他款项
支付实现的税基侵蚀予以限制
第4项行动计划

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# TABLE OF CONTENTS

**ABBREVIATIONS & ACRONYMS** ................................................................................................................. 1

**EXECUTIVE SUMMARY** ...................................................................................................................... 2

**INTRODUCTION** .................................................................................................................................. 6
  - Use of interest and payments economically equivalent to interest for base erosion and profit shifting ..... 6
  - BEPS Action Plan and interest expense ......................................................................................... 12
  - Existing approaches to tackle base erosion and profit shifting involving interest .................. 12
  - European Union law issues ............................................................................................................. 18

**CHAPTER 1  RECOMMENDATIONS FOR A BEST PRACTICE APPROACH** ........................................ 24

**CHAPTER 2  INTEREST AND PAYMENTS ECONOMICALLY EQUIVALENT TO INTEREST** .......... 30

**CHAPTER 3  WHO A BEST PRACTICE APPROACH SHOULD APPLY TO** ....................................... 36
  - Entities which are part of a multinational group ........................................................................ 36
  - Entities which are part of a domestic group .............................................................................. 38
  - Standalone entities which are not part of a group .................................................................... 38
  - De minimis threshold .................................................................................................................... 40

**CHAPTER 4  APPLYING A BEST PRACTICE APPROACH BASED ON THE LEVEL OF INTEREST EXPENSE OR DEBT** ................................................................. 42
  - Applying the best practice approach to limit the level of interest expense in an entity ........ 42
  - Applying the best practice approach to limit an entity’s gross interest expense or net interest expense 44
  - An option to exclude certain public-benefit projects .............................................................. 44

**CHAPTER 5  MEASURING ECONOMIC ACTIVITY USING EARNINGS OR ASSET VALUES** .......... 52
  - Measuring economic activity using earnings ............................................................................. 52
  - Measuring economic activity using asset values ..................................................................... 54
  - Proposed approach ..................................................................................................................... 56

**CHAPTER 6  FIXED RATIO RULE** ........................................................................................................ 60
  - The aim of a fixed ratio rule .......................................................................................................... 60
  - Operation of a fixed ratio rule ....................................................................................................... 60
  - Setting a benchmark fixed ratio .................................................................................................. 62
  - Changes over time ........................................................................................................................ 72

**CHAPTER 7  GROUP RATIO RULE** ....................................................................................................... 76
  - The aim of a group ratio rule ........................................................................................................ 76
  - Option to apply different group ratio rules, or no group ratio rule .................................... 78
  - Obtaining financial information on a group .............................................................................. 78
  - Definition of a group .................................................................................................................... 80
  - Operation of a group ratio rule ................................................................................................... 82
目录

简称及缩略词................................................................................................................................. 1
摘要.................................................................................................................................................. 3
引言.................................................................................................................................................. 7
利用利息和经济上等同利息的支付达到 BEPS 效果 ............................................................... 7
BEPS 行动计划和利息费用 ......................................................................................................... 11
处理涉及利息的 BEPS 的现行方法 ............................................................................................. 13
欧盟法律问题 ............................................................................................................................. 19
第 1 章 最佳实践方法建议 ......................................................................................................... 25
第 2 章 利息和经济上等同利息的支出 ..................................................................................... 31
第 3 章 最佳实践方法的适用实体 ............................................................................................. 37
    隶属于跨国集团的实体 ............................................................................................................. 37
    隶属于本国集团的实体 ............................................................................................................. 39
    不属于某一集团的独立实体 ................................................................................................... 39
最低标准 ...................................................................................................................................... 41
第 4 章 基于利息费用或债务水平采用最佳实践方法 ............................................................. 43
    应用最佳实践方法限制实体的利息费用或债务水平 ......................................................... 43
    应用最佳实践方法限制实体毛利息费用或净利息费用 ................................................... 45
    排除特定公益项目的选择 ....................................................................................................... 45
第 5 章 使用收益或资产价值计量经济活动 ............................................................................. 53
    使用收益计量经济活动 ........................................................................................................... 53
    使用资产价值计量经济活动 ................................................................................................ 55
    建议的方法 ........................................................................................................................... 57
第 6 章 固定比率规则 .................................................................................................................. 61
    固定比率规则的目标 .............................................................................................................. 61
    固定比率规则的运作 .............................................................................................................. 61
    设定基准固定比率 ................................................................................................................ 63
    一段时期内的变动 ................................................................................................................ 73
第 7 章 集团比率规则 .................................................................................................................... 77
    集团比率规则的目的 .............................................................................................................. 77
    应用不同集团比率规则，或者不采用集团比率规则的方案 ............................................. 79
    获取集团财务信息 ................................................................................................................ 79
    集团的定义 ........................................................................................................................... 81
    集团比率规则的运用 .............................................................................................................. 81
Stage 1: Determine the group’s net third party interest/EBITDA ratio ........................................ 82
Stage 2: Apply the group’s ratio to an entity’s EBITDA ................................................................. 88
Addressing the impact of loss-making entities on the operation of a group ratio rule ......................... 90

CHAPTER 8 ADDRESSING VOLATILITY AND DOUBLE TAXATION ........................................... 94
Measuring economic activity using average EBITDA ........................................................................ 94
Carry forward and carry back of disallowed interest and unused interest capacity ............................ 94

CHAPTER 9 TARGETED RULES ...................................................................................................... 100
The aim of targeted rules .................................................................................................................. 100
Targeted rules to prevent avoidance of the general rules ................................................................ 102
Targeted rules to address other base erosion and profit shifting risks ........................................... 102
Definition of ‘related parties’ and ‘structured arrangements’ .......................................................... 104

CHAPTER 10 APPLYING THE BEST PRACTICE APPROACH TO BANKING AND INSURANCE GROUPS .................................................................................................................. 108

CHAPTER 11 IMPLEMENTING THE BEST PRACTICE APPROACH .................................................. 114
Implementation and co-ordination .................................................................................................... 114
Transitional rules .............................................................................................................................. 114
Separate entity and group taxation systems ...................................................................................... 114
Interaction of the best practice approach with hybrid mismatch rules under Action 2 .................... 118
Interaction of the best practice approach with controlled foreign company rules under Action 3 .... 118
Interaction of the best practice approach with other rules to limit interest deductions .................. 120
Interaction of the best practice approach with withholding taxes .................................................. 120

ANNEX A EUROPEAN UNION LAW ISSUES .............................................................................. 122

ANNEX B DATA ON COMPANIES AFFECTED BY A BENCHMARK FIXED RATIO AT DIFFERENT LEVELS .................................................................................................................. 126

ANNEX C THE EQUITY ESCAPE RULE ..................................................................................... 132

ANNEX D EXAMPLES ................................................................................................................... 136
ABBREVIATIONS & ACRONYMS

BEPS        Base Erosion and Profit Shifting
BIAC        Business and Industry Advisory Committee
CFC         Controlled Foreign Company
CIV         Collective Investment Vehicle
EBIT        Earnings before interest and taxes
EBITDA      Earnings before interest, taxes, depreciation and amortisation
EU          European Union
GAAP        Generally Accepted Accounting Principles
IFRS        International Financial Reporting Standards
JV          Joint Venture
OECD        Organisation for Economic Co-operation and Development
PwC         PricewaterhouseCoopers
TFEU        Treaty on the Functioning of the European Union
USD         United States Dollar
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<td>BEPS</td>
<td>税基侵蚀和利润转移</td>
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<tr>
<td>BIAC</td>
<td>商业及工业咨询委员会</td>
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<td>CFC</td>
<td>受控制外国公司</td>
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<td>OECD</td>
<td>经济合作和发展组织</td>
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<td>普华永道</td>
<td>普华永道会计师事务所</td>
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EXECUTIVE SUMMARY

It is an empirical matter of fact that money is mobile and fungible. Thus, multinational groups may achieve favourable tax results by adjusting the amount of debt in a group entity. The influence of tax rules on the location of debt within multinational groups has been established in a number of academic studies and it is well known that groups can easily multiply the level of debt at the level of individual group entities via intra-group financing. Financial instruments can also be used to make payments which are economically equivalent to interest but have a different legal form, therefore escaping restrictions on the deductibility of interest. Base Erosion and Profit Shifting (BEPS) risks in this area may arise in three basic scenarios:

- Groups placing higher levels of third party debt in high tax countries.
- Groups using intragroup loans to generate interest deductions in excess of the group’s actual third party interest expense.
- Groups using third party or intragroup financing to fund the generation of tax exempt income.

To address these risks, Action 4 of the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013) called for recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense. This report analyses several best practices and recommends an approach which directly addresses the risks outlined above. The recommended approach is based on a fixed ratio rule which limits an entity’s net deductions for interest and payments economically equivalent to interest to a percentage of its earnings before interest, taxes, depreciation and amortisation (EBITDA). As a minimum this should apply to entities in multinational groups. To ensure that countries apply a fixed ratio that is low enough to tackle BEPS, while recognising that not all countries are in the same position, the recommended approach includes a corridor of possible ratios of between 10% and 30%. The report also includes factors which countries should take into account in setting their fixed ratio within this corridor. The approach can be supplemented by a worldwide group ratio rule which allows an entity to exceed this limit in certain circumstances.

Recognising that some groups are highly leveraged with third party debt for non-tax reasons, the recommended approach proposes a group ratio rule alongside the fixed ratio rule. This would allow an entity with net interest expense above a country’s fixed ratio to deduct interest up to the level of the net interest/EBITDA ratio of its worldwide group. Countries may also apply an uplift of up to 10% to the group’s net third party interest expense to prevent double taxation. The earnings-based worldwide group ratio rule can also be replaced by different group ratio rules, such as the ‘equity escape’ rule (which compares an entity’s level of equity and assets to those held by its group) currently in place in some countries. A country may also choose not to introduce any group ratio rule. If a country does not introduce a group ratio rule, it should apply the fixed ratio rule to entities in multinational and domestic groups without improper discrimination.

The recommended approach will mainly impact entities with both a high level of net interest expense and a high net interest/EBITDA ratio, in particular where the entity’s ratio is higher than that of its worldwide group. This is a straightforward approach and ensures that an entity’s net interest deductions are directly linked to the taxable income generated by its economic activities. An important feature of the fixed
摘要

实证发现金融机构流动性及可替代性特征，因此跨国集团可通过调整集团企业内部债务数额外降低税负。不少学术研究已确认税收规则对跨国集团内部债务选择有影响。众所周知跨国集团可轻易地通过集团内部融资提高个别集团企业的债务水平。金融工具可用于支付经济上类似于利息但拥有不同法律形式的款项，从而规避对利息扣除的限制。这方面的税基侵蚀和利润转移（BEPS）风险可能来自三种基本情形：

- 集团将更多第三方债务转移到高税率国家。
- 集团通过内部贷款产生超出实际第三方利息费用的利息扣除。
- 集团用第三方或集团内部融资为免税收入的产生进行融资。

为处理这些风险，《BEPS行动计划》行动4（BEPS行动计划，OECD, 2013）呼吁就防止通过利息费用实现税基侵蚀之规则设计的最佳实践提供建议。本报告分析了若干个最佳实践，并提出了一项解决上述风险的建议。建议的方法是根据固定比率规则，该规则将一个实体的利息以及其他经济上等同于利息的支付款项之扣除按比例在该实体税款及折旧摊销前利润（EBITDA）的百分比。这个规则至少应适用于跨国集团内部企业，为确保各国采用低至中等对付BEPS的固定比率，同时考虑各国国情不同，该建议方法提出了介于3%至30%的可行比率区间。本报告还探讨各国在区间内制定本国固定比率时应考虑的若干因素，全球集团比率规则可作为前述方法的补充，以允许实体在某些情况下超过上限。

鉴于部分跨国集团因为某些非税务原因导致第三方债务杠杆偏高，该建议方法在固定比率规则以外还提出了集团比率规则。集团比率规则允许利息费用超过该国固定比率的实体将利息扣除至该集团全球范围的净利息/EBITDA比率。各国还可提高集团的第三方净利息费用比率最高达10%，以避免出现双重征税问题。以盈余为基准的集团全球比率规则可以不同的集团比率规则取代，例如部分国家现行的“权益豁免”规则（将实体的权益和资产负债与集团的权益和资产水平作比较）。国家亦可选择不采用任何集团比率规则。如果某国不采用集团比率规则，则应一视同仁对跨国和本国集团内部实体采用固定比率规则。

建议方法主要影响净利息支出水平较高，而且净利息/EBITDA比率也较高的实体。尤其是当该实体的比率高于集团的全球比率。这个方法相对直接，并可确保实体的利益扣除与经济活动所产生的应纳税收入直接挂钩。固定比率规则的一个重要特征是该规则将限制实体的利益扣除（即超出利息收入的利息费用）。该规则并不限制跨国集团考虑信用评级、货币和利用资本市场的便利程度等非税务因素后选择效率最高的国家和实体统一借第三方债务，然后在集团内部重组借款，以支持集团的经济活动。

该建议方法还允许各国制定其他条款作为固定比率规则和集团比率规则的补充，以减低这些规则对实体或BEPS风险较低情况下的影响，例如：
ratio rule is that it only limits an entity's net interest deductions (i.e. interest expense in excess of interest income). The rule does not restrict the ability of multinational groups to raise third party debt centrally in the country and entity which is most efficient taking into account non-tax factors such as credit rating, currency and access to capital markets, and then on-lend the borrowed funds within the group to where it is used to fund the group's economic activities.

The recommended approach also allows countries to supplement the fixed ratio rule and group ratio rule with other provisions that reduce the impact of the rules on entities or situations which pose less BEPS risk, such as:

- A de minimis threshold which carves-out entities which have a low level of net interest expense. Where a group has more than one entity in a country, it is recommended that the threshold be applied to the total net interest expense of the local group.

- An exclusion for interest paid to third party lenders on loans used to fund public-benefit projects, subject to conditions. In these circumstances, an entity may be highly leveraged but, due to the nature of the projects and the close link to the public sector, the BEPS risk is reduced.

- The carry forward of disallowed interest expense and/or unused interest capacity (where an entity's actual net interest deductions are below the maximum permitted) for use in future years. This will reduce the impact of earnings volatility on the ability of an entity to deduct interest expense. The carry forward of disallowed interest expense will also help entities which incur interest expenses on long-term investments that are expected to generate taxable income only in later years, and will allow entities with losses to claim interest deductions when they return to profit.

The report also recommends that the approach be supported by targeted rules to prevent its circumvention, for example by artificially reducing the level of net interest expense. It also recommends that countries consider introducing rules to tackle specific BEPS risks not addressed by the recommended approach, such as where an entity without net interest expense shelters interest income.

Finally, the report recognises that the banking and insurance sectors have specific features which must be taken into account and therefore there is a need to develop suitable and specific rules that address BEPS risks in these sectors.

Further technical work will be conducted on specific areas of the recommended approach, including the detailed operation of the worldwide group ratio rule and the specific rules to address risks posed by banking and insurance groups. This work is expected to be completed in 2016.

The amount of intragroup interest and payments economically equivalent to interest is also affected by transfer pricing rules. Revisions to Chapter I of the Transfer Pricing Guidelines under Actions 8-10 of the BEPS Action Plan (OECD, 2013), contained in the OECD Report Aligning Transfer Pricing Outcomes with Value Creation (OECD, 2015), limit the amount of interest payable to group companies lacking appropriate substance to no more than a risk-free return on the funding provided and require group synergies to be taken into account when evaluating intragroup financial payments. Further work on the transfer pricing aspects of financial transactions will be undertaken during 2016 and 2017.

A co-ordinated implementation of the recommended approach will successfully impact on the ability of multinational groups to use debt to achieve BEPS outcomes. To ensure the recommended approach remains effective in tackling BEPS involving interest, the implementation, operation and impact of the approach will be monitored over time, to allow for a comprehensive and informed review as necessary.
· 用最低标准扣除净利息费用偏低的实体。如果某集团在某国有多个实体，建议采用最低标准与集团该国的净利息费用总额进行比较。

· 如果第三方贷款资金是用来支付利息的，那么支付给第三方存款人的利息可获减免，但需符合某些条件。在此情况下，某实体的债务杠杆比率可能很高，但鉴于项目的性质及其与公共部门的紧密联系，BEPS 风险相对较高。

· 不允许扣除的利息费用及/或未使用的利息扣除额（如果某实体的实际净利息扣除额低于法定上限）结转至未来年度使用。这将降低被侵蚀母体的扣除利息费用能力的影响。结转不允许扣除的利息费用对于长期投资产生利息费用且该投资预计只会在未来年度产生纳税收入的实体有所帮助，亏损的实体在恢复盈利后将能够进行利息扣除。

本报告还建议制定有针对的规则支持建设性融资方法以防止该方法被滥用，例如人为地降低净利息费用水平。此外，各国还可考虑制定规则处理建议方法未能解决的特定 BEPS 风险，例如没有净利息费用的实体对利息收入进行隐藏。

最后，本报告认可银行及保险业有一些特殊情况必须加以考虑，因此有必要制定针对这些行业的 BEPS 风险的适当规定。

进一步的技术工作将针对该建议方法的特定领域展开，包括全球集团比率规则的具体应用，以及针对银行及保险集团风险的特殊规则。这些工作预计在 2016 年完成。

集团内部利息和经济上等同利息的支出数额也受转让定价规则影响。载于 OECD 报告《配售价创造的转让定价结果》(OECD, 2015) 的对 BEPS 行动计划 (OECD, 2013) 行动 8-10 中的转让定价指引第 1 章的修订，将缺乏适当实质的应付集团公司利息限制在提供相关资金所获得的无风险回报水平之内，而且要求在评估集团内部财务支出时必须考虑集团的协同效益。有关金融交易转让定价方面的进一步工作将于 2016 年和 2017 年间进行。

对于该建议方法的协调性实施将成功地影响跨国集团利用债务达到 BEPS 效果的能力。为确保建议方法在处理涉及利息的 BEPS 时保持有效性，且后应持续监控建议方法的实施、应用和影响，以便在需要时进行全面检讨。
INTRODUCTION

Use of interest and payments economically equivalent to interest for base erosion and profit shifting

1. The use of third party and related party interest is perhaps one of the most simple of the profit-shifting techniques available in international tax planning. The fluidity and fungibility of money makes it a relatively simple exercise to adjust the mix of debt and equity in a controlled entity. Against this background, Action 4 of the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013) calls for the:

[development of] recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be co-ordinated with the work on hybrids and CFC rules.

2. Most countries tax debt and equity differently for the purposes of their domestic law. Interest on debt is generally a deductible expense of the payer and taxed at ordinary rates in the hands of the payee. Dividends, or other equity returns, on the other hand, are generally not deductible and are typically subject to some form of tax relief (an exemption, exclusion, credit, etc.) in the hands of the payee. While, in a purely domestic context, these differences in treatment may result in debt and equity being subject to a similar overall tax burden, the difference in the treatment of the payer creates a tax-induced bias, in the cross-border context, towards debt financing. The distortion is compounded by tax planning techniques that may be employed to reduce or eliminate tax on interest income in the jurisdiction of the payee.

3. In the cross-border context, the main tax policy concerns surrounding interest deductions relate to the debt funding of outbound and inbound investment by groups. Parent companies are typically able to claim relief for their interest expense while the return on equity holdings is taxed on a preferential basis, benefiting from a participation exemption, preferential tax rate or taxation only on distribution. On the other hand, subsidiary entities may be heavily debt financed, using excessive deductions on intragroup loans to shelter local profits from tax. Taken together, these opportunities surrounding inbound and outbound investment potentially create competitive distortions between groups operating internationally and those operating in the domestic market. This has a negative impact on capital ownership neutrality, creating a tax preference for assets to be held by multinational groups rather than domestic groups. In addition, as identified in the BEPS Action Plan (OECD, 2013), when groups exploit these opportunities, it reduces the revenues available to governments and affects the integrity of the tax system. The use of interest deductions to fund income which is exempt or deferred for tax purposes, and obtaining relief for interest deductions greater than the actual net interest expense of the group, can also contribute to other forms of base erosion and profit shifting. These include the use of intragroup loans to generate deductible interest expense in high tax jurisdictions and interest income in low or no tax jurisdictions, the development of hybrid instruments which give rise to deductible interest expense but no corresponding taxable income, and the use of loans to invest in assets which give rise to a return that is not taxed or is
引言

利用利息和经济上等同利息的支付达到 BEPS 效果

1. 利用第三方和关联方利息可能是国际税务规划中最简单的利润转移技巧之一。现金的流动性和可替代性使企业及受控制实体的债务与权益组合相对容易。在此背景下，BEPS 行动计划的行动 4 (BEPS 行动计划, OECD, 2013) 呼吁：

[提出]设计最佳实践规则防止通过利用利息费用达到税收优惠的目的。例如通过对利用关联方和第三方债务过度扣除利息，或为免税或递延税项收入的产生进行融资，以及经济上等同利息的其他财务支出。相关工作包括评估不同类别限制的有效性。为支持上述工作，针对关联方的财务交易定价将制定转让定价指引，包括财务和税务担保、衍生工具（包括银行内部交易产生的内部衍生工具），以及附属和其他保险安排。相关工作将与混合工具及外国受控企业（CFC）规则的工作协调进行。

2. 大部分的国家根据本国法律对债务和权益有不同的税务处理。债务利息一般是支付方的可扣除费用，并按正常税率向收息方征税。另一方面，股息或其他权益回报一般不能扣除，而且收息方一般可享有商定或可享受的债务减免（免税、不计入应税收入、抵免等）。在只有国内环境下，处理方法的差异可能导致债务和权益承担相近的实体税务负担，但在跨境交易情况下对支付方处理的差异将会产生税务偏见引发的债务融资倾向。而在支付方所管理辖区减低或消除利息收入征税的税务规划技巧加剧扭曲了这种倾向。

3. 在跨境交易情况下，主要税务政策针对与集团对外和对内投资的债务融资相关的利息扣除。母公司一般可将利息费用提出税务减免，而持有股份的回报则可享有税务优惠，其中包括参股权利、优惠税率或只在分配股息时征税。另一方面，子公司可能可将利息费用提出税务减免，利用集团内部贷款大幅度扣除利息，以规避对当地利息的征税。整体而言，对内和对外投资的这些税务操作可能会造成跨国集团与本地企业集团之间出现竞争扭曲。这些资本所有权的中性性负面影响，导致跨国集团持有的资产比本地集团所持有的资产享有税务优势。此外，正如 BEPS 行动计划 (OECD, 2013) 所述，在集团进行这些税务操作时，政府的税收会相应减少，税务制度的公平性也会受损。利用利息扣除提供的资金可供免税用途或可作为递延税项，以及使利息扣除所取得的税务减免甚至大于集团的直接净利息费用，还将导致其他形式的 BEPS。其中包括利用集团内部贷款在高税地区产生可扣除利息费用，在低税率地区产生利息收入；制造混合工具产生利息减免费用，但不会产生相应的应扣除利息收入；以及利用贷款投资产生免税或低税回报的资产。下表 1 列举了一个简单的示例说明跨国集团如何根据债务地点，在对外和对内投资两种情况下获得税务利益。

| 表 1 税务对利息费用地的特点的影响示例 |
| 这些示例假设集团在获得利息费用扣除方面不受限制，例如不受转让定价或资本弱化规则限制。 |
taxed at a reduced rate. Box 1 below contains simple examples of how a multinational group can generate a benefit based on the location of its debt, in both outbound and inbound investment scenarios.

| Box 1. Example of the impact of tax on the location of interest expense |
| These examples assume no restriction on the ability of a group to obtain deductions for its interest expense, for example under transfer pricing or thin capitalisation rules. |

**Outbound investment**

Consider a simple group structure, including two companies (A Co and B Co). A Co is resident in a country with a 35% rate of corporate income tax, which exempts foreign source dividends from tax. B Co is resident in a country with a 15% corporate tax rate.

B Co borrows USD 100 from a third party bank at an interest rate of 10%. B Co uses these funds in its business and generates additional operating profit of USD 15. After deducting the USD 10 interest cost, B Co has a pre-tax profit of USD 5 and a post-tax profit of USD 4.25.

Alternatively, A Co could borrow the USD 100 from the bank and contribute the same amount to B Co as equity. In this case, B Co has no interest expense and its full operating profit of USD 15 is subject to tax. B Co now has a pre-tax profit of USD 15 and a post-tax profit of USD 12.75. Assuming A Co can set its interest expense against other income, A Co has a pre-tax cost of USD 10 and a post-tax cost of USD 6.50. Taken together, A Co and B Co have a total pre-tax profit from the transaction of USD 5 and a total post-tax profit of USD 6.25.

As a result of transferring the interest expense from B Co to A Co, the group is now subject to a negative effective rate of taxation (i.e. the group's post-tax profit exceeds its pre-tax profit).

**Inbound investment**

A similar result can also be achieved in an inbound investment context.

In this case, A Co is resident in a country with a 15% rate of corporate income tax and B Co is resident in a country with a 35% corporate tax rate.

B Co borrows USD 100 from a third party bank at an interest rate of 10%. B Co uses these funds in its business and generates additional operating profit of USD 15. After deducting the USD 10 interest cost, B Co has a pre-tax profit of USD 5 and a post-tax profit of USD 3.25.

A Co could also replace USD 50 of existing equity in B Co with a loan of the same amount, at an interest rate of 10% (the same rate as on the loan from the third party bank). In this case, B Co has a pre-tax and post-tax profit of nil. A Co has interest income on its loan to B Co, and has a pre-tax profit of USD 5 and a post-tax profit of USD 4.25. The group has reduced its effective tax rate from 35% to 15% by shifting profit from B Co to A Co.

Taking this one step further, A Co could replace USD 100 of existing equity in B Co with a loan of the same amount. Assuming B Co can set its interest expense against other income, as a result of this transaction B Co now has a pre-tax loss of USD 5 and a post-tax loss of USD 3.25. A Co receives interest income from B Co, and has a pre-tax profit of USD 10 and a post-tax profit of USD 8.50. Taken together, A Co and B Co have a pre-tax profit of USD 5 and a post-tax profit of USD 5.25. As a result of thinly capitalising B Co and shifting profit to A Co, the group is now subject to a negative effective rate of taxation.

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4. The ongoing existence of international debt shifting has been established in a number of academic studies which show that groups leverage more debt in subsidiaries located in high tax countries.
对外投资

假设有一结构简单的集团，旗下有两家公司（A公司和B公司）。A公司所在国的企业所得税税率为35%，但来自外国的股息收入可获税收减免。B公司所在国的企业所得税税率为15%。

B公司向第三方银行借入100万美元，利率为10%。B公司利用这笔资金经营业务，产生了额外的经营利润15万美元。在扣除10万美元的利息成本后，B公司的税前利润是5万美元，税后利润是4.25万美元。

另一种做法是A公司向银行借入100万美元，用这笔资金入股B公司。在此情况下，B公司没有利息费用，全部的经营利润15万美元都会被征税。B公司的税前利润是15万美元，税后利润是12.75万美元。假设A公司能够将利息费用抵销其他收入，A公司的税前成本是10万美元，税后成本是6.50美元。A公司和B公司整体来自交易的税前利润总额是7.5万美元，税后利润总额是6.25万美元。

由于将利息费用从B公司转移给A公司，集团的实际税率为负数（即集团的税后利润超过其税前利润）。

对内投资

对内投资的情况下也可产生类似的结果。

在此情况下，A公司所在国的企业所得税税率为15%，B公司所在国的企业所得税税率为35%。

B公司向第三方银行借入100万美元，利率为10%。B公司利用这笔资金经营业务，产生了额外的经营利润15万美元。在扣除10万美元的利息成本后，B公司的税前利润是5万美元，税后利润是3.25万美元。

A公司还可将其目前持有B公司股份50万美元转换为相同金额的贷款，利率为10%（与第三方银行的贷款利率相同）。在此情况下，B公司的税前和税后利润是零。A公司借给B公司的贷款可产生利息收入，因此税前利润是5万美元，税后利润是4.25万美元。该集团通过将利润从B公司转移给A公司将实际税率从35%降至15%。

再进一步分析，A公司可将其目前持有B公司股份100万美元转换为相同金额的贷款。假设B公司能够将利息费用抵销其他收入，通过这项交易，B公司的税前亏损是5万美元，税后亏损是3.25万美元。A公司向B公司收取利息收入，因此税前利润是10万美元，税后利润是8.50万美元。A公司和B公司的整体税前利润是5万美元，税后利润是5.25万美元。经过B公司的资本淡化，以及利润转移至A公司，该集团产生了实际税率为负数的结果。

4. 不少学术研究确认国际债务转移的持续存在反映跨国集团通过高税率国家的子公司承担较多债务（M en et al., 2011; Huizinga, Laeven and Nicolet, 2008; Minz and Weichenrieder, 2005; Desai, Foley and Hines, 2004）。债务转移不仅影响发达国家，对发展中国家来说也是一个问题，而且根据学术研究，发展中国家对债务转移风险的影响更大（Fuat, Hebous and Riedel, 2011）。学术研究显示资本淡化与跨国集团有密切联系（Taylor and Richardson, 2013），与可比较的内资企业相比，外资企业会更多地利用债务（Egger et al., 2010）。额外的债务通过集团内部和第三方提供（M en et al., 2011），而集团内部贷款一般在第三方借贷成本偏高时采用（Beuvernet et al., 2012）。学术界还研究了资本弱化规则的有效性，显示资本弱化规则可达到降低子公司债务总额的效果（Blouin et al., 2014; Beuvernet et al., 2012）。如果资本弱化规则只适用
(Moen et al., 2011; Huizinga, Laeven and Nicodeme, 2008; Mintz and Weichenrieder, 2005; Desai, Foley and Hines, 2004). Debt shifting does not only impact developed countries, but is also an issue for developing countries which, according to academic research, are even more prone to these risks (Fuest, Hable and Riedel, 2011). Academics have shown that thin capitalisation is strongly associated with multinational groups (Taylor and Richardson, 2013), and that foreign-owned businesses use more debt than comparable domestically-owned businesses (Egger et al., 2010). Additional debt is provided through both intragroup and third party debt (Moen et al., 2011), with intragroup loans typically used in cases where the borrowing costs on third party debt are high (Buettermer et al., 2012). Academics have also looked at the effectiveness of thin capitalisation rules and illustrated that such rules have the effect of reducing the total debt of subsidiaries (Blouin et al., 2014; Buettermer et al., 2012). Where thin capitalisation rules apply solely to interest deductions on intragroup debt, these rules are effective in reducing intragroup debt but then lead to an increase in third party debt, although this may not be to the same extent (Buettermer et al., 2012).

5. The impact of interest limitation rules on investment has also been the subject of academic studies and the topic has been approached using both theoretical models and empirical analysis. Analysing the impact of interest limitation rules on investment from a theoretical standpoint, academics suggest that such rules would increase effective capital costs thus reducing real investment (Ruiz and Schindler, 2012). The theoretical approach is supported by studies which suggest that certain countries set lenient thin capitalisation rules in order to protect foreign direct investment (Haufer and Runkel, 2012). The limited empirical analysis that has been done does not, however, support this theory. Two studies, both analysing the effect of German interest limitation rules on investment, find no significant evidence of a reduction of investment in relation to either thin capitalisation rules (Weichenrieder and Windischbauer, 2008) or interest barrier rules based on a ratio of interest expense to income (Buslei and Simmler, 2012). This lack of empirical support may be due to a number of factors including the fact that multinational groups may avoid the application of the interest limitation rule by using loopholes in the legislation or by adjusting their capital structure (Ruiz and Schindler, 2012). Therefore, there does not seem to be enough empirical evidence to reach conclusions on the actual impact of interest limitation rules on foreign investment.

6. Countries have introduced a wide range of rules to address issues of base erosion and profit shifting involving third party and intragroup interest. These include general interest limitation rules which put an overall limit on the level of interest deductions that an entity can claim, as well as targeted rules which address specific planning risks. Where general interest limitation rules have been used, in some countries they have focused on inbound investment situations only, while in others rules have attempted to address both inbound and outbound situations. The main types of rules applied by countries are considered later in this introduction. These approaches have been successful to varying degrees, but there is a sense that unilateral action by countries is failing to tackle some of the issues at the heart of this problem. Partly, this is because the fungibility of money and the flexibility of financial instruments have made it possible for groups to bypass the effect of rules and replicate similar benefits using different tools. This has led to countries repeatedly introducing new rules, or amending existing ones, creating layers of complexity without addressing the key underlying issues. There is also a concern that a robust approach to restrict interest deductions by a single country could adversely impact the attractiveness of the country to international business and the ability of domestic groups to compete globally.

7. It has therefore become increasingly apparent that a consistent approach utilising international best practices would be a more effective and efficient way of addressing concerns surrounding the use of interest in base erosion and profit shifting. This approach should encourage groups to adopt funding structures whereby: (i) the net interest expense of an entity is linked to the overall net interest expense of the group; and (ii) the distribution of a group's net interest expense should be linked to income-producing activities. Groups should also benefit from a consistent approach between countries. Similar rules based on the same principles should make the operation of rules more predictable, enabling groups to plan their capital structures with greater confidence. It could also make it possible to introduce group-wide systems
于集团内部债务的利息扣除，这些规则能有效地降低集团内部债务，但将导致第三方债务增加，虽然两者的影响程度不一定相同 (Buehler et al., 2012)。

5. 利息扣除限制规则对投资的影响也是学术研究的课题。学术界通过理论模型和实证分析研究这个课题。从理论角度分析利息扣除限制规则对投资的影响，学术界认为这些规则可能增加实际资本成本，从而减少实际投资 (Ruf and Schindler, 2012)。该理论观点获得了研究支持，研究结果显示部分国家的资本弱化规则较为宽松，目的是保障外国直接投资 (Haufler and Runkel, 2012)。但已进行的有限实证分析却支持上述理论。有两项研究分析了德国利息扣除限制规则对投资的影响，研究结果显示没有重大证据证明投资因资本弱化规则 (Weichenrieder and Windischbauer, 2008) 或因利息费用占收入比率的利息限制规则而减少 (Baudel and Simmer, 2012)。证据支持不足可能与若干因素有关，其中包括跨国集团可通过利用法律漏洞，或调整资本结构规避利息扣除限制规则的应用 (Ruf and Schindler, 2012)。因此，目前似乎没有足够的实证证据证明利息扣除限制规则对外国投资的实际影响下结论。

6. 各国引进了各种规则处理涉及第三方和集团内部利息的 BEPS 问题。其中包括一般利息扣除限制规则对实体能够获得的利息扣除水平整体设限，以及针对特定税务规划风险的针对性规则。如果采用一般利息扣除限制规则，一些国家会集中处理对内投资，而另一些国家会制定规则涵盖对内和对外投资。各国所采用规则的主要类别将在本章节稍后段落探讨。这些方法发挥了不同程度的作用，但各国采用单一行动似乎未能从根本上解决某些问题。一部分原因是因为中国的替代性和金融工具的灵活性使跨国集团能够绕过规则影响，利用不同的工具复制类似的结果。因此各国不断引进新的规则，或修订现行规则，以求规则越来越复杂，但依然未能触及最关键的关键问题。此外，有意见认为某些国家如推行完善的立法保障利益扣除，可能会对外国吸引国际投资的能力，以及本国企业的全球竞争力构成负面影响。

7. 因此，各方意识到采用国际最佳实践的统一方法来处理利息扣除的 BEPS 问题会更为有效和高效。这个方法将会鼓励跨国集团采用下列融资结构：(i) 实体的净利息费用与集团的总体利息费用挂钩；以及 (ii) 集团的净利息费用分享与产生盈利的活动挂钩。各国采用单一的方法对跨国集团也有利。基于相同原则的类似规则使规则的运用更可预测，使跨国集团在规划资本结构时增强信心。跨国集团还可在集团系统和流程生成所需信息，使不同国家的合规工作更简单、成本更低。统一方法可纠正扭曲的税务操作，减轻难以预料的双重征税风险，而且杜绝 BEPS 的机会后，各集团也可得到更公平、更平等的待遇。

BEPS 行动计划和利息费用

8. 2012 年 G20 呼吁经济合作和发展组织 (OECD) 分析 BEPS 问题，制定行动计划并以互相协凋及全面的方式处理这些问题。OECD 在 2013 年 7 月公布 BEPS 行动计划 (OECD, 2013)，该计划包含 15 项行动。其中若干行动针对已经利用利息扣除的 BEPS 的不同方面。例如利用混合金融工具或混合实体安排使同一项目支付产生两重税前扣除，或支付方的支付获得税前扣除，而收款方却不需要按正常收入课税。这些问题通过行动 2 制定的模型规则处理 (中和混合配对安排效率)，行动 3 的工作 (加强《CFC 规则》) 以及控制外国公司 (CFC) 规则的设计提出建议，其中包括协助处理受控制公司在低税率地区的利润收入问题。行动 4 (限制通过利息扣除和其它经济支付达到税基侵蚀目的) 即本报告重点探讨的课题，通过将利息扣除
and processes to produce required information, making compliance with rules in multiple countries simpler and cheaper. A consistent approach should remove distortions, reduce the risk of unintended double taxation and, by removing opportunities for base erosion and profit shifting, improve fairness and equality between groups.

**BEPS Action Plan and interest expense**

8. In 2012 the G20 called on the Organisation for Economic Co-operation and Development (OECD) to analyse the issue of base erosion and profit shifting and develop an action plan to address these issues in a co-ordinated and comprehensive manner. The BEPS Action Plan (OECD, 2013) was delivered by the OECD in July 2013 and contains 15 Actions. Several of these address different aspects of base erosion and profit shifting using interest. Arrangements using hybrid financial instruments or hybrid entities to generate two tax deductions for the same payment, or payments which are deductible in the payer but are not taxed as ordinary income in the recipient, are addressed through model rules developed under Action 2 (Neutralise the effects of hybrid mismatch arrangements). Work under Action 3 (Strengthen CFC rules) has developed recommendations regarding the design of controlled foreign company (CFC) rules, which among other things should help to address the issue of interest income in controlled companies in low tax jurisdictions. Action 4 (Limit base erosion via interest deductions and other financial payments), which is the focus of this report, makes recommendations for best practices in the design of rules to address base erosion and profit shifting using interest and payments economically equivalent to interest, by aligning interest deductions with taxable economic activity. Action 4 also refers to the development of transfer pricing guidance for related party financial transactions, which will be carried out as a separate project to be completed by 2017. This work should in no way impede countries from implementing the best practice approach contained in this report. Revisions to Chapter I of the Transfer Pricing Guidelines under Actions 8-10 (Intangibles; Risks and capital; and Other high risk transactions) limit the amount of interest payable to group companies lacking appropriate substance to no more than a risk-free return on the funding provided and require group synergies to be taken into account when evaluating intragroup financial payments.

9. Action 4 is focused on the use of third party, related party and intragroup debt to achieve excessive interest deductions or to finance the production of exempt or deferred income. A best practice approach to tackling these issues should apply to all forms of interest and payments equivalent to interest, to ensure that groups in an equivalent position are treated consistently and to reduce the risk of a rule being avoided by a group structuring its borrowings into a different legal form. Base erosion and profit shifting can arise from arrangements using third party debt (e.g. where one entity or country bears an excessive proportion of the group’s total net third party interest expense) and intragroup debt (e.g. where a group uses intragroup interest expense to shift taxable income from high tax to low tax countries). It can also occur where payments are made to a lender outside a country or within the same country. For example, within a country base erosion and profit shifting may arise as a result of interest paid to a third party under a structured arrangement, or where interest is paid to a group entity in the same country which makes a corresponding payment to a foreign lender. In order to be effective in tackling base erosion and profit shifting, a best practice approach should therefore apply to all of these situations.

**Existing approaches to tackle base erosion and profit shifting involving interest**

10. The recommendations in this report are the result of significant work which explored the advantages and disadvantages of different types of rules. This included a review of countries’ experiences as to how rules operate in practice and impacts on taxpayer behaviour. It also included an analysis of empirical data on the leverage of groups and entities in countries which do and do not currently apply rules to limit interest deductions, and the results of academic studies.
与应课税经济活动挂钩，就制定规则处理利用利息和经济上等同利息的支付达到 BEPS 目的的最佳实践提出建议。行动 4 还提及就关联方财务交易制定转让定价指引，这项工作作为独立项目将于 2017 年完成。这项工作不会妨碍各国实施本报告所述的最佳实践方法。行动 8-10 转让定价指引第 1 章的修订 (无形资产、风险与资本；其他高风险交易) 将缺乏适当实际的应付集团公司利息限制在提供资金的无风险回报水平内，而且要求在评估集团内部财务支付时必须考虑集团的协同效应。

9. 行动 4 的重点是利用第三方、关联方和集团内部债务过度扣除利息，或为产生免税或递延税收项收入融资。处理这些问题的最佳实践方法应适用各种形式的利息及等同利息的支出，以确保处于同等地位的集团获得一致的对待，降低集团通过利用不同的法律形式制定借贷结构规避规则的风险。利用第三方债务安排（例如实体或国家所承担的集团第三方净利息费用总额不超过比例）和集团内部债务（例如集团利用集团内部利息费用将纳税收入从高税负国家转移至低税负国家）也可能产生 BEPS 效果。BEPS 还可能在向国外或本国批款人支付时发生。举例来说，在同一个国家根据结构性安排向第三方支付利息可能发生 BEPS，或向本国的集团实体支付利息，而本国的集团实体再向外国批款人支付相应款项也可能发生 BEPS。为有效处理 BEPS 问题，最佳实践方法需要适用于上述各种情况。

处理涉及利息的 BEPS 的现行方法

10. 本报告的建议是对不同类别规则的优点和缺点进行大量分析后得出的成果。其中包括检查各国在实际应用这些规则方面的经验，以及规则对纳税人行为的影响。其中还包括集团和实体在目前实施及不实施利息扣除限制规则的国家借贷的实证数据分析，以及学术研究成果。
11. Rules currently applied by countries fall into six broad groups, with some countries using a combined approach that includes more than one type of rule:

1) Arm’s length tests, which compare the level of interest or debt in an entity with the position that would have existed had the entity been dealing entirely with third parties.

2) Withholding tax on interest payments, which are used to allocate taxing rights to a source jurisdiction.

3) Rules which disallow a specified percentage of the interest expense of an entity, irrespective of the nature of the payment or to whom it is made.

4) Rules which limit the level of interest expense or debt in an entity with reference to a fixed ratio, such as debt/equity, interest/earnings ratios or interest/total assets.

5) Rules which limit the level of interest expense or debt in an entity with reference to the group’s overall position.

6) Targeted anti-avoidance rules which disallow interest expense on specific transactions.

12. An arm’s length test requires consideration of an individual entity’s circumstances, the amount of debt that the entity would be able to raise from third party lenders and the terms under which that debt could be borrowed. It allows a tax administration to focus on the particular commercial circumstances of an entity or a group but it can be resource intensive and time consuming for both taxpayers and tax administrations to apply. Also, because each entity is considered separately after arrangements are entered into, the outcomes of applying a rule can be uncertain, although this may be reduced through advance agreements with the tax administration. An advantage of an arm’s length test is that it recognises that entities may have different levels of interest expense depending on their circumstances. However, some countries with experience of applying such an approach in practice expressed concerns over how effective it is in preventing base erosion and profit shifting, although it could be a useful complement to other rules (e.g. in pricing the interest income and expense of an entity, before applying interest limitation rules). In particular, countries have experience of groups structuring intragroup debt with equity-like features to justify interest payments significantly in excess of those the group actually incurs on its third party debt. Additionally, an arm’s length test does not prevent an entity from claiming a deduction for interest expense which is used to fund investments in non-taxable assets or income streams, which is a base erosion risk specifically mentioned as a concern in the BEPS Action Plan (OECD, 2013).

13. Withholding taxes are primarily used to allocate taxing rights to a source country, but by imposing tax on cross-border payments they may also reduce the benefit to groups from base erosion and profit shifting transactions. Withholding tax has the advantage of being a relatively mechanical tool which is easy to apply and administer. However, unless withholding tax is applied at the same rate as corporate tax, opportunities for base erosion and profit shifting would remain. In fact, in some cases withholding taxes can drive base erosion and profit shifting behaviour, where groups enter into structured arrangements to avoid imposition of a tax or generate additional tax benefits (such as multiple entities claiming credit with respect to tax withheld). Where withholding tax is applied, double taxation can be addressed by giving credit in the country where the payment is received, although the effectiveness of this is reduced if credit is only given up to the amount of tax on net income. This can impose a significant cost on groups not engaged in base erosion and profit shifting, if an entity suffers withholding tax on its gross interest receipts, but is unable to claim a credit for this because its taxable income is reduced by interest expense. In practice, where withholding tax is applied the rate is often reduced (sometimes to zero) under bilateral tax treaties. It would also be extremely difficult for European Union (EU) Member States to apply withholding taxes on
11. 各国目前实施的规则可分为 6 大类，部分国家会采用混合类型规则的方法：

1) 独立交易规则：将实体的实际经营水平与实体在完全与第三方交易时可能出现的情况作对
比。

2) 利息支出的预提税被用来将征税权分配到利息来源管理。

3) 不允许实体享受利息费用的一部分 (某个具体百分点) 获得税前扣除的规则，此规则对利息支付
的性质或对象不会加以考虑。

4) 以固定比率的方式 (例如区时室、利息/盈利比例或利息/总资产比例) 限制实体的利息费用
或债务水平的规则。

5) 以集团整体单位限制实体利息费用或债务水平的规则。

6) 不允许某些特定交易的利息费用获得税前扣除的针对性反避税规则。

12. 独立交易测试需要考虑个别实体的具体情况，实体能够向第三方放款人举债的金额，以及借贷条
款、税务机关由此可关注一家实体或集团的具体商业情况，但采用这种测试的纳税人和税务机关因此可
能需要投入大量资源及花费大量时间。此外，存在在达成安排后会独立考虑每家实体，尽管可通过对与
税务机关达成事先裁定减低影响，但仍无法确定采用该准则的结果。独立交易测试的优点是它认可实体根
据其自身情况可能会有不同水平的利息费用，但部分实施这种方法的国家对该方法是否能够有效防止
BEPS 表示关注，虽然该方法可作为其他规则的有用补充 (例如在实施利息扣除限制规则之前确定某实体的利息
收入和支出)。值得一提的是，部分国家的企业集团将拥有类似股份的特征纳入集团内部债务结构，以作
为解释利息支出大幅超过集团第三方债务实际利息费用的理由。此外，独立交易测试并不能阻止实体就
用于投资非赚税资产或收入流的资金产生的利息费用进行扣除，这是 BEPS 行动计划特别指出的一个税
基侵蚀风险 (OECD, 2013)。

13. 提税税主要用来将征税权分配到利息来源国，但跨国支付征税税可能会减少跨国集团通过 BEPS
交易获得的利益。预提税的优点是应用方式相对机械，实施和管理都相对容易。然而，除非预提税率率
与企业所得税率水平列，否则仍然存在 BEPS 机会。事实上，在某些情况下预提税甚至会被长期 BEPS
行为，例如集团性结构安排以避免被征税或产生额外的税务利益 (例如多家实体就预提税须申请税务豁
免)。如果实施预提税，双重征税的问题可通过收取支付的国家提供税务抵免税来处理。如果税务抵免只适
用于净收入所产生的利息，税务抵免税的费用也会相应减低。如果一家实体的利息收入总额被征收预提税，
但因为其应纳税收入因利息费用而减少，从而无法申请税务抵免，这对不参与 BEPS 的集团来说可能
会产生较高成本。实际上，即使实施预提税，但根据双边税收协定，预提税率往往会被调低 (有时甚至足
零)。根据利息和特许权使用费指令，欧盟联盟 (欧盟) 成员国很难就联盟内部的利益支付征收预提税。
此外，部分国家还因为一些更宏观的政策因素，目前没有对利息支付实施预提税，因此实施新税种也
会变得困难。整体而言在大部分情况下预提税并不是彻底解决企业所得税法律制度中避税的工具，但部分
国家仍可在实施最佳实践的同时征收预提税。

14. 不允许实体享受利息费用的一部分 (某个具体百分点) 获得税前扣除的规则实际上增加了所有最底限
interest payments made within the European Union due to the Interest and Royalty Directive. In addition, there are broader policy reasons why some countries do not currently apply withholding tax to interest payments, which could make the introduction of new taxes difficult. Taken together, these factors mean that in many situations withholding taxes would not be a suitable tool for completely tackling the base erosion and profit shifting risks which are the subject of this report. However, countries may still continue to apply withholding tax alongside the best practice.

14. Rules which disallow a percentage of all interest paid by an entity in effect increase the cost of all debt finance above any de minimis threshold. Therefore, entities with a relatively low leverage will be subject to the same proportionate disallowance as similar entities with very high levels of debt. This approach is likely to be more effective in reducing the general tax preference for debt over equity, than in targeting base erosion and profit shifting involving interest.

15. For the reasons set out above, the rules in groups 1 to 3, on their own, do not address all of the aims of Action 4 set out in the BEPS Action Plan (OECD, 2013). As such, they are not considered to be best practices in tackling base erosion and profit shifting involving interest and payments economically equivalent to interest if they are not strengthened with other interest limitation rules. However, these rules may still have a role to play within a country’s tax system alongside a best practice approach, either in supporting those rules or in meeting other tax policy goals. Therefore, after introducing the best practice approach, a country may also continue to apply an arm’s length test, withholding tax on interest, or rules to disallow a percentage of an entity’s total interest expense, so long as these do not reduce the effectiveness of the best practice in tackling base erosion and profit shifting.

16. The best practice approach set out in this report is based on a combination of some or all of the rules in groups 4 to 6 above. A general limit on interest deductions would restrict the ability of an entity to deduct net interest expense based on a fixed financial ratio. This could be combined with a rule to allow the entity to deduct more interest up to the group’s equivalent financial ratio where this is higher. If a country does not introduce a group ratio rule, it should apply the fixed ratio rule to entities in multinational and domestic groups without improper discrimination. These general rules should be complemented by targeted rules to address planning to reduce or avoid the effect of the general rules, and targeted rules can also be used to tackle specific risks not covered by the general rules. This approach should provide effective protection for countries against base erosion and profit shifting involving interest, but should not prevent businesses from raising the debt finance necessary for their business and commercial investments.

17. Rules which limit interest expense by reference to a fixed ratio are relatively easy to apply and link the level of interest expense to a measure of an entity’s economic activity. These rules are currently applied by a number of countries. However, the way in which existing rules are designed is not always the most effective way to tackle base erosion and profit shifting. The majority of countries applying fixed ratio rules link interest deductibility to the level of equity in an entity, typically through thin capitalisation rules based on a debt/equity test. The main advantage of such a test is that it is relatively easy for tax administrations to obtain relevant information on the level of debt and equity in an entity and it also provides a reasonable level of certainty to groups in planning their financing. However, set against these advantages are a number of important disadvantages. A rule which limits the amount of debt in an entity still allows significant flexibility in terms of the rate of interest that an entity may pay on that debt. Also, an equity test allows entities with higher levels of equity capital to deduct more interest expense, which makes it relatively easy for a group to manipulate the outcome of a test by increasing the level of equity in a particular entity. An illustration of this is included as Example 1 in Annex D. It was therefore agreed by countries involved in this work that fixed ratio debt/equity tests should not be included as a general interest limitation rule within a best practice approach to tackle base erosion and profit shifting, although again this is not intended to suggest that these tests cannot play a role within an overall tax policy to limit interest deductions.
度以上的债务融资成本。因此，杠杆比率较低的实体被允许获得利息前扣除的比例与负债水平非常高的类似实体相同。这个方法可能更有效地使整体税收偏好从债务转移向股权，而不是针对涉及利息扣除的 BEPS。

15. 综上所述，第 1 至第 3 组规则本身并不能达到 BEPS 行动计划 (OECD, 2013) 行动 4 的所有目标。因此，如果这些规则没有其他利息扣除限制规则的补充，在处理涉及利息和经济上等同利息的支出的 BEPS 问题时，这些规则不会被视为最佳实践。不过，这些规则在一个国家的税务制度中可与最佳实践方法并行不悖，不仅可作为最佳实践规则的补充，也可达到其他税务政策目标。因此，在实施最佳实践方法后，各国仍可在不降低通过最佳实践处理 BEPS 的成效前提下，继续实施独立交易测试或规则、针对利息的预扣税，或使实体的总利息费用中的某个百分比不获扣除。

16. 本报告所述的最佳实践方法是以上述第 4 至第 6 组的全部或部分规则组合为基础。对利息扣除整体设限可能会限制一家实体根据固定融资比率扣除净利息费用的能力。这项规则可与另一项规则混合实施。即允许实体扣除更多利息直至达到集团的融资比率为止（若集团融资比率较高）。如果某国不实施集团比率规则，则应对跨国的集团的主体一视同仁地实施固定比率规则。这些一般规则应由针对性规则作补充，以减轻或规避一般规则的影响，还可用来处理一般规则未能涵盖的特殊风险。这个方法应为各国涉及利息的 BEPS 风险提供有效保障，不应阻碍企业为业务和商业投资举债融资。

17. 利用固定比率限制利息费用的规则相对容易实施，而且能够将利息费用水平与实体经济活动指标挂钩。目前有一部分国家实施这些规则。但现行规则的设计不一定能够以最有效的方式处理 BEPS。大部分实施固定比率规则的国家将可扣除利息与实体的股份权益水平挂钩，一般是通过规定负债比例的资本弱化规则实施。这项测试的主要优点是税务机关获得实体债务和权益水平的相关信息相对容易，而且这也为集团规划融资活动提供了合理的确定性。然而，在这些优点之外也有不少重大缺点。限制实体债务数额的规则对实体支付的债务利息率来说有相当大的弹性。此外，权益测试使股本水平较高的实体扣除较多利息费用，这使集团相对容易通过增加某实体的股份水平以操纵测试结果。有关示例见于附录 D 示例 1。因此，参与相关工作的各国同意固定比率债务比例测试不应被纳入一般利息扣除限制规则作为处理 BEPS 的最佳实践方法，尽管这并不表示这些测试不能在整体税政政策下对限制利息扣除方面发挥作用。
18. In recent years, countries have increasingly introduced fixed ratio tests based on an entity’s interest/earnings ratio, which is a better tool to combat base erosion and profit shifting. In these tests, the measure of earnings used is typically earnings before interest, taxes, depreciation and amortisation (EBITDA). Most countries presently use a tax measure of EBITDA. However, there remains a general view that in many cases multinational groups are still able to claim total interest deductions significantly in excess of the group’s actual third party interest expense. Available data, discussed in Chapter 6, shows that the majority of publicly traded multinational groups with positive EBITDA have a net third party interest/EBITDA ratio below 10%, based on consolidated financial reporting information.

19. Rules which directly compare the level of interest expense or debt of an entity to that of its group are less common, but are applied by a small number of countries. These group ratio tests currently typically operate by reference to debt/equity ratios. However, in many cases the amount of equity in an entity may at best only be an indirect measure of its level of activity and as already mentioned can be subject to manipulation.

20. Targeted rules can complement a general interest limitation rule and are therefore a component of the best practice approach. Many countries have targeted anti-avoidance rules and these can be an effective response to specific base erosion and profit shifting risks. However, as new base erosion and profit shifting opportunities are exploited, further targeted rules may be required and so there is a tendency over time for more rules to be introduced, resulting in a complex system and increased administration and compliance costs. An approach which includes an effective general interest limitation rule should reduce the need for additional targeted rules, although some will be required to address specific risks. However, these targeted rules should operate consistently with the general interest limitation rules recommended in this report.

**European Union law issues**

21. Throughout this work, EU law requirements imposed on Member States of the European Union have been considered, and in particular the need for recommended approaches to be in accordance with EU treaty freedoms, directives and State aid regulations. Although countries outside the European Union are not required to comply with these obligations, the need for a consistent international approach outlined above means that any approach which cannot be fully implemented by the 28 EU Member States is unlikely to be effective in tackling the global issue of base erosion and profit shifting. Specific issues related to EU treaty freedoms, directives and State aid rules and possible approaches to deal with them are set out in Annex A of this report.

**NOTES**

1. A domestic group is a group which operates wholly within a single country.

2. The first part of this example is adapted from Graetz (2008).

3. All monetary amounts in this example are denominated in United States dollars (USD). This is an illustrative example only, and is not intended to reflect a real case or the position in a particular country.
18. 近年来，越来越多国家根据实体的利息/盈利比率引进固定比率测试，这对打击 BEPS 更为有效。这项测试所采用的盈利指标一般是息税前利润 EBITDA。大部分国家目前采用 EBITDA 的税务措施。但是有意见认为在大部分情况下跨国集团所提出的利息扣除总额远高于集团的税前利息费用。第 6 章探讨的根据合并财务报告的资料显示，大部分 EBITDA 为正数的上市跨国集团的第三方净利息/EBITDA 比率低于 10%。这将会在第 6 章进行探讨。

19. 直接将实体的利息费用与集团的利息费用或债务水平比较的规则是并不常见，但有部分国家采用。这些集团比率测试目前一般按资产负债表比例实施。但在大部分情况下，一家实体的权益股份数额充其量只是该实体经济活动水平的间接指标，而且如前文所述可被人操纵。

20. 针对性规则可补充一般利息扣除限制规则，因此是最佳实践方法的组成部分。不少国家已制定针对性的反避税规则，而且这些规则能够有效地应对特殊的 BEPS 风险。但是随着新的 BEPS 税制被利用，便需要进一步的利用针对性规则予以打击，所以形成了规则会随着时间不断增加的发展。税务制度因此将日趋复杂，管理与合规成本也不断增加。虽然处理特殊风险需要一些针对性规则，但有效的一般利息扣除限制规则应能够减少对额外针对性规则的需要。针对性规则的应用应与本报告所推荐的一般利息扣除限制规则保持一致。

欧盟法律问题

21. 本报告在工作过程中考虑了欧洲联盟成员国的欧盟法律规定。特别是符合欧盟经济合作、指令和国家援助法的建议方法。虽然非欧盟国家不需要遵守这些法规，但因为上文所述对全球实施统一方法的需求，如果是 28 个欧盟成员国无法全面实施的方法，也不太可能有效地处理 BEPS 的全球问题。与欧盟经济合作、指令和国家援助法有关的特定事项，以及处理这些事项的可行方法载于本报告附录 A。

注释

1. 本国集团是指完全在一个国家经营业务的集团企业。
2. 本示例的第一部分引述自 Gaertner (2008)。
3. 本示例的所有数据均以美元为单位。示例目的仅为说明，并不反映真实案例或集团的实际情况。
5. 欧盟理事会于 2003 年 6 月 3 日适用于不同成员国相关公司之间的利息和特许权使用费支付的统一税务制度。颁布第 2003/49/EC 号指令 (2003/03/11) 57/49。


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CHAPTER 1
RECOMMENDATIONS FOR A BEST PRACTICE APPROACH

22. The critical objective of the work on Action 4 is to identify coherent and consistent solutions to address base erosion and profit shifting using interest and payments economically equivalent to interest. In constructing the best practice approach described in this report, a focus has been placed on the need for an approach that provides an effective solution to the risks countries face and which is robust against planning to avoid or reduce its application or effect. At the same time, this is balanced by the need for an approach to be reasonably straightforward for groups and tax authorities to apply. A short outline of the best practice approach is set out below. Detail on each element of the approach is included in later chapters.

Figure 1.1. Overview of the best practice approach

<table>
<thead>
<tr>
<th>De minimis monetary threshold to remove low risk entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional</td>
</tr>
<tr>
<td>Based on net interest expense of local group</td>
</tr>
<tr>
<td>+</td>
</tr>
<tr>
<td>Fixed ratio rule</td>
</tr>
<tr>
<td>Allows an entity to deduct net interest expense up to a benchmark net interest/EBITDA ratio</td>
</tr>
<tr>
<td>Relevant factors help a country set its benchmark ratio within a corridor of 10%-30%</td>
</tr>
<tr>
<td>+</td>
</tr>
<tr>
<td>Group ratio rule</td>
</tr>
<tr>
<td>Allows an entity to deduct net interest expense up to its group’s net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio</td>
</tr>
<tr>
<td>Option for a country to apply an uplift to a group’s net third party interest expense of up to 10%</td>
</tr>
<tr>
<td>+</td>
</tr>
<tr>
<td>Carry forward of disallowed interest / unused interest capacity and/or carry back of disallowed interest</td>
</tr>
<tr>
<td>Optional</td>
</tr>
<tr>
<td>+</td>
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<tr>
<td>Targeted rules to support general interest limitation rules and address specific risks</td>
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<td>+</td>
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<tr>
<td>Specific rules to address issues raised by the banking and insurance sectors</td>
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23. The best practice approach is based around a fixed ratio rule which limits an entity’s net interest deductions to a fixed percentage of its profit, measured using earnings before interest, taxes, depreciation and amortisation (EBITDA) based on tax numbers. This is a straightforward rule to apply and ensures that an entity’s interest deductions are directly linked to its economic activity. It also directly links these deductions to an entity’s taxable income, which makes the rule reasonably robust against planning. As described in Chapter 5, although EBITDA is the recommended measure of earnings to be used, the best
第 1 章
最佳实践方法建议

22. 行动 4 的主要目的是找出条理分明、全球一致的方法处理利用利息的经济上等同利息之支出的 BEPS 问题。构思本报告所述的最佳实践方法的重点是找出一个能够有效解决各国所面对风险，而且能够针对税务避税规则的税务规划，与此同时，最佳实践方法还需要相对简单以便集团实体和税务机关采纳。下图所列为最佳实践方法概览图，最佳实践方法的各项详情载于后文章节。

图 1.1 最佳实践方法概览

通过最细数额标准下限排除低风险实体
可选择
以集团当地的净利息支出为准

固定比率规则
允许实体扣除净利息支出直至达到基准净利息/EBITDA 比率为止
相关因素有助于国家将基准比率定于 10%～30% 的区间

集团比率规则
当实体所属集团的净利息/EBITDA 比率高于基准固定比率时，
允许实体扣除净利息支出直至达到其所属集团的净利息/EBITDA 比率为止
国家可选择提高集团第三方净利息支出比率最高达 10%
国家可选择采用不同的集团比率规则或不采用集团比率规则

结转不允许扣除的利息/未用的利息扣除及/或转回不允许扣除的利息
可选择

补充一般利息扣减限制规则及针对特殊风险的针对性规则

处理银行及保险业问题的特殊规则

23. 最佳实践方法是以固定比率规则为基础，将实体的净利息扣除限制在利润的一个固定百分比，并以税后数字为基础按息税折旧与摊销前利润（EBITDA）计量。这是一个相对容易应用的规则，可确保实体的利息扣除与经济活动直接挂钩。而还将利息扣除与实体的应纳税收入直接挂钩，这使该规则在针对税务规划时相对有效。如第 5 章所述，尽管 EBITDA 是推荐采用的盈余指标，最佳实践方法允许国家可根据
practice allows a country the flexibility to introduce rules based on earnings before interest and taxes (EBIT). In limited cases, a country may apply a fixed ratio rule based on asset values rather than earnings. Chapter 6 includes factors which a country should take into account in setting the benchmark ratio for a fixed ratio rule, within a corridor of 10% to 30%.

24. A fixed ratio rule provides a country with a level of protection against base erosion and profit shifting, but it is a blunt tool which does not take into account the fact that groups operating in different sectors may require different amounts of leverage, and even within a sector some groups are more highly leveraged for non-tax reasons. If a benchmark fixed ratio is set at a level appropriate to tackle base erosion and profit shifting, it could lead to double taxation for groups which are leveraged above this level. Therefore, countries are encouraged to combine a robust and effective fixed ratio rule with a group ratio rule which allows an entity to deduct more interest expense in certain circumstances. A group ratio rule may be introduced as a separate provision from the fixed ratio rule, or as an integral part of an overall rule including both fixed ratio and group ratio tests.

25. Chapter 7 includes a description of a group ratio rule, which allows an entity that exceeds the benchmark fixed ratio to deduct interest expense up to the net third party interest/EBITDA ratio of its group, where this is higher. In calculating the group’s ratio, a country may also apply an uplift of up to 10% to the group’s net third party interest expense (i.e. its third party interest expense after deducting third party interest income). Under this approach, only net interest expense which takes an entity’s net interest/EBITDA ratio above the higher of the benchmark fixed ratio and the group’s ratio is disallowed. This rule should complement the fixed ratio rule and provide a robust response to base erosion and profit shifting involving interest expense. However, countries may also apply different group ratio rules, including those using asset-based ratios, so long as these rules only permit an entity to exceed the benchmark fixed ratio where it is able to demonstrate that a relevant financial ratio is in line with that of its group. A country may also decide to apply a fixed ratio rule in isolation. Where a country does not apply a group ratio rule, it should apply the fixed ratio rule consistently to entities in multinational and domestic groups, without improper discrimination. In all cases, under the best practice approach a country should implement the fixed ratio rule using a benchmark ratio which is sufficiently low to address base erosion and profit shifting.

26. In order to remove entities which pose the lowest risk from the scope of a general interest limitation rule, a country may apply a de minimis threshold based on a monetary value of net interest expense. Entities falling below this threshold may deduct interest expense without restriction. Where a group has more than one entity in a country, the threshold should take into account the total net interest expense of the entire local group, including all entities in that country. Where a rule is applied at the level of an individual entity, a country should consider including anti-fragmentation rules to prevent a group avoiding the application of an interest limitation rule by establishing a number of entities, each of which falls below the threshold.

27. Rules which link interest deductions to EBITDA raise issues where an entity’s interest expense and earnings arise in different periods. This may be the result of volatility in earnings which means the ability of an entity to deduct interest changes from year to year, or because an entity has incurred interest expense to fund an investment which will give rise to earnings in a later period. To reduce the effect of these issues, a country may permit entities to carry forward disallowed interest expense or unused interest capacity for use in future periods, or carry back disallowed interest expense into earlier periods. It is suggested countries consider imposing limits on these carry forwards and carry backs.

28. A fixed ratio rule and group ratio rule should provide an effective framework to tackle most base erosion and profit shifting involving interest and payments economically equivalent to interest. These
息税前利润 (EBIT) 采用这项规则。在个别情况下，还可根据资产价值而不是盈利实施固定比率规则。第 6 章探讨了各国在 10% 至 30% 区间内对固定比率做出规定时应考虑的因素。

24. 固定比率规则为各国抵御 BEPS 风险提供了一定程度的保障，但这个工具较为粗略，并没有考虑到经营不同行业的集团可能有不同的借款数额，而且即使是从事同一种行业，部分集团也可能因为税务合理选择借入较多债务。如果要将基准固定比率设定在能够处理 BEPS 的适当水平，可能会导致借款比率高于设定水平的集团被双重征税。因此，各国需要将健全有效的固定比率规则与集团比率规则（在某些情况下可允许实体扣除更多利息费用）结合。集团比率规则可作为有别于固定比率规则的独立规则被采用，或作为包括固定比率和集团比率两项测试在内的组成部分被采用。

25. 第 7 章描述了集团比率规则。该规则允许实体扣除超过基准固定比率的利息费用直至达到相关集团的第三方净利润与 EBITDA 比率为止（当集团比率较高时）。在计算集团比率时，相关国家还可能提高集团的第三方利润率（即第三方收入与第三方利息费用的差额）比率的上限。根据这项规则，只有实体的利润率/EBITDA 比率高于基准固定比率与集团比率两者的之中较高者则其利息费用才允许扣除。这项规则可补充固定比率规则，而且能够有效地应对涉及利息费用的 BEPS 问题。不过，各国可采用不同的集团比率规则，包括以资产为基础的比率。前提是在这些规则只允许实体超过基准固定比率，但实体必须能够显示相关财务比率符合集团的整体财务比率。各国可决定是否单独应用固定比率规则。

26. 为消除从会计一般利息扣除限制规则的角度被认为是风险最小的实体，相关国家可对净利润费用的金额设定最低限度。低于此下限的实体可不受限制地扣除利息费用。如果集团在某一国家有多个实体，则下限应考虑该集团在该地区的净利息费用总额。如果规则只应用于个别实体层面，则该国应考虑反反洗钱等规则，以避免集团通过成立若干基于单独计算低于下限的实体来规避利息扣除限制规则的实施。

27. 将利息扣除与 EBITDA 挂钩的规则对在不同期间产生利息费用和盈利的实体可能构成问题。这可能是因为盈利的波动性所致，因此实体扣除利息的能力也会随着年度变化而变化，或因为某些实体因投资融资产生利息费用，而投资者将来期间才产生盈利。为降低这些问题的影响，相关国家可允许实体结转不允许扣除的利息费用或未使用的利息扣除，于未来期间使用，或转回不允许扣除的利息费用至较早期间。建议各国考虑结转和转回限额。

28. 固定比率规则和集团比率规则应该为处理大部分涉及利息和经济上等同利息之间支出的 BEPS 提供有效的框架。这些一般利息扣除限制规则应以针对性规则作为补充，保障一般利息扣除限制规则的完整性，并处理了其余的特殊 BEPS 风险。

29. 银行及保险业的独特性质意味着本报告所述的固定比率规则和集团比率规则不大可能有效处理这些行业涉及利息的 BEPS 问题。如第 10 章所述，为应对针对银行及保险业公司 BEPS 风险的针对性规则，需要开展进一步工作，预计将于 2016 年完成。
general interest limitation rules should be supplemented by targeted rules, which protect the integrity of the general interest limitation rules and deal with specific base erosion and profit shifting risks which remain.

29. Particular features of the banking and insurance industries mean that the fixed ratio rule and the group ratio rule set out in this report are unlikely to be effective in addressing base erosion and profit shifting involving interest in these sectors. As discussed in Chapter 10, further work will be conducted, to be completed in 2016, to identify targeted rules to deal with the base erosion and profit shifting risks posed by banks and insurance companies.

30. It is recommended that, as a minimum, the best practice approach in this report should apply to all entities that are part of a multinational group. Countries may also apply the best practice approach more broadly to include entities in a domestic group and/or standalone entities which are not part of a group. In certain cases countries may be required to do so. In this regard, Annex A includes a summary of EU law issues, including factors that should be taken into account by EU Member States.

31. The best practice approach set out in this report should provide an effective solution to base erosion and profit shifting involving interest and payments economically equivalent to interest. However, countries are free to apply stricter rules than those set out in this report either for the purposes of combating base erosion and profit shifting or to achieve other tax policy goals. For example, the best practice approach may be supplemented by additional general or targeted interest limitation rules which a country has identified as appropriate to address the risks it faces. It is also recognised that a country may have interest limitation rules that carry out broader policy aims, such as reducing the tax bias in favour of debt finance, and that it will want to retain these, or a country may introduce rules to achieve such aims. An illustration of how the best practice approach may be combined with other interest limitation rules is included as Example 2 in Annex D. Finally, when implementing a best practice approach, each country will need to take into account any obligations under its constitution (such as the equal treatment of taxpayers), as well as the specific features of its overall tax system. This may impact, for example, the application of a de minimis threshold, the operation of a fixed ratio rule and group ratio rule, and the use of carry forwards. How the fixed ratio rule and group ratio rule may be applied by countries with separate entity taxation or group taxation systems is considered in Chapter 11.

32. The remainder of this report discusses the structure and operation of the best practice approach in more detail, focussing on the following aspects:

- interest and payments economically equivalent to interest
- who a best practice approach should apply to
- applying a best practice approach based on the level of interest expense or debt
- measuring economic activity using earnings or asset values
- a fixed ratio rule
- a group ratio rule
- addressing volatility and double taxation
- targeted rules
- applying the best practice approach to banking and insurance groups
- implementing the best practice approach.
30. 本报告建议最佳实践方法至少应适用于跨国集团旗下的所有实体。各国还应将最佳实践方法更广泛地应用于本国集团内的实体及或不属于任何集团的独立实体。在某些情况下各国可能有需要更广泛地应用最佳实践方法。此外，附录 A 总结了欧盟法律问题，包括欧盟成员国应考虑的因素。

31. 本报告所述的最佳实践方法应就涉及利息和经济上等同利息之支出的 BEPS 提供有效的解决方案。但各国仍可自由地实施比本报告所述规则更严格的规则，以达到打击 BEPS 或其他税制政策目标的目的。举例来说，最佳实践方法可配合相关国家认为适于处理本国风险的其他一般或针对性利息扣除限制规则实施。此外，相关国家还可制定附带更宏观政策目标的利息扣除限制规则，例如减少资产或债务融资的税务优惠，相反如果相关国家希望保留有关倾向，也可制定规则达到相关目的。有关最佳实践方法如何与其他利息扣除限制规则结合的示例载于附录 D 示例 2。最后，在实施最佳实践方法时，各国需要考虑本国宪法义务（例如对纳税人的平等待遇），以及整体税制制度的独特性。这可能影响税收标准、固定比率规则和集团比率规则及结转等的应用。有关实施独立实体或集团征税制度的国家如何应用固定比率规则和集团比率规则的讨论载于第 11 章。

32. 本报告的其余部分探讨最佳实践方法结构与应用方法详情，重点探讨下列领域：

- 利息和经济上等同于利息的支出
- 实施最佳实践方法的对象
- 根据利息费用或债务水平实施最佳实践方法
- 以盈利或资产价值衡量经济活动
- 固定比率规则
- 集团比率规则
- 处理波动性和双重征税
- 针对性规则
- 银行及金融集团运用最佳实践方法
- 实施最佳实践方法
CHAPTER 2

INTEREST AND PAYMENTS ECONOMICALLY EQUIVALENT TO INTEREST

33. Interest cost is treated as a tax deductible expense in most countries, but each country applies its own approach to determine what expenses are treated as interest and therefore deductible for tax purposes. It is not the aim of this report to recommend a definition of interest that is applied by all countries for all tax purposes. Differences will continue to exist between countries as to the items treated as deductible interest expense and countries will continue to use their own definitions of interest for other tax purposes, such as for withholding taxes. However, in identifying best practices for the design of rules to address base erosion and profit shifting, there are benefits in countries taking a broadly consistent approach to the items that should be covered by such rules, improving certainty for business and ensuring a coherent approach to tackling the issue across countries. This chapter therefore sets out the items which should be the subject of a best practice rule to tackle base erosion and profit shifting.

34. At its simplest, interest is the cost of borrowing money. However, if a rule restricted its focus to such a narrow band of payments, it would raise three broad issues:

   - It would fail to address the range of base erosion and profit shifting risks that countries face in relation to interest deductions and similar payments.
   - It would reduce fairness by applying a different treatment to groups that are in the same economic position but use different forms of financing arrangements.
   - Its effect could be easily avoided by groups re-structuring loans into other forms of financing arrangement.

35. To address these issues, rules to tackle base erosion and profit shifting using interest should apply to interest on all forms of debt as well as to other financial payments that are economically equivalent to interest. Payments that are economically equivalent to interest include those which are linked to the financing of an entity and are determined by applying a fixed or variable percentage to an actual or notional principal over time. A rule should also apply to other expenses incurred in connection with the raising of finance, including arrangement fees and guarantee fees. This chapter includes a non-exhaustive list of examples of the types of payment that should be covered by a rule, but it is left to each country to determine how this should be reflected within its domestic law, taking into account existing definitions of interest and other payments. In deciding whether a payment is economically equivalent to interest, the focus should be on its economic substance rather than its legal form.

36. A best practice rule to address base erosion and profit shifting using interest expense should therefore apply to: (i) interest on all forms of debt; (ii) payments economically equivalent to interest; and (iii) expenses incurred in connection with the raising of finance. These should include, but not be restricted to, the following:

   - payments under profit participating loans
   - imputed interest on instruments such as convertible bonds and zero coupon bonds
第 2 章
利息和经济上等同于利息的支出

33. 利息成本在大部分国家都可获税前扣除，但各国会自行厘定哪些支出会被视为利息并获得税前扣除。本报告的目的并不是就利息定义提供建议供各国作不同的税务用途。对于哪些项目可视为可扣除利息费用，各国之间会存在差异，而且会继续运用本国的利息定义作其他税务用途，例如为预提税目的。然而，在找出最佳实践时对 BEPS 规则时，各国宜对相关准则所涵盖的项目采取大致统一的方法：提高经济活动的确定性并确保以条理分明的方法在各国之间处理 BEPS 问题。因此，本章所列举的内容应成为应对 BEPS 最佳实践规则的主题。

34. 简言之，利息是指借贷成本。但如若规则的重点只限于如此狭隘的一类支付，可能引起以下三大问题：

- 规则可能无法处理各国面对的关于利息扣除和类似支出的一类 BEPS 风险。
- 对处于不同的经济境况下，利用不同形式进行融资的集团采取不同的处理方式，可能有欠公允。
- 集团可通过贷款重组或其他融资安排轻易规避规则的影响。

35. 为解决这些问题，处理利用利息的 BEPS 规则应适用于所有债务形式的利息，而且还应适用于经济上等同利息的其他支出。经济上等同利息的支出包括与实体融资挂钩的支出，相关支出是以在一段时间内占实际或名义本金的一个固定或可变百分比计算的。BEPS 规则还适用于因融资产生的其他费用，包括手续费和担保费。本章不完全地列举了应受规则限制的不同类型支付，但各国在考虑本国现行的利息和其他支出定义后，可自行决定支出类别如何在国家税种中反映。在决定支出在经济上是否等同利息时，重点是决定经济实质而不是其法律形式。

36. 因此处理利用利息费用及 BEPS 效果的最佳实践规则应适用于：（i）所有债务形式的利息；（ii）经济上等同利息的支出；以及（iii）因融资产生的费用。其中包括，但不限于：

- 利润参与贷款下的支出
- 可转换债券和零息债券等票据的应计利息
- 伊斯兰金融等另类融资安排下的款项
- 融资租赁支付的融资成本元素
• amounts under alternative financing arrangements, such as Islamic finance
• the finance cost element of finance lease payments
• capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest
• amounts measured by reference to a funding return under transfer pricing rules, where applicable
• notional interest amounts under derivative instruments or hedging arrangements related to an entity’s borrowings
• certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance
• guarantee fees with respect to financing arrangements
• arrangement fees and similar costs related to the borrowing of funds.

37. It is recognised that foreign exchange gains and losses on instruments to hedge or take on a currency exposure connected with the raising of finance are not generally economically equivalent to interest. A country may however wish to treat some or all foreign exchange gains and losses on these instruments as economically equivalent to interest, in line with local tax rules and to reflect the economics of the currency exposure.

38. Throughout this report, references to interest should also be taken to include amounts economically equivalent to interest, unless the context clearly requires otherwise. Similarly, where the report refers to a group’s or entity’s interest income, this includes receipts of amounts economically equivalent to interest based on the definition and examples in this chapter.

39. The best practice approach does not apply to payments which are not interest, economically equivalent to interest or incurred in connection with the raising of finance. Therefore in general, the rules set out in this report should not limit deductions for items such as:

• foreign exchange gains and losses on monetary items which are not connected with the raising of finance
• amounts under derivative instruments or hedging arrangements which are not related to borrowings, for example commodity derivatives
• discounts on provisions not related to borrowings
• operating lease payments
• royalties
• accrued interest with respect to a defined benefit pension plan.

40. However, any payment (including those listed above) may be subject to limitation under the best practice approach where they are used as part of an arrangement which, taken as a whole, gives rise to a defined benefit pension plan.
相关资产的资产债表价值所含的资本化利息，或资本化利息摊销

根据转让定价规则下资金回报进行衡量的款项（如适用）

与实体借贷相关的衍生工具或对冲安排下的名义利息款项

借债及融资相关工具所产生的部分汇兑收益和损失

融资安排的担保费

手续费及与借贷相关的类似成本

37. 对冲工具的汇兑收益和损失，或与融资相关的货币风险一般不被视为在经济上等同利息。但相关国家可能希望将这些工具的部分或全部汇兑收益和损失视为经济上等同利息，以配合当地税务规定及反映货币风险的经济实质。

38. 在本报告中，除文意另有所指外，凡利息亦包括经济上等同于利息的款项。同样地，如果本报告提及集团或实体的利息收入，根据本章的定义和示例其中亦包括经济上等同于利息的款项。

39. 最佳实践方法并不适用于非利息、经济上不等同于利息或非因融资产生的费用。因此本报告所述规则一般并不限制下列项目的税前扣除：

- 与融资无关的货币项目的汇兑收益和损失
- 与借款无关的衍生工具或对冲安排下的款项，例如商品衍生工具
- 与借款无关的准备金贴现
- 经营租赁支付
- 特许权使用费
- 界定的权益退休金计划的应付利息

40. 然而，任何款项（包括上文所列）都可能受到最佳实践方法的限制。例如当这些款项是某种安排的一部分，而相关安排整体产生了经济上等同利息的款项。

41. 有关该定义的实际应用示例载于附录 D 示例 3。

42. 如果某国制定规则，按权益资本的特定百分比给予特定扣除待遇，该特定扣除不能被视为本报告所指的利息或经济上等同于利息的款项。这些规则及有类似效果的规则应由 OECD 另行研究作进一步考虑。
41. An illustration of how this definition could be applied in practice is included as Example 3 in Annex D.

42. Where a country has a rule which grants a deemed deduction by applying a specified percentage to the equity capital of an entity, these deemed deductions are not treated as being interest or a payment economically equivalent to interest for the purposes of this report. These rules and rules having similar effect should be considered further by the OECD in separate work.

NOTES

Throughout this report, references to payments also include accruals of income or expense.
注释

* 在本报告中，凡提及支付亦包括应计收入或支出。
CHAPTER 3

WHO A BEST PRACTICE APPROACH SHOULD APPLY TO

43. Base erosion and profit shifting arise in a range of scenarios, including within a group, with related parties outside a group and through the use of structured arrangements with third parties. The best practice approach addresses the risks posed by each of these scenarios, although different rules may be used to address different types of risk. For the purposes of considering which entities these rules should apply to, entities have been categorised into three types: entities which are part of a multinational group; entities which are part of a domestic group; and standalone entities which are not part of a group. It is recommended that, as a minimum, the best practice approach in this report should apply to all entities that are part of a multinational group. Countries may also apply the best practice approach more broadly to include entities in a domestic group and/or standalone entities which are not part of a group.

Entities which are part of a multinational group

44. As set out in the BEPS Action Plan (OECD, 2013), the deductibility of interest can raise base erosion and profit shifting concerns in both inbound and outbound investment scenarios. Therefore, it is recommended that, as a minimum, a fixed ratio rule as described in Chapter 6 should apply to all entities which are part of a multinational group.

45. An entity is part of a group if the entity is directly or indirectly controlled by a company, or the entity is a company which directly or indirectly controls one or more other entities. A group is a multinational group where it operates in more than one jurisdiction, including through a permanent establishment.

46. Where a country applies a group ratio rule alongside the fixed ratio rule, it may wish to use a consistent definition between both rules to reduce the risk that an entity subject to the fixed ratio rule is unable to apply the group ratio rule. In this case, the country may instead determine that an entity is part of a group where: (i) the entity is included on a line-by-line basis in the consolidated financial statements of any company, or (ii) the entity would be included on a line-by-line basis in the consolidated financial statements of any company, if that company prepared consolidated financial statements in accordance with any of the accounting standards accepted by the country in applying the group ratio rule (as described in Chapter 7).

47. Where a group has more than one entity in a particular country, the country may apply the fixed ratio rule and group ratio rule to the position of each entity separately, or to the overall position of all group entities in the same country (i.e. the local group). Applying a rule to the overall position of the local group would avoid the scenario where a highly leveraged entity incurs an interest disallowance even though the interest expense of the local group as a whole falls within the limit permitted.

48. If the benchmark fixed ratio is set at an appropriate level, a fixed ratio rule should to a large extent address base erosion and profit shifting concerns involving payments by entities which are part of a multinational group. To ensure the fixed ratio rule is effective in tackling base erosion and profit shifting, it is recommended that all entities which are subject to the fixed ratio rule are also subject to targeted provisions which address planning to reduce the impact of the rule. However, there may be specific risks
第3章

最佳实践方法的适用实体

43. **BEPS** 产生于多种情形中，既可产生于集团内部，也可产生于集团外部的关联方，亦可在与第三方使用结构性安排时产生。最佳实践方法用以应对以上各情形产生的风险，尽管不同类型的风险可能需要采用不同的规则。为便于考虑这些规则对实体的适用性，实体应划分为三大类：隶属于某一跨国集团的实体；隶属于本国集团的实体；以及不属于某一集团的独立实体。本报告的最佳实践方法建议至少应该适用于隶属于某一跨国集团的所有实体。各国亦可扩大最佳实践方法的适用性，将之用于隶属于本国集团的实体和/或不属于某一集团的独立实体。

**隶属于跨国集团的实体**

44. **BEPS** 行动计划 (OECD, 2013年) 指出，利息的可扣除性会在对外投资和对外投资两种情形中引发 **BEPS** 问题。因此，建议将第6章论述的固定比率规则至少用于隶属于某一跨国集团的所有实体。

45. 实体若被某一公司直接或间接控制，或自身是直接或间接控制一个或多个其他实体的公司，则该实体应被视为隶属于某一集团。集团是潜在一个以上税收管辖区运营的跨国集团，包括通过设立常设机构等方式。

46. 一国若同时采用集团比率规则和固定比率规则，可能希望统一两套规则中的定义，以降低应采用固定比率规则的实体无从采用集团比率规则的风险。为此，该国可在以下条件得以满足的情况下，将实体视为隶属于某一集团：(1) 该实体的财务数据被纳入某一公司的合并财务报表；或 (2) 任何公司只要按照该国在采用集团比率规则时认可的任何会计准则编制合并财务报表，实体就可以被纳入该公司的合并财务报表 (参见第7章)。

47. 集团若在一国拥有一个以上的实体，该国可将固定比率规则和集团比率规则分别用于各实体，或用于一国境内所有集团实体 (即本地集团) 的总体状况。将规则用于本地集团的总体状况可避免即使本地集团的整体利息费用处于允许的限度之内，高杠杆实体产生不能扣除之利息的情况。

48. 若将基线固定比率设置在适当的水平上，固定比率规则就能在很大程度上解决与跨国集团内实体的支持相关的 **BEPS** 问题。为确保固定比率规则能有效遏制 **BEPS**，建议让所有应采用固定比率规则的实体同时采用涉及规划的针对性规定，以降低规则带来的影响。然而，鉴于固定比率规则可能存在其无法
which are not dealt with by the fixed ratio rule and it is recommended that countries consider introducing targeted rules to deal with these risks. The role of targeted rules within the best practice is discussed in Chapter 9.

**Entities which are part of a domestic group**

49. Entities in multinational groups pose the main base erosion and profit shifting risk. Therefore, it may be appropriate for a country to restrict the application of a fixed ratio rule to these entities. However, a country may choose to apply a fixed ratio rule more broadly, to include entities in domestic groups (i.e. groups which operate wholly within a single country). This may be part of a broad approach to tackle base erosion and profit shifting in all types of entity, or may be in order to meet other policy goals, such as to avoid competition issues between domestic and multinational groups, to reduce the general tax bias in favour of funding with debt over equity, or to comply with constitutional obligations for the equal treatment of taxpayers. In particular, countries which are EU Member States would need to take into account EU law considerations in designing their domestic rules, to ensure they are compliant with EU law.

50. Where a country applies a fixed ratio rule and a group ratio rule to entities which are part of a domestic group, it may apply the rules either to each entity individually or to the overall position of the domestic group. In either case, the fixed ratio rule should to a large extent address base erosion and profit shifting concerns involving interest. However, there may be specific risks which are not dealt with by the fixed ratio rule and it is recommended that countries consider introducing targeted rules, discussed in Chapter 9, to address these risks.

51. Where a country does not apply a fixed ratio rule to entities in a domestic group, it will be exposed to base erosion and profit shifting risks, in particular involving interest paid to related parties and third parties under structured arrangements. In this case, a country should consider addressing these risks using targeted rules as described in Chapter 9.

**Standalone entities which are not part of a group**

52. A standalone entity is any entity which is not part of a group. The fact that a standalone entity is not part of any group means that the nature and level of base erosion and profit shifting risk that a standalone entity poses is often different to that posed by entities in a group. In many cases standalone entities are small entities, owned directly by an individual, where there are no other entities under common control. In these cases, due to the entity's small size and lack of related parties, the risk of base erosion and profit shifting involving interest is likely to be relatively low. However, in other cases, standalone entities may be large entities held under complex holding structures involving trusts or partnerships, where there are a number of entities under the control of the same investors. In these cases the level of base erosion and profit shifting risk may be similar to that posed by a group structure. In both scenarios, where base erosion and profit shifting involving interest does occur, it will arise as a result of payments to related parties and third parties.

53. A country should apply rules to address base erosion and profit shifting risks posed by standalone entities. A country may apply the fixed ratio rule to standalone entities or, recognising the differences between the risks posed by entities in groups and standalone entities, it may tackle risks posed by standalone entities using different rules. In either case, standalone entities should be subject to targeted rules to address specific risks, discussed in Chapter 9. EU Member States would need to take into account EU law considerations in designing their domestic rules, to ensure they are compliant with EU law. Such considerations should be taken into account when designing domestic rules in order to limit their possible negative impact on situations not involving base erosion or profit shifting.
处理的具体风险，建议各国考虑制定针对性规则应对这些风险。针对性规则在最佳实践方法中的作用将在第 9 章探讨。

隶属于本国集团的实体

49. 由于 BEPS 风险主要来自于跨国集团内的实体，因此，各国限制这些实体采用固定比率规则有其正当性。同时，一国也应选择扩大固定比率规则的适用性，将其用于本国集团的实体（即使在跨国集团内的集团）。这既可作为应对不同实体 BEPS 问题的总体方法的一部分，也可为满足其他政策目标服务，如避免本国集团和跨国集团的竞争问题。降低债务融资优于股权融资这一常见税务偏好，履行章程规定的平等对待纳税人义务等。尤其是欧盟成员国在制定国内规则时，需充分考虑欧盟法律的影响，确保遵守欧盟法律。

50. 一国所制定固定比率规则和集团比率规则用于隶属于本国集团的实体时，既可将这些规则分别用于各类实体，也可用于本国集团的总体。无论何种情况，固定比率规则应能在很大程度上应对涉及利息的 BEPS 问题。然而，鉴于固定比率规则可能存在其无法处理的具体风险，建议各国考虑制定针对性规则（详见第 9 章）应对这些风险。

51. 一国若不对其集团内的实体实施固定比率规则，将会面临 BEPS 风险，尤其在关联方和第三方根据结构性安排支付利息的情况下。此时，一国应考虑采用第 9 章论述的针对性规则应对这些风险。

不属于某一集团的独立实体

52. 独立实体指不隶属于某一集团的任何实体。独立实体不属于任何集团的特性决定了源于独立实体的 BEPS 风险在本质和程度上往往不同于源于集团内实体的风险。独立实体多为由私人直接所有的小型实体，无处于共同控制下的其他实体。在此情况下，由于实体规模较小，且无关联方，因此，其涉及利息的 BEPS 风险可能相对较小。然而，也有一些独立实体具有较大规模，其复杂的股权架构可能涉及信托或合伙制度，同时在众多实体处于同一投资者的控制下。在此情况下，其 BEPS 风险的程度与源于集团架构的风险可能较为相似。在以上两种情况下，涉及利息的 BEPS 一旦发生，基本是源于对关联方和第三方的支付。

53. 一国应制定规则应对源于独立实体的 BEPS 风险。一国可将固定比率规则用于独立实体，也可在认识到来源于集团内实体的风险与源于独立实体之风险的差异时，对源于独立实体的风险采用不同的应对规则。无论采用何种方法，应对外来实体或属第 9 章论述的用以处理具体风险的针对性规则。欧盟成员国在制定国内规则时，需充分考虑欧盟法律的影响，确保遵守欧盟法律。在制定国内规则时考虑这些影响，是为了降低其对与 BEPS 无关的情形产生的负面影响。
De minimis threshold

54. While the main policy goal of the best practice approach set out in this report is to address base erosion and profit shifting using interest, it is recognised that certain entities may pose a sufficiently low risk that excluding them from a fixed ratio rule and group ratio rule would be appropriate. Excluding these entities from the fixed ratio rule and group ratio rule would mean that a best practice approach can focus on entities which pose material base erosion and profit shifting risk, reducing compliance costs for other entities. Reducing the number of entities covered would also reduce the costs of administering a rule and would allow a tax authority to focus its resources on entities which pose the greatest risk.

55. Countries may therefore introduce a de minimis threshold to exclude low risk entities from the scope of the fixed ratio rule and group ratio rule. It is recommended that such a threshold should be based on the total net interest expense of all entities in the local group. Where a country wishes to apply a threshold based on the net interest expense of each entity separately, it is important that these rules are not abused. Therefore, a country should consider introducing anti-fragmentation rules to prevent a group avoiding an interest limitation rule by establishing multiple entities, each of which falls below the threshold.

56. A de minimis threshold based on net interest expense should be relatively simple to apply and would ensure that highly-leveraged entities are required to apply a general interest limitation rule regardless of their size. A country should set the level of a de minimis threshold to reflect a number of factors, including the local economic and interest rate environment, as well as relevant tax or legal considerations. This may be reviewed and updated periodically to reflect changes in these factors.

NOTES

7 The terms ‘related party’ and ‘structured arrangement’ are defined in Chapter 9.

8 There may be cases where a country is required to apply the fixed ratio rule more broadly, for example to entities in domestic groups. For instance, countries may need to take into account any constitutional issues which could have a direct impact on interest limitation rules. In addition, Annex A includes a summary of EU law issues, including factors that should be taken into account by EU Member States.

9 Chapter 11 includes a summary of different approaches that a country may use in applying a fixed ratio rule to a local group, depending upon the structure of its tax system.
最低标准

54. 尽管应对实体利用利息实现 BEPS 是本报告提出最佳实践方法的首要政策目的，但也应理解某些实体蕴含较低的风险，可将其排除在固定比率规则和集团比率规则的适用范围之外。因此，最佳实践方法可重点关注潜在重大 BEPS 风险的实体，减少其他实体的合规成本。减少适用实体的数量也将降低规则管理成本，使税务机构得以将有限的资源集中于风险最高的实体。

55. 为此目的，各国可制定最低标准，将低风险实体排除在固定比率规则和集团比率规则的适用范围之外。在设立最低标准时，建议以本地集团的所有实体的净利息费用总额为基础。一国若希望以各实体单独的净利息费用为限度设立基础，需防止这些规则遭到滥用。某些集团为避免利息限制规则，可能会建立多个实体，使各实体均低于最低标准，为防止此类情况的发生，一国应考虑制定反分解规则。

56. 基于净利息费用的最低标准易于应用，并能确保高杠杆实体，无论大小，均须采用一般性利息限制。一国设立最低标准的限额时，应将众多因素考虑在内，包括本地经济和利率环境，以及相关税务或法律影响等。可对最低标准进行定期审查和更新，以反映这些因素的变化。

注释

① “关联方”和“结构性安排”的定义见第9章。
② 在某些情况下，一国须扩大固定比率规则的适用性，如将其用于本地集团的实体。例如，各国可能需要考虑任何会对利息限制规则产生直接影响的章程事项。为此，附件A就欧盟法律事项进行了汇总，涵盖了欧盟成员国需考虑的诸多因素。
③ 第11章概括了一国在其税务架构内，将固定比率规则用于本地集团时可使用的不同方法。
APPLYING A BEST PRACTICE APPROACH BASED ON THE LEVEL OF INTEREST EXPENSE OR DEBT

57. A key cause of base erosion and profit shifting is the ability of a group to artificially separate taxable income from the underlying activities that drive value creation. Therefore, one of the aims of the best practice approach set out in this report is to link the amount of interest deductions in an entity to the level of its taxable economic activity.

Applying the best practice approach to limit the level of interest expense or debt in an entity

58. A general interest limitation rule may operate directly, by restricting the amount of interest an entity may deduct for tax purposes, or indirectly, by restricting the amount of debt with respect to which an entity may claim deductions for interest. In considering which approach to include in the best practice recommendation, a number of factors have been taken into account. These include the following:

- Base erosion and profit shifting using interest is driven by the level of tax deductible expense incurred by an entity. A rule which directly limits the level of interest deductions an entity may claim addresses this.

- A rule which limits the level of debt in an entity will not necessarily address base erosion and profit shifting risks where an excessive rate of interest is applied to a loan. Therefore, such a rule would need to have a further mechanism to identify the maximum interest on the permitted level of debt. This could be done by applying an arm’s length test or apportioning an entity’s actual interest expense, but these approaches add a step to the operation of a rule and increase complexity.

- A best practice approach should apply to base erosion and profit shifting involving interest and payments economically equivalent to interest. However, for some payments economically equivalent to interest, there may be no existing requirement for an entity to separately recognise a debt linked to the payment. It should therefore be easier for entities and tax authorities to identify and value the payments of interest (and economically equivalent payments) for which tax relief is being claimed.

- The level of debt in an entity may vary throughout a period, which means that the amount of debt on a particular date, or even an average for the period, may not be representative of an entity’s true position. On the other hand, the level of interest expense in an entity will reflect all changes in borrowings throughout the period. This is therefore likely to give a more accurate picture of the entity’s actual position over the period.

- A rule based on the level of debt in an entity could take into account the fact that two entities with the same amount of debt may for commercial reasons be subject to different rates of interest (e.g. taking into account the currency of borrowings and credit risk). This could also be done under a rule that directly limits an entity’s interest expense (e.g. by taking a group’s actual level of interest expense into account).
第 4 章

基于利息费用或债务水平采用最佳实践方法

57. BEPS 产生的一个主要原因是，集团有能力将应税收入从推动价值创造的经营活动剥离出来。因此，在实体的利息扣除金额与其应税经济活动水平之间建立联系是本报告提出的最佳实践方法的目标之一。

应用最佳实践方法限制实体的利息费用或债务水平

58. 一般性利息限制规则可直接发生效力，限制实体基于税收目的可扣除的利息金额，或间接发生效力，限制实体可获得利息扣除的债务金额。在确定最佳实践方法应建议采用何种方法时，我们已对一系列因素予以考虑，包括：

- 由于利用利息实现的 BEPS 受实体税收可扣除费用水平的驱动，因此直接限制实体可获得利息扣除水平的规则能解决这一问题。

- 限制实体债务水平的规则不一定能应对涉及过高贷款利率的 BEPS 风险。因此，这一规则需建立额外机制，以确立或允许的债务水平可收取的最高利息。这可以采用自交易测试或分配实体的实际利息费用实现，但这些措施会增加规则运作多出一个步骤，增加复杂程度。

- 最佳实践方法应适用于涉及利息和在经济上等同于利息支付的 BEPS。然而，对某些等同于利息的支付而言，目前尚无任何规定要求实体分清确认与该类支付相关的债务。因此，更简单的做法是，让实体和税务机构识别和关注用以申请税收减免的利息支付（及在经济上与其等同的支付）。

- 由于实体的债务水平在一定时期内会发生变化，因此，实体某一具体期间的债务金额甚至一段时期的平均债务金额，也许不能代表实体的真实状况。而实体利息费用水平却能反映一段时期内实体所有的借款变动。因此，这可能会更准确地呈现实体一段时期内的真实状况。

- 基于债务金额相同的两个实体在业务规模的影响下，其适用利息可能会不同（如将借款货币和信用风险考虑在内）。因此基于实体债务水平的规则可对这一情况予以考虑。这仍可通过直接限制实体利息费用的规则实现（如将集团实际利息费用水平考虑在内）。
The level of debt in an entity is under the control of the entity's management and so is generally predictable. The amount of interest expense, however, may vary reflecting changes in interest rates. This means that a rule that directly limits the level of interest expense could make it difficult for an entity to enter into long-term borrowings if there is a risk that interest rates could increase and it would suffer an interest disallowance in future periods.

59. Taking these factors into account, and given the key policy objective is to tackle base erosion and profit shifting involving interest and payments economically equivalent to interest, the best practice set out in this report includes rules which directly limit the level of interest expense that an entity may deduct for tax purposes. It also includes features, such as the group ratio rule, which should address some of the possible issues this raises. For example, if a group represents a greater credit risk and is required to pay a higher rate of interest on its third party debt, a group ratio rule will take this into account in setting a limit on tax deductions for entities within the group. As set out in the Introduction, a country may continue to apply an arm's length test alongside the best practice approach. For example, this could ensure that the amount of interest expense claimed by an entity is in accordance with the arm's length principle, but this amount is then subject to limitation under the best practice approach in this report.

Applying the best practice approach to limit an entity's gross interest expense or net interest expense

60. Another key question is whether a general interest limitation rule should apply to the interest an entity incurs on its borrowings without any offset for interest income (gross interest expense) or after offsetting the interest income it receives (net interest expense).

61. A gross interest rule has the benefit of simplicity and is also likely to be more difficult for groups to avoid through planning. However, a gross interest rule could lead to double taxation where each entity is subject to tax on its full gross interest income, but part of its gross interest expense is disallowed.

62. A net interest rule would reduce the risk of double taxation, as an entity's interest income would be set against its interest expense before the interest limitation is applied. It would also allow an entity to raise third party debt and on-lend borrowed funds within its group, without the entity incurring a disallowance of part of its gross interest expense. Taking into account these considerations, the general interest limitation rules contained in this report apply to an entity's net interest expense paid to third parties, related parties and intragroup, after offsetting interest income. The rules should apply to all of an entity's net interest expense, as discussed in Chapter 2, to ensure that a broad range of base erosion and profit shifting risks are addressed, including where excessive third party interest expense is incurred in a high tax country.

63. However, the fact that an entity has a relatively low net interest expense does not mean that base erosion and profit shifting is not taking place. For example, an entity with net interest income could use interest expense to shelter this income from tax. An entity may also disguise other forms of taxable income as interest income, reducing the level of net interest expense to which the rule can apply. Therefore, it is recommended that countries supplement the general interest limitation rules with targeted provisions which disallow gross interest expense in specific situations identified as posing base erosion and profit shifting risk. This is discussed in Chapter 9. Rules which apply to limit an entity's net interest expense will also have no impact on entities which, because of their business model, are typically receivers of net interest income. This arises in particular in the banking and insurance sectors, which are discussed in Chapter 10.

An option to exclude certain public-benefit projects

64. The best practice approach set out in this report places a general limit on the level of net interest expense that an entity may deduct for tax purposes. The fixed ratio rule should be applied consistently to all interest paid to third parties, related parties and group entities. However, as an exception to this general
实体债务水平处于实体管理层的控制下，因此，通常具有可预测性。而利息费用金额会随着利率的变动而变动，这说明对实体而言，若存在利息上升并导致其在未来期间对不得扣除利息的风险，直接限制利息费用水平的规则就会让实体难以进行长期借款交易。

59．考虑到这些因素，以及处理涉及利息和在经济上等同于利息之支付的 BEPS 这一主要政策目标，本报告所提出的最佳实践方法包括直接限制实体可税前扣除利息费用水平的规则。最佳实践方法还包括多种特别规则，如能解决由此可能产生的某些问题的集团比率规则。例如，集团若面临较大信用风险，须就其第三方债务支付更高的利率，集团比率规则将对此予以考虑，对集团内实体设定税前扣除限额。如本报告相关部分所述，一国可将独立交易测试与最佳实践方法一同采用。例如，这可确保实体的利息费用金额符合独立交易原则，但同时，该金额也应受本报告的最佳方法所设定的限额约束。

应用最佳实践方法限制实体毛利息费用或净利息费用

60．另一关键的问题是，一般性利息限制规则在用于实体借款产生的利息时，应基于未抵消利息收入的利息费用（毛利息费用），还是基于已抵消该实体利息收入的利息费用（净利息费用）。

61．毛利息规则不仅简单明了，还可能防止集团通过税务筹划进行避税。然而，在各实体应缴其全部毛利息收入缴税，而其部分毛利息费用不被允许税前扣除的情况下，毛利息规则会导致双重征税。

62．由于净利息规则在应用限制前，实体的利息收入已与利息费用相抵，因此该规则能降低双重征税的风险。同时，净利息规则也能使实体在集团内部最终第三方债务和利率来源资金时，不会造成其部分毛利息费用被禁止税前扣除。考虑到这些因素，本报告内的一般性利息限制规则适用于抵消利息收入后，实体的第三方，关联方和集团内部公司支付的净利息费用。” 如第 2 章所述，规则应适用于实体所有的净利息费用，确保被能应对各种 BEPS 风险，包括在高税负国家产生超额第三方利息费用的情况。

63．然而，尽管实体的净利息费用相对较低并不意味着 BEPS 不会发生。例如，收到净利息收入的实体可以利用利息费用避免该收入被征税。实体也能将其资产的应纳税收入和作为净利息收入，从而降低规则适用的净利息费用水平。因此，建议国家将针对性规定作为一般性利息限制的补充。在此在发现 BEPS 风险的具体情况下，不允许毛利息费用的税前扣除。详情将在第 9 章论述。用于限制实体净利息费用的规则，对受其商业模式影响而通常作为净利息收入接收方的实体也不会有影响。这在银行和保险业尤为突出，详情见第 10 章。

排除特定公益项目的选择

64．本报告所提出的最佳实践方法用于实体可税前扣除的净利息费用水平设定了一般性限额，固定比率规则应统一适用于所有向第三方、关联方和集团实体支付的利息。然而，在满足以下条件的情况下，一国可选择将特定第三方贷款产生的利息费用排除在固定比率规则和集团比率规则适用范围之外。除本报告特别规定的情况外，不得对其他情况予以排除。

65．对一些国家而言，私营公益活动可以是通过高额债务进行融资的大规模资产。然而，鉴于该类资
principle, a country may choose to exclude interest expense incurred on specific third party loans meet-

ing the conditions set out below from the scope of the fixed ratio rule and group ratio rule. Except as set out in

this report, other exclusions should not be applied.

65. In some countries, privately-owned public-benefit assets may be large-scale assets financed using

a high proportion of debt. However, because of the nature of the assets and the close connection with the

public sector, some such financing arrangements present little or no base erosion or profit shifting risk.

66. Taking account of the specific circumstances of the public sector, a country may exclude certain

amounts with respect to third party loans linked to specific assets when calculating an entity's net interest

expense which is subject to limitation under the best practice approach. To ensure this approach is tightly

targeted only on those projects which do not pose a base erosion or profit shifting risk, the following

conditions must be met:

- An entity (the operator) establishes a project to provide (or upgrade), operate and/or maintain

  assets on a long-term basis, lasting not less than 10 years, and these assets cannot be disposed of

  at the discretion of the operator.

- A public sector body or a public benefit entity (the grantor), contractually or otherwise obliges

  the operator to provide goods or services in which there is a general public interest. This

  provision must be subject to specific controls or a regulatory framework in addition to rules

  applying generally to companies or other commercial entities within a jurisdiction.

- Interest is payable by the operator on a loan or loans obtained from and owed to third party

  lenders on non-recourse terms, so that the lender only has recourse to and a charge over the assets

  and income streams of the specific project. Arrangements involving recourse to other assets,

  guarantees from other group companies or which otherwise seek to offer recourse beyond the

  project assets would not qualify for the exclusion.

- The loan or loans made to the operator do not exceed the value or estimated value of the assets at

  acquisition or once constructed, unless additional investment is made to maintain or increase their

  value. Subject to minimal and incidental lending to a third party (such as a bank deposit), none of

  the funds should be on-lent.

- The operator, the interest expense, the project assets and income arising from the project are all in

  the same country, where the income must be subject to tax at ordinary rates. Where the project

  assets are held in a permanent establishment, the exclusion will only apply to the extent that

  income arising from the project is subject to tax at ordinary rates in the country applying the

  exclusion.

- Similar projects of the operator or similar projects of other entities of the operator's group are not

  substantially less leveraged with third-party debt, taking into account project maturities.

67. Countries making use of the exclusion may impose additional rules before allowing an exclusion

 to apply, in order to prevent the exclusion being used by businesses not engaged in projects which deliver

 public benefits. These might include a requirement that obtaining the exclusion is not a main purpose of

 structuring the financing arrangements to meet the other conditions of the exclusion. Countries making use

 of the exclusion should publish full information about the scope of domestic legislation and the

 circumstances in which it can be used, and should also introduce mechanisms to provide for spontaneous

 exchange of information relating to the entities benefiting from the exclusion and investors in those with all

 relevant jurisdictions. The framework in Chapter 5 of the OECD Report Countering Harmful Tax Practices
产的性质，及其与公共部门的紧密联系，此类融资安排很少或几乎不会产生税务风险或利润转移风险。

66. 考虑到公共部门的特殊性质，任何在计算中涉及最佳实践方法所设定的限制的净利息费用时，可将某一特定金额范围内的现金和特定资产相关的第三方贷款。为确保这一方法仅针对不会产生税务风险或利润转移风险的项目，以下条件须被满足：

   - 实体（或经营方）设立的项目以长期提供（或升级）、运营和/或维护资产为目的，期限不少于10年，且经营方无权处置这些资产。

   - 公益组织的公益实体（授权方）以合同或其他方式要求实体提供具有公共利益的商品或服务，并受具体控制或监管框架，以及公司或其他商业实体在税收管辖区内须遵守相应的规则约束。

   - 经营方向债权人或支付第三方贷款的款项或对第三方贷款的支付利息，须使债权人仅对特定项目的资产和收入流程具有赎回权和清偿权，涉及其他资产的赎回权、其他集团公司提供的担保或安排，或寻求其他方式提供项目资产以外的赎回权的安排，不在可排除范围之内。

   - 向经营方提供的款项或对第三方贷款的款项或支付利息，须在资产价值超过或等于原值或税后估值，但为维持或增加资产价值而增加投资的情况除外。由于对第三方贷款的款项或支付利息，因此此类资金不得转贷。

   - 项目方、利息费用、项目资金和项目产生的收入须经过同一国家，且收入须按普通税率缴税。项目方资产位于常设机构的，只有在项目产生的收入应按采用排除规则的国家之普通税率缴税的情况下，排除规则方可使用。

   - 从项目成熟度来看，经营方的类似项目或经营方集团其他实体的类似项目并未在很大程度上减少对第三方债务的利用。

67. 采用排除规则的国家在使用该规则时，可能会改变额外规则防止与公共利益项目的公司使用该规则。这些规则可能会对具体要求，规定获得排除的主要目的并非为满足排除规则的其他条件而组织融资安排。采用排除规则的国家应完全公开关于国内法律适用范围和适用情形的信息，并引入相关机制，就排除规则的受益实体及其投资者，与所有相关税收管辖区开展自发性信息交流。OECD 报告《考虑透明度和实质性因素，有效打击有害税收实践》（OECD, 2015）第 5 章提出的框架可用于确定开展该自发性信息交流的税收管辖区。采用排除规则的国家应随时监控其运行状况，以协助以下提及的审查。这些国家应要求纳税人明确披露排除规则的使用情况。

68. 在排除规则适用的情况下，采用排除规则的国家还应采取措施确保项目收益和资产，以及相关利息费用不被用于允许该国境内的实体或其集团实体进一步扣除利息。因此，该国应调整国内比率规则和集团比率规则的运作，以确保当实体从排除规则中受益时；
More Effectively, taking into Account Transparency and Substance (OECD, 2015) would be used to determine the jurisdictions with which to spontaneously exchange such information. Countries adopting the exclusion should monitor its operation with a view to assisting in the review referred to below. Such countries should require taxpayers to clearly disclose any use of this exclusion.

68. Where this exclusion applies, a country applying the exclusion should also take steps to ensure that the project earnings and assets, and related interest expense, are not used to permit further interest deductions for the entity or other group entities in the country. Therefore, the country should adjust the operation of the fixed ratio rule and group ratio rule, so that where an entity benefits from this exclusion:

- Any earnings arising from the project (and/or the project assets) are excluded from the calculation of earnings or asset values under the fixed ratio rule and group ratio rule.
- The interest expense which has been excluded from limitation should not be included in the group’s net third party interest expense when applying the group ratio rule.

69. There is also a risk that interest which benefits from this exclusion will be used to increase the level of net interest deductions for group entities in other countries in which a group ratio rule is applied. Therefore, in applying the group ratio rule, a country may exclude any third party interest expense which benefits from an exclusion in any other country. Similarly, project earnings and assets may be excluded from the calculation of group earnings or asset values. Countries may obtain information on whether the exclusion has been applied using the exchange of information provisions contained in applicable international agreements. A country may also choose not to require the adjustments in this paragraph, in order to minimise complexity.

70. The design and operation of this exclusion will be included in the initial review of the best practice, to be conducted by no later than the end of 2020. This will include consideration of how the exclusion is being used, to ensure it is not giving rise to base erosion or profit shifting risks. Following this review, the exclusion may be revised or removed.

71. EU law issues are considered in Annex A.
任何源自项目（和/或项目资产）的收益不计入固定比率规则和集团比率规则下收益或资产价值的计算中。

已排除在限制适用范围以外的利息费用在采用集团比率规则时，不应纳入集团净第三方利息费用。

69. 这一排除规则也会带来风险，即排除的利息会被用于增加集团实体在其他采用集团比率规则的国家的净利息税前扣除水平。因此，采用集团比率规则时，应排除在任何其他国家可获排除的任何第三方利息费用。同样地，项目受益和资产不应计入集团收益或资产价值的计算中。各国应利用适用的国际协定中的信息互换条款，获取是否已采用排除规则的信息。一国也可选择不采用本段所述的调整，以降低复杂性。

70. 本排除规则的设计和运行将纳入定于2020年年中以前就最佳实践方法开展的最初审查范围内。审查将涉及排除规则的使用方式，以确保不会产生税基侵蚀或利润转移风险。审查后，排除规则可能会修改或取消。

71. 附件A就欧盟法律问题予以考虑。
NOTES

10 The term 'related party' is defined in Chapter 9.

11 A public benefit entity will typically be an entity whose primary objective is to provide goods or services for the general public, community or social benefit and where any equity is provided with a view to supporting the entity’s primary objectives rather than to provide a financial return to equity holders. The definition of a public benefit entity used by a country may be contained in law or a relevant applicable accounting standard.

12 Assets that provide goods and services in which there is a general public interest would generally refer to assets that are public goods.

13 Countries which are Member States of the European Union would need to take into account EU law considerations in designing their domestic rules.

BIBLIOGRAPHY

注释

注释

“关联方”的定义见第9章。

5. 公益实体一般指首要目标为向公众、社区或社会公益提供商品或服务的实体，如需提供股权，该股权也应
为支持企业的首要目标服务，而非向股权持有者提供金融收益。一国法律或相关适用会计准则可能会对其
认可的公益实体予以定义。

6. 提供具有明显公共利益的商品和服务的资产统称为公益资产。

7. 欧盟成员国在指定其国内规则时，需考虑欧盟法律的影响。

参考文献

CHAPTER 5
MEASURING ECONOMIC ACTIVITY USING EARNINGS OR ASSET VALUES

72. Fixed ratio rules and group ratio rules restrict the ability of an entity to deduct interest expense based on an objective measure of its economic activity. Work to develop a best practice approach has focused on earnings and asset values, as the measures which most clearly reflect the level of activity and value creation within a multinational group.

Measuring economic activity using earnings

73. As highlighted in the previous chapter, a goal of the BEPS project is to address practices that artificially separate taxable income from the activities that generate it. For most entities it is expected that there should be a clear correlation between earnings and taxable income. Therefore, 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. In addition, depending upon the definition of earnings used, this is a useful indicator of an entity’s ability to meet its obligations to pay interest, and therefore is one of the key factors used in determining the amount of debt an entity is able to borrow.

74. Another benefit of an earnings-based approach is that it makes a general interest limitation rule more robust against planning. Where the level of deductible interest expense in an entity is linked to earnings, a group can only increase net interest deductions in a particular country by increasing earnings in that country. Similarly, any restructuring to move profits out of a country will also reduce net interest deductions in the country. On the assumption that an increase in earnings will also give rise to an increase in taxable income, it is unlikely that the level of earnings will be manipulated in order to increase the interest deductions in a country.

75. The BEPS Action Plan (OECD, 2013) specifically requires the development of rules to address base erosion and profit shifting using interest expense to fund tax exempt or tax deferred income. A third important benefit of an approach using earnings is that the definition of earnings can be adapted to exclude income which is subject to favourable tax treatment. An obvious example would be dividend income, which in many countries is exempt from tax or is taxed at a reduced rate (subject to conditions such as a minimum holding requirement).

76. The main disadvantage of earnings as a measure of economic activity is that an entity’s earnings may be relatively volatile and there is a limit to the extent this can be controlled by a group. This means that under an earnings-based rule it may be hard for an entity to anticipate the level of net interest expense that will be permitted from year to year. This could make it difficult for an entity to calculate a cost of debt for long term projects, without knowing the extent to which its interest cost will be deductible. To an extent, these issues may be addressed in the design of a best practice approach, for example by allowing an entity to measure economic activity using the average earnings over a number of periods or by permitting an entity to carry forward disallowed interest expense and unused capacity to deduct interest. These approaches are discussed in Chapter 8.

77. A particular aspect of earnings volatility is the possibility that an entity may be in a negative earnings (i.e. loss-making) position. Under an earnings-based approach, an entity with negative earnings will be unable to deduct its net interest expense in the current period. In principle, this could mean that an entity with losses could be required to pay taxes as a result of an interest disallowance. However, this risk could be reduced depending
第5章
使用收益或资产价值计量经济活动

72. 固定比率规则和集团比率规则利用对实体经济活动的客观计量，达到限制实体扣除利润费用的目的。制定最佳实践方法的工作重点放在收益和资产价值上，因为两者是第一和第二集团内部的经济活动和价值创造水平。

使用收益计量经济活动

73. 如前述所述，BEPS 项目的目标是人为地将应纳税收从生产该收入的活动中割断，对大多数实体而言，收益和应纳税收在收入之间存在明显的联系。因此，为确保收入可扣除的净利息费用与生产应纳税收收入和推高价值创造的活动相匹配，使用收益计量经济活动应是最有效的方法。此外，通过对收益进行定义，可成为表明实体能够履行利息支付义务的有用指标，因此，也是用以确定实体能否扣减的债务余额的关键因素之一。

74. 基于收益的方法另一个好处是，它能让一般性利息限制规定更具可操作性。实体可扣除利息费用水平若与收益挂钩，集团就能通过增加在集团的收益来增加在该国的净利息扣除额。同样地，任何将利润转出一国的重组行为，也必将导致在该国的净利息扣除额的减少。如果收益的增加将导致应纳税收收入的增加，为增加在一国的利息扣除额而操作收益水平的行为就大大可能发生。

75. BEPS 行动计划 (OECD, 2013) 明确要求制定规则以应对使用利息费用为免税收入或税收递延收入的产生进行融资所导致的 BEPS 问题。基于收益的方法是解决这个问题的关键，它可对收益的定义予以调节以排除现有税收优惠待遇的收入。收益收入是一个显而易见的例子。在许多国家，股息收入均享受免税或低税率待遇 (如最低持股要求)。

76. 收益用以计量经济活动的主要不利因素在于实体的收益可能具有一定的波动性。且集团对该波动性的控制程度有限。这表明，在基于收益的规则下，实体可能难以预测各年度被允许的净利息费用水平。这会使实体难以在尚未知晓其可扣除利息费用的条件下，计算长期项目的债务成本。在一定程度上，这些问题可通过设计最佳实践方式予以解决，比如允许实体使用多个期间的平均收益计量其实体活动，或允许实体结转不扣除的利息费用和未使用的利息扣除。这些方法将在第 8 章予以论述。

77. 收益波动性的一个特定情形是，实体可能会处于负收益 (即亏损) 状况。根据基于收益的方法，实体若出现负收益，则不能扣除其当期利息费用。原则上，这会导致亏损实体因利息不予扣除而需缴税。然而，这一风险可以通过调整所用的收益定义、明确以税务信息或会计信息为准予以处理。其他机制，如不予扣除利息费用的结转，应能帮助亏损实体保留利息扣除权利，在盈利时申请税收减免。
upon the definition of earnings used, and whether this is based on tax or accounting information. Other mechanisms, such as the carry forward of disallowed interest expense, should enable a loss-making entity to retain the benefit of interest deductions and claim relief once it returns to profit.

Definition of earnings

78. In terms of the definition of earnings to be used, earnings before interest, taxes, depreciation and amortisation (EBITDA) and earnings before interest and taxes (EBIT) are both possible options. In either, non-taxable income such as branch profits or dividend income that benefit from a participation exemption should not be included in the calculation of earnings. Appropriate adjustments should also be made for taxable branch profits and dividend income to the extent that they are shielded from tax by foreign tax credits, in order to address the base erosion and profit shifting issues which are the subject of this report. EBITDA is the most common measure of earnings currently used by countries with earnings-based tests. By excluding the two major non-cash costs in a typical income statement (depreciation of fixed assets and amortisation of intangible assets), EBITDA is a guide to the ability of an entity to meet its obligations to pay interest. It is also a measure of earnings which is often used by lenders in deciding how much interest expense an entity can reasonably afford to bear. On the other hand, using EBITDA potentially favours entities operating in sectors with high levels of fixed asset investment. This is because EBITDA does not include the write-down of capitalised costs such as investment in plant and machinery, whereas it does take into account revenue costs which are the majority of the cost base for entities in other sectors. Data suggests that, across all industry sectors, average gross interest/EBIT ratios based on information taken from consolidated financial statements are approximately 40% higher than average gross interest/EBITDA ratios, although there can be significant variation between different industry sectors.

Measuring economic activity using asset values

79. The main benefit of an assets-based approach to measuring economic activity is that in general asset values are typically more stable (except in the case of revaluations and write-downs, and assets which are carried at fair value under accounting rules). This means that using asset values as a basis for measuring economic activity within a group should give rise to a relatively steady and predictable limit on the level of interest relief that can be claimed. This would improve certainty for groups and could also reduce compliance costs. In addition, an approach based on asset values would mean that entities with losses would still be able to deduct an amount of net interest expense, which may not be possible under an earnings-based approach.

80. In order to provide an accurate measure of an entity’s economic activity, an assets-based rule should take into account the value of those assets which drive the creation of value for the group. These would include assets such as land and buildings, plant and equipment, intangible assets, and financial assets which give rise to income other than interest, but excluding assets which give rise to non-taxable income (such as equity holdings which give rise to tax exempt dividends). However, a key issue surrounding an assets-based approach for the purposes of applying a fixed ratio rule is achieving a consistent and acceptable model for valuing each of these classes of assets. In terms of tangible assets, such as land and buildings and plant and equipment, a requirement to use market values of assets would be impractical and impose an excessive compliance burden on groups. However, an amortised historic cost valuation could give rise to inconsistencies depending upon the age of assets and is subject to influence by decisions of management, for instance on depreciation periods and the timing of revaluations and write downs. Historic cost is also unlikely to represent the actual value an asset contributes to a group’s economic activity. Intangible assets including trademarks and patents can be a group’s most valuable assets. However, accounting standards often impose stringent requirements on groups before they are able to recognise an intangible asset on their balance sheet, particularly where the asset has been internally created. This means that for a number of large groups, an approach to limiting interest deductions based on asset values for accounting purposes will not directly take into account the group’s most valuable assets (although intangible assets may be indirectly reflected to the
收益的定义

78. 关于应采用的收益定义，EBITDA（息税折旧及摊销前利润）和 EBIT（息税前利润）均为可取的选择。在两者中，对于参与免税的分公司利润或股息收入等非应税收入均不能计入收益的计算中。同时，还对应税分公司利润和股息收入予以足额，使其无需按外国税务抵免缴税，以应对对报告探讨的 BEPS 问题。EBITDA 是最普遍的计量收益的方法，目前被很多国家用于收益的控制。通过将主要非现金成本排除在普通利润表之外（固定资产折旧和无形资产摊销），EBITDA 能显示实体履行其利息支付义务的能力。EBITDA 同时也能计量收益，经常被政府机构用以确定实体可承担的利息费用的合理限度。另一方面，EBITDA 的使用有利于在固定资产投资水平较高的行业中运作的实体，这是因为 EBITDA 不含资本化成本的减记，如厂房与机器的折旧，尽管 EBITDA 的确考虑其他行业实体中占成本绝大部分的支出成本。数据显示，在所有行业领域，基于合并财务报表信息的平均利润/EBITDA 比率高于平均利润/EBITDA 比率 40% 左右，但不同行业间可能会存在较大差异。

使用资产价值计量经济活动

79. 用基于资产的方法计量经济活动的主要好处在于，一般来说，资产价值一般更为稳定（资产负债表和减记的情况，以及按会计规则以公认价值计量的资产除外）。这表明，将资产价值作为计量集团内部经济活动的基础可为实体可获得利益的水平设定相对较为稳定和可预测的限制，这加强集团的确定性，也能降低合规成本。此外，基于资产价值的方法也有助于实体即使出现亏损，也能从净利息费用中扣除一定金额。而这一做法的基于收益的方法中或许无法实现。

80. 为了能准确计量实体的经济活动，基于资产的方法应考虑推动集团价值创造的资产的价值。这是一些资产包括产生收入而非利息的土地和建筑物、厂房和设备、无形资产、金融资产等资产，不包括产生非应税收入的资产（如产生免税股息的所得股），而是使用基于资产的方法采用固定比率规则时面临一个关键问题，即建立一个用以评估企业可获得利息的水平设定相对较为稳定和可预测的限制。这加强集团的确定性，也能降低合规成本。另一方面，基于资产价值的方法也意味着实体即使出现亏损，也能从净利息费用中扣除一定金额。而这一做法在基于收益的方法中或许无法实现。
extent they give rise to earnings which are not distributed and so are included in retained earnings within equity). A specific area of difference in the treatment of assets under accounting standards is in the recognition of financial assets including derivative balances, and in particular the ability of groups to report positions on a gross or net basis. This can result in a significant difference in the value of a group’s total assets and under some accounting standards is left to the discretion of a group’s management, subject to conditions being met. These issues are in particular a problem in applying a fixed ratio rule based on asset values as in these cases a fixed benchmark ratio is applied to asset values which can vary significantly based on the accounting standards and policies applied by different groups. Concerns over the recognition and valuation of assets may be less of an issue in applying a group ratio rule, so long as a consistent approach is taken at entity and group level.

**Proposed approach**

81. On balance and taking into account the above factors, it appears that for a fixed ratio rule earnings is the most appropriate measure of economic activity, for groups operating in the majority of sectors and in different countries. In applying a group ratio rule, the differences between an earnings-based and an assets-based approach are less significant. This is reflected in the best practice approach set out in this report.

82. It is recommended that a fixed ratio rule should measure earnings using EBITDA. However, a country may apply a fixed ratio rule which measures earnings using EBIT, so long as the other elements of the rule are consistent with the best practice in this report. Where a country applies a fixed ratio rule based on EBIT, the benchmark net interest/EBIT ratio used should be equivalent to the appropriate benchmark net interest/EBITDA ratio described in Chapter 6, taking into account where the particular country would be placed within the corridor based on the factors in that chapter. In considering whether a benchmark net interest/EBIT ratio is equivalent to a net interest/EBITDA ratio, a country should take into account differences between average EBIT and EBITDA figures for the major sectors in its economy.

83. Where the economy of a particular country is highly reliant on heavily capitalised groups whose activities rely on tangible fixed assets with long depreciation periods, earnings should still be a suitable measure of economic activity for the purposes of applying a fixed ratio rule. However, in this case asset values may exceptionally be used as an acceptable alternative. Where a country applies a fixed ratio rule based on asset values, other elements of the rule should be consistent with the best practice approach. For example, the rule should apply to limit net interest expense payable to third parties and group entities located within the country and in other countries. The assets included in a valuation should include the main categories of assets which drive economic activity in a group but should exclude assets which give rise to non-taxable income such as dividends which qualify for a participation exemption. Asset values may be based on accounting or tax numbers, but this should be applied consistently. The benchmark net interest/assets ratio should be equivalent to the appropriate benchmark net interest/EBITDA ratio described in Chapter 6, taking into account where the particular country would be placed within the corridor based on the factors in that chapter. In considering whether a benchmark net interest/assets ratio is equivalent to a net interest/EBITDA ratio, a country may take into account the number of groups affected and the overall level of net interest expense disallowed.

84. Where a country applies a fixed ratio rule and group ratio rule both based on earnings, it is recommended that either EBITDA or EBIT be used for both rules. As described in Chapter 7, a country may also apply a fixed ratio rule based on earnings alongside a group ratio rule based on asset values, so long as the group ratio rule only permits an entity to exceed the benchmark fixed ratio where it is able to demonstrate that a relevant financial ratio (such as equity/total assets) is in line with that of its group.
建议的方法

81. 总体而言，考虑以上因素，对于固定比率规则，收益是计量经济活动的最佳方法，适用于大部分行业。在不同国家运营的集团，在应用集团比率规则时，基于收益的方法与基于资产的方法差异较小，这在本报告提出的最佳实践方法中得以反映。

82. 建议固定比率规则使用 EBITDA 计量收益。然而，一国也可采用基于 EBIT 计量收益的固定比率规则，只要该规则的其他要素与本报告的建议一致。一国应用基于 EBIT 的固定比率规则时，需确保所使用的基准净利息/EBIT 比率等于第 6 章所述的适当基准净利息/EBITDA 比率。该比率由第 6 章所述各因素确立的一国所处区间位置决定。在考虑基准净利息/EBIT 比率是否等于净利息/EBITDA 比率时，一国应考虑其经济体中各主要行业平均 EBIT 和 EBITDA 数据间的差异。

83. 如果一国经济高度依赖于资本化程度高的集团，而这些集团的活动又依赖于具有较长折旧期的无形资产，收益仍应作为计量经济活动的最佳方法。以应用固定比率规则。然而，在此情况下，资产价值可对资产进行不可接受的另一可选方法。一国应用基于资产价值的固定比率规则时，该规则的其他要素应与本报告的建议一致。例如，该规则应规定资本性支出位于集团和其他国家的第三方和集团实体支付的净利息费用。资产评估涉及的资产包括对推动集团经济活动的主要资产类别，但应排除产生非应纳税收入的资产，如享受无偿配售的股份。资产价值既可基于历史数据，也可基于税务数据，但必须保持一致。基准净利息/EBIT 比率应等于第 6 章所述的恰当的基准净利息/EBITDA 比率。该比率由第 6 章所述各因素确立的一国所处区间位置决定。在考虑基准净利息/EBIT 比率是否等于净利息/EBITDA 比率时，一国应考虑受影响集团的数量和不予扣除净利息费用的总体水平。

84. 一国若在应用固定比率规则和集团比率规则时均以收益为基础，建议在两套规则中仅使用 EBITDA 和 EBIT 二者中的一个。如第 7 章所述，一国应用基于收益的固定比率规则的同时，也可采用基于资产价值的集团比率规则，只要集团比率规则仅在实体能够证明相关金融比率（如股权 / 总资产）与集团一致时才允许实体超出基准固定比率的限度。
NOTES

Where branch profits benefit from a participation exemption, the entity’s EBITDA or EBIT should be reduced by an amount equal to the EBITDA or EBIT of the branch. Where branch profits are taxed, an entity’s EBITDA or EBIT should be reduced by an amount equal to part of the branch’s EBITDA or EBIT, in proportion to the extent that the tax on branch profits is sheltered by tax credits. For example, under one possible approach, if 25% of the entity’s tax liability on the branch profits is sheltered by tax credits, the entity’s EBITDA or EBIT should be reduced by an amount equal to 25% of the EBITDA or EBIT of the branch.
注释

分公司利润若受益于参与免税，实体的 EBITDA 或 EBIT 应减去分公司的 EBITDA 或 EBIT。如果分公司利润应上税，实体的 EBITDA 或 EBIT 应减去分公司 EBITDA 或 EBIT 的一部分。减去的金额应等于受税务抵免保护的应就分公司利润上缴的税额。例如，在一个可能的方法下，如果实体就分公司利润所需承担的纳税义务的 25% 受税务抵免的保护，实体的 EBITDA 或 EBIT 应减去分公司 EBITDA 或 EBIT 的 25%。
CHAPTER 6
FIXED RATIO RULE

The aim of a fixed ratio rule

85. The premise underlying the fixed ratio rule is that an entity should be able to deduct interest expense up to a specified proportion of EBITDA, ensuring that a portion of an entity's profit remains subject to tax in a country. A fixed ratio rule can apply to all entities, including those in a multinational group, a domestic group and standalone entities. The underlying benchmark fixed ratio is determined by a country's government and applies irrespective of the actual leverage of an entity or its group. Interest paid to third parties, related parties, and group entities is deductible up to this fixed ratio, but any interest which takes the entity's ratio above this benchmark is disallowed.

86. The key advantage of a fixed ratio rule is that it is relatively simple for companies to apply and tax administrations to administer. On the other hand, a fixed ratio rule does not take into account the fact that groups operating in different sectors may require different amounts of leverage, and even within a sector groups may adopt different funding strategies for non-tax reasons. Applying a fixed ratio rule differently to groups in different sectors would inevitably make a rule more complex to administer, in particular where a sector cannot be easily defined or where a group has activities across more than one sector. The option to exclude interest funding certain public-benefit projects described in Chapter 4 may help to address these issues for some entities. However, in general, a country should apply the fixed ratio rule consistently, using the same benchmark fixed ratio, to groups in all sectors (with the exception of groups in the banking and insurance sectors, which are considered in Chapter 10, for which targeted rules are being considered).

87. However, groups in certain sectors may benefit from economic rent that means they are able to generate high levels of EBITDA, which under the general approach described in this report could give rise to relatively high levels of net interest deductions. A country may therefore choose to apply a fixed ratio rule more strictly to groups in these sectors. For example, groups in sectors which benefit from economic rents may be subject to a lower benchmark fixed ratio, or the calculation of entity EBITDA may be adjusted to strip out the effect of the economic rent.

Operation of a fixed ratio rule

88. Fixed ratio rules apply a predetermined benchmark fixed ratio to the earnings of an entity or a local group to calculate the maximum deductible interest expense. Calculating the amount of any interest expense disallowance under a fixed ratio rule involves a three step process: firstly, calculating the appropriate measure of EBITDA; secondly, applying the statutory benchmark fixed ratio to an entity's EBITDA to determine the maximum deductible interest expense; and thirdly, comparing this with the actual interest expense of the entity. The calculation of EBITDA should be based on values that are determined under the tax rules of the country applying the rule. The use of tax figures to calculate entity EBITDA has a number of advantages. Firstly, the rule should be reasonably straightforward to apply and audit. Secondly, using tax figures reduces the risk that an entity with negative EBITDA is required to pay taxes as a result of an interest disallowance. Finally, linking interest deductions to taxable earnings means it is more difficult for a group to increase the limit on net interest deductions without also increasing the level of taxable income in a country.
第6章
固定比率规则的目标

85. 固定比率规则实施的前题是，实体应能在不超过 EBITDA 规定比率的范围内扣除利息费用，确保实体仍处有利可图的一部分在界线之间。固定比率规则适用于所有实体，包括但不限于跨国集团的实体。固定比率规则的基线为实收资本由各国政府确定，在应用中不考虑实体其全球的实际杠杆水平。支付第二方、关联方"和集团实体的利息可在这一固定比率范围内扣除，但任何让实体比率超过这一基线的利息将被不予扣除。

86. 固定比率规则的主要优点在于其相对简单明了，便利公司应用，也利于税务机构的管理。另一方面，固定比率规则并不考虑在不同行业运营的集团可能需要不同的杠杆水平。即使在同一行业中，实体也会因非税务原因采用不同的融资策略，对处于不同行业的集团采取不同的固定比率规则。然而，固定比率规则的复杂度，尤其是在行业难以轻易定义或集团活动跨越多个以上行业的情况下。第4章所述的将资助特定项目的利息排除在外的规则，可帮助解决某些实体面临的这类问题。然而，一般说来，一国应对所有行业的集团统一采用同一基线的固定比率（处于银行和保险业的集团除外，对其应考虑采用针对性规则，将在第10章介绍）。

87. 然而，处于某些特定行业的集团可能会从经济租金中获益，这意味着它们能产生较高水平的 EBITDA，根据本报告所述的一般方法，较高水平的 EBITDA 又能产生较低水平的净利息支付。因此，一国可在这些行业更加严格地实施固定比率规则。例如，可以对处于受益于经济租金的行业中的集团采用更低的基准固定比率，或对 EBITDA 的计算规则以剔除经济租金的影响。

固定比率规则的运作

88. 固定比率规则将设定的基准固定比率用于实体或本地集团的收益，以计算可扣除的最高利息费用。根据固定比率规则计算任何利息费用不予扣除额需经过三个步骤：第一步，恰当地计算 EBITDA；第二步，将固定比率固定比率用于实体的 EBITDA，以确定扣除的最高利息费用；第三步，将其与实体实际利息费用相比较。计算 EBITDA 时，应采用该规则的国家所制定的税务规则确定的价值为基础。使用税务数据计算实体的 EBITDA 有诸多益处。首先，该规则较为直观，不仅易于应用，还易于审计。其次，使用税务数据能降低实体在利息不予扣除影响下，未发生负债的 EBITDA 但仍需缴税的风险。最后，将利息扣除与应税收益挂钩意味着集团要想在不增加在国的应税收入水平的情况下增加净利息扣除限额，将面临更大困难。
Step 1: Calculating the measure of earnings

89. An entity’s EBITDA should be calculated by adding back to its taxable income, the tax values for: (i) net interest expense and net payments equivalent to interest payments as defined in Chapter 2; and (ii) depreciation and amortization. Tax exempt income, such as exempt dividend income or foreign earnings that are tax exempt, should not form part of the entity’s EBITDA figure. The rationale behind excluding exempt dividend income is to address concerns related to the outbound investment scenario as described in Action 4.

Step 2: Applying the statutory benchmark fixed ratio to earnings

90. Following the calculation of the entity’s EBITDA, the statutory benchmark fixed ratio will be applied to the EBITDA figure. The result determines the maximum amount of interest expense that the entity is allowed to deduct for tax purposes.

Step 3: Comparing maximum deductible interest expense with actual interest expense

91. In the last step, the maximum amount that the entity is allowed to deduct for tax purposes is then compared with the entity’s actual net interest expense.

92. Net interest expense in excess of the maximum allowable amount is disallowed. An illustration of how a fixed ratio rule might operate in practice is included as Example 4 in Annex D. This example also illustrates the potential advantages and disadvantages of applying a fixed ratio rule at the level of the local group.

Setting a benchmark fixed ratio

93. An effective fixed ratio rule requires a country to set the benchmark fixed ratio at a level which is appropriate to tackle base erosion and profit shifting. At the same time, it is recognised that countries differ in terms of both their economic environment and the presence of other targeted tax rules which specifically address base erosion and profit shifting risk involving interest. There are many factors which could affect the competitiveness of countries to attract investment, including the tax rate, composition of the tax base and interest deductibility rules. Therefore, without an agreed best practice approach, there is a risk that competitiveness concerns would drive countries to adopt benchmark fixed ratios at a high level which would allow more interest expense to be deducted and reduce the effectiveness of the rule in tackling base erosion and profit shifting.

A corridor of benchmark fixed ratios

94. In order to address base erosion and profit shifting risks, by co-ordinating the approach to setting a benchmark fixed ratio between countries and reduce the risk that countries will be driven to apply a ratio at a level which is too high to address base erosion and profit shifting risks, it is recommended that countries set their benchmark fixed ratio within a best practice range or ‘corridor’.

95. In setting a best practice corridor, the key aim is to identify a range of benchmark fixed ratios which:

- allows the majority of groups to deduct an amount equivalent to their net third party interest expense (assuming net interest expense is spread around the group in accordance with accounting-EBITDA)
第一步：收益计算

89. 计算实体的 EBITDA 时，将第 2 章定义的等同于利息支付的净利息费用和净支付，以及折旧和摊销的税前价格加回税收收入中。免税股息收入或免税外国收益等免税收入不计入实体 EBITDA 中。将免税股息收入排除在外是为了应对与第 3 项行动计划所述与对外投资情形相关的问题。

第二步：将法定基数固定比率用于收益

90. 完成实体 EBITDA 的计算后，将法定基数固定比率用于 EBITDA 数据。由此产生的结果决定实体可税前扣除的最大利息费用额度。

第三步：将最大可扣除利息费用与实际利息费用比较

91. 在最后一步，将实体可税前扣除的最大金额与实体实际净利息费用作比较。

92. 净利息费用超过最大可扣除金额的部分将不予扣除。附件 D 的示例 4 详细展示了固定比率规则在实际中如何运作。这一示例还探讨了本地集团采用固定比率规则的利弊。

设定基准固定比率

93. 要使固定比率规则发挥有效作用，一国需设定一定水平的固定比率以应对 BEPS。同时，也应认识到，各国经济环境各不相同，有些国家可能已制定了具体应对涉及利息的 BEPS 风险的其他针对性税务规则。一国吸引投资的竞争力受诸多因素的影响，如税率、税基组成、利息扣除规则等。因此，在缺乏明确的最佳实践方法的情况下，各国为加强竞争力，可能会将基准固定比率设定在较高水平，允许扣除更高额度的利息费用，从而降低固定比率规则对 BEPS 的有效性。

基准固定比率区间

94. 为协调各国设定基准固定比率的方法，应对 BEPS 风险，防止各国采用过高的比率而无法应对 BEPS 风险，建议各国将基准固定比率设定在最佳实践模式或“区间”内。

95. 在设定最佳实践区间时，主要目的应是识别一系列满足以下条件的基准固定比率：

- 允许大部分集团按等值于其净第三方利息费用的金额进行扣除（假设净利息费用按会计 - EBITDA 分散在集团内）
96. Financial data provided to the OECD by BIAC/PwC illustrates the proportion of publicly traded multinational groups with positive EBITDA, that would in principle be able to deduct an amount equivalent to their net third party interest expense, if a benchmark fixed ratio is set at different levels. This assumes that a group’s net interest expense is spread around the group in accordance with EBITDA. Groups with negative EBITDA are not included in this analysis, as the impact of a fixed ratio rule on an entity with negative EBITDA is the same irrespective of the level at which a benchmark fixed ratio is set. The numbers below are based on average figures over the period 2009 to 2013:

- At a benchmark fixed ratio of 10%, 62% of these groups would in principle be able to deduct all of their net third party interest expense.
- At a benchmark fixed ratio of 20%, 78% of these groups would in principle be able to deduct all of their net third party interest expense.
- At a benchmark fixed ratio of 30%, 87% of these groups would in principle be able to deduct all of their net third party interest expense.
- At a benchmark fixed ratio of 40%, 91% of these groups would in principle be able to deduct all of their net third party interest expense.
- At a benchmark fixed ratio of 50%, 93% of these groups would in principle be able to deduct all of their net third party interest expense.

97. Once a benchmark fixed ratio exceeds 30%, the rate at which more groups are able to deduct all of their net third party interest expense increases more slowly. However, at this level, a significant proportion of groups may have an incentive to increase the level of intragroup debt in order to claim net interest deductions in excess of their net third party interest expense. For example, based on the financial data referred to in the paragraph above, around half of publicly traded multinational groups with positive EBITDA have a net third party interest/EBITDA ratio of 5% or below. Therefore, at a benchmark fixed ratio of 30%, there is a risk that these groups could deduct up to six times their actual net third party interest, assuming there are no impediments to the use of intragroup debt. This risk increases if a benchmark fixed ratio is set above this level. On the basis of this analysis, and balancing the goals of allowing most groups to deduct their net third party interest expense and limiting the risk that groups will deduct more than this amount, it is recommended that countries applying a fixed ratio rule based on a net interest/EBITDA ratio set their benchmark fixed ratio within a corridor of 10% to 30%. As set out in Chapter 11, this corridor may be revised following an initial review of the best practice, to be completed by no later than the end of 2020.

98. Within the best practice corridor, a majority of groups with positive EBITDA should in principle be able to deduct all of their net third party interest expense. A country could also include other elements of the best practice approach to enable entities in groups with a net third party interest/EBITDA ratio above the benchmark fixed ratio to deduct more net interest expense, where they pose a low risk of base erosion and profit shifting. For example, a group ratio rule may be used to allow an entity which exceeds the benchmark fixed ratio to deduct more net interest expense up to the level of the group’s net third party interest/EBITDA ratio where this is higher. A country may also apply a de minimis threshold to exclude from the scope of a fixed ratio rule and group ratio rule entities with low net interest expense.
96. BIAC (工商界咨询委员会) / PwC (普华永道) 向 OECD 提供的财务信息展示了将基准固定比率设于不同水平的情况下，原则上能以等同于集团利润费用的金额实行扣除的，EBITDA 为正数的上市集团所占的比例。这是基于集团的利润费用根据 EBITDA 分散在集团内的假设得到的。由于固定比例规则对 EBITDA 为负数的实体的影响不受基准固定比率水平的影响，因此 EBITDA 为负数的集团不纳入这一分析中。以下数据以 2009 年至 2013 年期间的平均数据为基础：

- 基准固定比率若设定为 10%，62% 的此类集团原则上可扣除其全部的净第三方利息费用。
- 基准固定比率若设定为 20%，78% 的此类集团原则上可扣除其全部的净第三方利息费用。
- 基准固定比率若设定为 30%，87% 的此类集团原则上可扣除其全部的净第三方利息费用。
- 基准固定比率若设定为 40%，91% 的此类集团原则上可扣除其全部的净第三方利息费用。
- 基准固定比率若设定为 50%，93% 的此类集团原则上可扣除其全部的净第三方利息费用。

97. 基准固定比率一旦超过 30%，可扣除全部净第三方利息费用的集团数量增长变得较为缓慢。然而，在这一水平上，很大一部分集团为获得超过其净第三方利息费用的净利息扣除，增加集团内负债水平。例如，根据上一段提及的财务数据，约一半 EBITDA 为正数的上市集团的净第三方利息/EBITDA 比例为 5% 或更低。因此，当基准固定比例为 30% 时，假设使用集团内部负债没有任何限制，此类集团最大可扣除的金额是其实际净第三方利息的 6 倍。如果基准固定比率设定在更高水平，这一风险还会增加。基于这一分析，为了让大部分集团在可以扣除其净第三方利息费用的同时，限制集团可扣除水平不超过这一水平的风险，建议采用基于净利息/EBITDA 比率的固定比率规则的国家将基准固定比例设定在 10% 至 30% 的区间内。如第 11 章所述，在最佳实践的初步审查后，可能会对这一区间予以修改，该最初修改将在 2020 年末完成。

98. 在最佳实践区间内，大部分 EBITDA 为正数的集团原则上可扣除其全部的净第三方利息费用。一般也可制定其他最佳实践方法的组成部分，让净第三方利息/EBITDA 比率超过基准固定比率的集团内实体能够扣除更多净利息费用，只要这些实体进行 BEPS 的风险较低。例如，集团比率规则可允许实体扣除超过基准固定比率但低于集团净第三方利息/EBITDA 比率（如果该比率高于基准固定比率）的利息费用。一般也可采用最低限度将净利息费用较低的实体排除在固定比率规则和集团比率规则适用范围之外。
Factors to assist countries in setting a benchmark fixed ratio

99. It is recommended that countries set their benchmark fixed ratio within the corridor of 10% to 30%. However, it should be recognised that countries differ in terms of their legal framework and economic circumstances and, in setting a benchmark fixed ratio within the corridor which is suitable for tackling base erosion and profit shifting, a country should therefore take into account a number of factors, including the following:

1) A country may apply a higher benchmark fixed ratio if it operates a fixed ratio rule in isolation, rather than in combination with a group ratio rule.

2) A country may apply a higher benchmark fixed ratio if it does not permit the carry forward of unused interest capacity or carry back of disallowed interest expense.

3) A country may apply a higher benchmark fixed ratio if it applies other targeted rules that specifically address the base erosion and profit shifting risks to be dealt with under Action 4.

4) A country may apply a higher benchmark fixed ratio if it has high interest rates compared with those of other countries.

5) A country may apply a higher benchmark fixed ratio, where for constitutional or other legal reasons (e.g. EU law requirements) it has to apply the same treatment to different types of entities which are viewed as legally comparable, even if these entities pose different levels of risk.

6) A country may apply different fixed ratios depending upon the size of an entity’s group.

100. These factors are considered in more detail below.

A country may apply a higher benchmark fixed ratio if it operates a fixed ratio rule in isolation, rather than operating it in combination with a group ratio rule

101. Where a country operates a fixed ratio rule alongside a group ratio rule, an entity which exceeds the fixed ratio may be able to deduct more net interest expense up to the relevant financial ratio of its group. The country is therefore able to apply a benchmark fixed ratio at a lower level, relying on the group ratio rule to moderate the impact of this on entities in groups which are highly leveraged. On the other hand, where a country introduces a fixed ratio rule without a group ratio rule, it may apply a higher benchmark fixed ratio.

A country may apply a higher benchmark fixed ratio if it does not permit the carry forward of unused interest capacity or carry back of disallowed interest expense

102. Unused interest capacity is the amount by which an entity’s net interest expense is below the maximum amount permitted under the fixed ratio rule. As discussed in Chapter 8, where a country permits unused interest capacity to be carried forward, this could give rise to a tax asset which may be monetised by increasing the entity’s net interest expense or by reducing its EBITDA. As these behaviours should not be encouraged by a rule to tackle base erosion and profit shifting, a country which allows the carry forward of unused interest capacity should apply a lower benchmark fixed ratio to reduce this incentive. Similarly, a country which permits the carry back of disallowed interest expense, which gives rise to the same risk, should also apply a lower benchmark fixed ratio. The weight which should be attached to this factor would depend upon the extent to which a country incorporates the restrictions discussed in Chapter 8. A country which does not allow either a carry forward of unused interest capacity or a carry back of disallowed interest expense may apply a higher benchmark fixed ratio.
帮助国家设定基准固定比率的因素

99. 帮助各国将基准固定比例设在 10% 至 30% 的区间内。然而也应认识到，各国的法律架构和经济环境各不相同，为了在区间内选定合适的比率作为基准固定比率，达到应对 BEPS 问题的目的，一国应考虑一系列表因素，包括以下情况：

1) 一国若单独采用固定比率规则，不与集团比率规则同时采用，可设定更高水平的基准固定比率。

2) 一国若不允许结转未使用的利息扣除限额或转回不予扣除的利息费用，可设定更高水平的基准固定比率。

3) 一国若采用了具体应对第 4 项行动计划所处理的 BEPS 风险的针对性规则，可设定更高水平的基准固定比率。

4) 一国若与其他国家相比，利率水平较高，可设定更高水平的基准固定比率。

5) 若在章程或其他法律规定（如欧盟法律规定）下，对于具有法律可比性的不同类型的实体，即使这些实体产生的风险水平各不相同，一国仍须对其采用同等待遇，在此情况下可设定更高水平的基准固定比率。

6) 一国可基于实体集团的规模设定不同的固定比率。

100. 以下是对这些因素的具体考量。

一国若单独采用固定比率规则，不与集团比率规则同时采用，可设定更高水平的基准固定比率。

101. 一国若在采用固定比率规则的同时，采用集团比率规则，超过固定比例的实体最多可将其所在集团的相关财务比率扣除净利息费用。因此，该国可将基准固定比率设定在较低水平，凭借集团比率规则减轻对高杠杆集团内实体的影响。另一方面，一国若采用固定比率规则时不采用集团比率规则，可设定更高的基准固定比率。

一国若不允许结转未使用的利息扣除限额或转回不予扣除的利息费用，可设定更高水平的基准固定比率。

102. 未使用的利息扣除限额指实体净利息费用低于固定比率规则允许的最大金额的情况。如第 8 章所述，在允许结转未使用的利息扣除限额的国家，这会产生税收资产，该资产通过增加实体净利息费用或降低实体的 EBITDA 即可实现。由于有利于应对 BEPS 问题的规则不鼓励这些行为，因此允许结转未使用的利息扣除限额的国家应采用更低水平的基准固定比率。同样地，由于允许转回不予扣除的利息费用也会带来同样的风险，因此，允许转回的国家也应设定更低水平的基准固定比率。一国对这一因素的重视程度，取决于该国在多大程度上采纳第 8 章所述的各种限制。不允许结转未使用的利息扣除限额或转回不予扣除的利息费用的国家，可设定更高水平的基准固定比率。

一国若采用了具体应对第 4 项行动计划所处理的 BEPS 风险的针对性规则，可设定更高水平的基准固定比率。
A country may apply a higher benchmark fixed ratio if it applies other targeted rules that specifically address the base erosion and profit shifting risks to be dealt with under Action 4.

103. Action 4 focuses on the development of best practices in the design of rules to prevent base erosion and profit shifting through the use of third party, related party and intragroup interest, including payments economically equivalent to interest, to achieve excessive interest deductions or finance the production of exempt or deferred income. The recommended best practice approach includes the fixed ratio rule described in this chapter, but it is recognised that other targeted interest limitation rules may also be effective in tackling some of these risks. For example, a country may have a targeted rule which disallows all interest expense used to fund tax exempt income. Where a country has targeted rules which specifically address the base erosion and profit shifting risks to be dealt with under Action 4, and it applies these rules in practice, these may reduce pressure on the fixed ratio rule meaning that a higher benchmark fixed ratio could be applied. The extent to which this factor supports a higher benchmark fixed ratio depends upon the extent to which the specific base erosion and profit shifting risks involving interest and targeted by Action 4 are addressed. Where a country does not have other rules which specifically deal with the base erosion and profit shifting risks targeted by Action 4, it should apply a lower benchmark fixed ratio.

A country may apply a higher benchmark fixed ratio if it has high interest rates compared with those of other countries.

104. The net interest/EBITDA ratio of entities which raise third party debt locally can be impacted by a number of factors, including the level of a country’s interest rates. Where a country’s interest rates are high relative to those in other countries, the country may recognise this by applying a higher benchmark fixed ratio. This is not intended to favour entities operating in a high interest rate country, but simply recognises the fact that these entities are likely to be subject to a higher cost of funds. The extent to which this factor supports a higher benchmark fixed ratio depends upon the extent to which interest rates are higher than those in other countries. However, a country with high interest rates may still apply a lower benchmark fixed ratio. For example, where a country applies the same benchmark fixed ratio to all entities, including those in large groups which are less likely to be exposed to differences in interest rates between countries, it may decide that it is not appropriate for its high interest rate to be taken into account when setting the ratio. Where a country has low interest rates compared with other countries, it should apply a lower benchmark fixed ratio. In comparing its interest rates with those of other countries, a country may take into account one or more relevant rates, such as the central bank rate, the long-term government bond rate and the average corporate bond rate for entities with a good credit rating (for example, equivalent to a credit rating of ‘A’ or above). Whether a particular interest rate is high or low must be judged in comparison with other countries and will change over time as interest rates move. Currently, it is suggested that a long-term government bond rate that is above 5% may be considered to be high.

A country may apply a higher benchmark fixed ratio, where for constitutional or other legal reasons (e.g. EU law requirements) it has to apply the same treatment to different types of entities which are viewed as legally comparable, even if these entities pose different levels of risk.

105. As set out in Chapter 3, the main base erosion and profit risk involving interest is posed by entities in multinational groups. Therefore, within the best practice approach, a country may restrict the application of the fixed ratio rule to these entities. However, in some cases, constitutional or legal requirements mean that a country is also required to apply the fixed ratio rule to other entities which are seen as legally comparable, including entities in domestic groups and/or standalone entities which may pose less risk of base erosion and profit shifting involving interest. In this case, because the country is required to apply the same treatment to entities which are legally comparable, including those which pose less base erosion and profit shifting risk, the country may apply a benchmark fixed ratio at a higher level.
103. 第4项行动计划的工作重点在于在规则设计过程中，提出最佳实践方法，防范利用第三方、关联方和集团内利息（包括经济上等同于利息的支付），以达到实现超额利润扣除或为免缴收入或递延收入融资的BEPS目的。建议采用的最佳实践方法包括原本所述的固定比率规则，但也应认识到，其他针对性利息限制规则也应在应对这些风险方面发挥有效作用。例如，一国可制定针对性规则，对所有用于为免税收入融资的利息费用不予扣除。一国若制定了具体应对第4项行动计划所处理的BEPS风险的针对性规则，并在实际中予以应用，将能降低固定比率规则所需承担的压力，因此，也就意味着可以采用更高水平的基准固定比率。这一因素能在多大程度上支持采用更高水平的基准固定比率，则取决于第4项行动计划所针对的，涉及利息的具体BEPS风险在多大程度上得到处理。

一国若与其他国家相比，利率水平较高，可设定更高水平的基准固定比率。

104. 本地或外方股东的实体的净利息/EBITDA比率受国家利率水平等诸多因素的影响。一国的利率若高于其他国家，该国在认识到这一点后，可设定更高的基准固定比率。这并非偏袒在高利率国家经营的实体，而仅是对这些实体可能已承担了更高资金成本这一事实的考虑。因此，这一因素能在多大程度上支持采用更高水平的基准固定比率，取决于利率在多大程度上高于其他国家。然而，高利率国家也可能采用更紧的基准固定比率。例如，对所有实体——包括不太受国家间利率差异影响的大型集团内的实体——应用相同基准固定比率的国家可能会认为，在设定利率时考虑其高利率水平并不合适。一国的利率若低于其他国家，应采用更低水平的基准固定比率。在与其他国家比较利率水平时，一国可考虑某一种或多种比率，如央行利率、长期政府债券率、信用评级较好（例如，等同于A及信用评级或以上）的实体的平均企业债务率等。由于利率不断变化，在判断利率是否过高或过低时，必须与其他国家进行比较。目前，建议将5%以上的长期政府债券率视为较高水平。

若在章程或其他法律规定（如欧盟法律规定）下，对于有法律可比性的不同类型的实体，即使这些实体产生的风险水平各不相同，一国仍须对其进行同等待遇，在此情况下可设定更高水平的基准固定比率。

105. 如第3章所述，涉及利息的BEPS主要源于跨国集团内的实体。因此，在最佳实践方法中，一国可将固定比率规则适用于这些实体。然而，在一些情况下，章程或法律要求一国将固定比率规则用于具有法律可比性的其他实体，包括本国集团内的实体和/或独立实体，尽管源于这些实体的涉及利息的BEPS风险可能相对较小。在情况下，由于该国须对所有具有法律可比性的实体实施同等待遇，包括那些产生较小BEPS风险的实体，因此，该国会将基准固定比率设定在区间内的较高水平。由此，作为补偿，一国可能会决定应用较低的比率以确保涉及利息的BEPS得到处理，尽管这也必将应用到蕴含更低风险的实体。

一国可基于实体集团的风险设定不同的固定比率。

106. 一般而言，大型集团内的实体向第三方借款时所处状况与其他实体不同。例如，大型集团更可能集中举借第三方债务。它们可能在进入全球资本市场方面享有更大优势，与贷款方交涉时可能具备更强
within the corridor. In such situations, a country may alternatively decide to apply a lower ratio in order to ensure that base erosion and profit shifting involving interest is addressed, even though this would also be applied to entities which pose less risk.

A country may apply different fixed ratios depending upon the size of an entity’s group

106. In general, entities in large groups are in a different position to other entities when raising third party debt. For example, large groups are more likely to raise third party debt centrally, they may have better access to global capital markets, and they may have greater bargaining power with lenders. Large groups also often have sophisticated treasury functions to manage the financial position of the group, including its interest cost. This has two important implications for the application of a fixed ratio rule to entities in large groups compared with other entities:

- Firstly, the analysis of financial data provided to the OECD during the public consultation on Action 4 indicates that large groups tend to have lower net third party interest/EBITDA ratios compared with other groups. For example, a benchmark fixed ratio of 30% would allow around 95% of publicly traded multinational groups with market capitalisation of USD 5 billion or above and with positive EBITDA to deduct all of their net third party interest expense, compared with around 85% of groups of all sizes. Therefore, to create a level playing field, a country may apply one benchmark fixed ratio to entities in large groups, and a higher benchmark fixed ratio to other entities.

- Secondly, because large groups are more likely to raise third party debt centrally, they are less likely to be exposed to differences in interest rates in the countries in which they operate. Therefore, in setting a benchmark fixed ratio to apply to entities in large groups, a country should not take into account whether its interest rate is higher or lower than those in other countries (i.e. factor 4 above should not be taken into account).

107. Where a country applies a different benchmark fixed ratio to entities in large groups compared with other entities, the definition of a large group should be based on the position of an entity’s worldwide group and not only the local group including entities in the country. Although the data referred to above defined a large group based on market capitalisation, it is not recommended that this definition be used to set a benchmark fixed ratio. For privately held groups, a definition based on market capitalisation could not be applied. For publicly held groups, market capitalisation depends on many factors other than the group’s level of economic activity. It is therefore suggested that a country’s definition of a large group should be based on group consolidated revenue or group assets. Information on a group’s consolidated revenue or assets may be obtained from the group’s consolidated financial statements or directly from entities in the group where consolidated financial statements are not prepared. Information provided for the purposes of Country-by-Country reporting (Transfer Pricing Documentation and Country-by-Country Reporting (OECD, 2015)) may be used as a risk assessment tool to identify groups which may exceed this threshold, although this information should not be used by itself in order to apply a lower benchmark fixed ratio. Where a country applies different benchmark fixed ratios to entities in large groups and to other entities, it should include provisions to accommodate groups which cross the threshold, for example through a merger or divestiture. Such transitional provisions should be available for at most three years, to give groups an opportunity to adjust their capital structures.

Other factors that may be taken into account

108. When setting a benchmark fixed ratio within the corridor of 10% to 30%, countries may also take into account other relevant factors in addition to those set out above. For example:
的定价能力。大型集团也往往享有更健全的资金职能，管理集团的财务状况，包括利息成本。与其他实体相比，将固定比率规则用于大型实体内会带来以下两项主要影响：

- 首先，通过分析第 4 项行动计划公开征求意见期间向 OECD 提供的财务数据可知，与其他集团相比，大型集团往往具有较低的净债务利息/EBITDA 比率。例如，基准固定比率若设定为 30%，约 95% 市值大于或等于 50 亿美元。EBITDA 为正的大型跨国集团虽然其全部债务利息费用，而对所有规模的集团而言，只有 85% 可以实现全额扣除。因此，为建立公平的环境，一国可对大型集团内的实体应用一个专门的基准固定比率，而对其他实体应用更高的基准固定比率。

- 其次，由于大型集团更有可能进行内部举债，因此更不可能受不同国家间利率差异的影响。因此，为大型集团设定基准固定比率时，一国不应考虑其利率是否高于或低于其他国家（即不应考虑第 4 项因素）。

107. 一国若对大型集团内的实体实施不同于其他实体的基准固定比率，对大型集团的定义应基于实体的全球集团状况，而不仅仅以实体所处的本地集团为基础。尽管上述数据以市值来确定大型集团，但建议应以此设定基准固定比率。例如对私营集团而言，不宜采用基于市值的定义。对上市集团而言，市值受集团经济活动水平等诸多因素的影响。因此，建议一国对大型集团的定义应以集团合并收入或集团资产为基础。集团合并收入或资产的信息可从集团合并财务报表获得，在未编制合并财务报表的情况下，不可直接从集团内的实体获得。为分国别报告提供的信息（如转让定价归档和分国别报告）(OECD, 2015) 可用作风险评估工具，找出超过这一标准的集团，但不应仅凭此信息即决定采用更低的基准固定比率。

一国若对大型集团内的实体和其他实体采用不同的基准固定比率，应设定相关条款，以确保通过兼并或剥离等方式超过此限度的集团。这些过渡条款最长有效期不应超过 3 年，为由集团提供调整资本结构的机会。

其他应考虑的因素

108. 在 10% 至 30% 的区间内设定基准固定比率时，除上述因素以外，各国还应考虑其他相关因素。例如：

- 如果数据显示，由于受经济或商业政策，而非 BEPS 的影响，净利息费用或债务处于较高水平，一国可在区间内采用更高比率。

- 一国因增加投资（如基础设施投资），实行鼓励第三方借贷的宏观经济政策，而该第三方借贷不涉及 BEPS，则一国可在区间内采用更高比率。

- 一国可在区间内采用较高或较低比率，只要与该国的本国集团外部杠杆率，或在国运营的跨国集团的全球杠杆率相关的本地数据支持这一做法。这一本地数据可基于税务数据，而非财务数据。

- 一国若希望采用更严格的方法应对涉及利息的 BEPS，可在区间内应用更高比率。
• A country may apply a higher ratio within the corridor where data shows that there are high levels of net interest expense or debt due to economic or business policies and not due to base erosion and profit shifting.

• A country may apply a higher ratio within the corridor where it applies a macro-economic policy to encourage third party lending not related to base erosion and profit shifting, to increase investment (e.g. in infrastructure).

• A country may apply either a higher ratio or a lower ratio within the corridor where this is justified by local data on the external gearing of its domestic groups or the worldwide gearing of multinational groups operating in the country. This local data may for instance be based on tax rather than accounting figures.

• A country may apply a lower ratio within the corridor where it wishes to apply a stricter approach to tackling base erosion and profit shifting involving interest.

109. However, a country should not take into account any factor which is inconsistent with this report, which introduces competition issues or which fails to take into account the level of base erosion and profit shifting risk involving interest in that country. For example:

• A country should not apply a higher ratio where it has high levels of net interest expense or debt compared to those in other countries, which does not have a non-tax justification.

• A country should not apply a higher ratio due to a policy of attracting international investment into a country through lenient interest limitation rules.

Apply factors to set a benchmark fixed ratio within the best practice corridor

110. It is recommended that a country uses the factors in this chapter, along with other relevant factors, to set its benchmark fixed ratio within the recommended corridor. A country may develop its own approach as to how to apply the factors in setting a ratio, including applying a different weighting to each factor depending upon the extent to which it applies. In all cases, a country is able to choose to apply a lower benchmark fixed ratio within the corridor.

111. Illustrations of ways in which a country could use the factors to set its benchmark fixed ratio within the recommended corridor are included as Example 5 in Annex D. These are intended to illustrate possible ways in which a country could apply the factors in this chapter, but are not exhaustive and a different approach may be used.

Changes over time

112. Interest rates change over time and given interest rates are currently at a low level compared with long term averages, it may be necessary for a benchmark ratio to reflect changing interest rate environments. At the same time, however, countries need to consider that an entity’s capacity to serve its interest payments is independent of the interest rate environment and that an increase in interest rates should typically result in reduced levels of debt. In this context, academic studies have found that corporate taxpayers issue more debt when interest rates are at a low level compared with historically higher rates (Barry et al., 2008).

113. Countries are therefore not expected to change the benchmark fixed ratio over time, but they may choose to change the ratio where there is a significant change in interest rates. For example, academic
然而，一国不应考虑任何与本报告不相符的因素，因为这些因素会带来竞争问题，或未能考虑该国涉及利息的 BEPS 水平。例如：

- 一国的净利息费用或债务高于其他国家，不应采用较高比率，因为不具备非税理由。
- 一国若希望通过宽松的利息限制规则吸引国际投资，不应为这一政策采用较高比率。

应用各因素在最佳实践区间内设定基准固定比率

建议各国使用本章提及的因素和其他相关因素在建议区间设定基准固定比率。一国可制定自身适用的方法，用以使用各因素设定比率，包括根据各因素的适用程度对各因素采取不同的重视程度。在任何情况下，一国都能选择采用区间内较低的比率。

附录 D 的示例 5 详述了一国使用各因素在建议区间设定基准固定比率的多种方法。这些方法是一国使用本章提及因素的示例，其并不全面，因此也可使用不同的方法。

一段时期内的变动

利率会随时间变动。鉴于利率目前仍低于长期平均水平，可能有必要让基准比率反映利率环境的变化。尽管如此，各国应考虑到实际承付利息支付的非利率环境的影响。利率上升一般意味着债务水平的下降。关于这方面的学术研究表明，与利率更高的历史期间相比，企业纳税人支付的利息水平较低时会选择更多债务 (Borio et al., 2008)。

因此，各国并不被预期在一定时期内改变基准固定比率，但可在利率出现重大变动时改变该比率。例如，学术研究表明，一国的信用等级影响着一国 mansion 的利率，同时也会对企业债券的信用等级产生重大影响 (Borio, 2008)。这表示一国的信用等级若出现重大波动，也可对基准固定比率予以调整。然而，为向纳税人提供稳定的基准固定比率，各国应考虑仅在出现例外情况时才对其调整。

此外，一国若选择对基准固定比率予以调整，应确保该比率既能向下移动，也能向上移动。例如，假设一国所采用的利息/EBITDA 固定利率规则的基准固定比率为 15%。受经济危机的影响，国内利率骤升，提高了企业纳税人的利率。为反映该利率上升事件，政府将基准固定比率从 15% 调升至 20%。同时，政府颁布条例，规定一旦利率下降至危机前水平，基准固定比率将自动下调至 15%。
studies suggest that a country's credit rating, which influences the interest rates a country has to pay, has a significant impact on the credit rating for corporate bonds (Borenstein, Cowan and Valenzuela, 2007). This suggests that where a country's credit rating undergoes a significant change the benchmark fixed ratio may also be adjusted. However, to provide taxpayers with stable benchmark fixed ratios, countries should consider making changes only on an exceptional basis.

Additionally, where a country opts to make adjustments to the benchmark fixed ratio the country should ensure that the ratio moves down as well as up. For example, say a country operates an interest/EBITDA fixed ratio rule with a benchmark fixed ratio of 15%. As a result of an economic crisis domestic interest rates increase sharply, increasing the interest rates for local businesses. To reflect this increase the government raises the benchmark fixed ratio from 15% to 20%. At the same time, the government makes provision that when the interest rates return to pre-crisis levels the benchmark fixed ratio will automatically drop down to 15%.

NOTES

15 The term ‘related party’ is defined in Chapter 9.

16 Chapter 11 includes a summary of different approaches that a country may use in applying a fixed ratio rule to a local group, depending upon the structure of its tax system.


BIBLIOGRAPHY


注释

第 11 章概括了一国根据其税务系统架构、在应用固定比率规则时可使用的不同方法。


参考文献


CHAPTER 7

GROUP RATIO RULE

The aim of a group ratio rule

115. Under the recommended fixed ratio rule, an entity or local group can deduct net interest expense up to a fixed percentage of its EBITDA. However, a fixed ratio rule does not take into account the fact that groups in different sectors may be leveraged differently and, even without a sector bias, some groups are simply more highly leveraged. Therefore, if a fixed ratio rule is introduced in isolation, groups which have a net third party interest/EBITDA ratio above the benchmark fixed ratio would be unable to deduct all of their net third party interest expense. To reduce the impact on more highly leveraged groups, it is recommended that countries consider combining a fixed ratio rule as described in Chapter 6, with a group ratio rule. This would allow an entity in a highly leveraged group to deduct net interest expense in excess of the amount permitted under the fixed ratio rule, based on a relevant financial ratio of the worldwide group. This means that the benchmark fixed ratio can be kept low, in particular for entities in large multinational groups, making sure the fixed ratio rule is effective in combating base erosion and profit shifting, while the group ratio rule compensates for the blunt operation of such a rule.

116. A group ratio rule may be introduced as a separate additional provision, or as an integral part of an overall rule including a fixed ratio rule. For example, where a country applies an approach based on an entity’s net interest/EBITDA ratio, a single rule could provide that an entity can deduct up to the higher of the benchmark fixed ratio and the group’s ratio. The decision to implement the fixed ratio rule and group ratio rule separately or as parts of a single rule may depend upon how a country intends the different elements to operate. For example, a single rule with two parts may be easier to apply if a country determines that both the fixed ratio and group ratio elements should use the same calculation of entity EBITDA based on tax numbers, and the same carry forward/carry back provisions.

117. This chapter contains a description of a best practice rule which allows an entity which exceeds the benchmark fixed ratio to deduct net interest expense up to its group’s net third party interest/EBITDA ratio, if this is higher. Where the net interest/EBITDA ratio of an entity exceeds that of its group, the entity can claim deductions up to its group’s ratio. Only net interest expense which exceeds both the benchmark fixed ratio and the ratio of its group should be disallowed. While a rule based on a net third party interest/EBITDA ratio should be effective in tackling base erosion and profit shifting, it is recognised that some groups are subject to legal or practical constraints that limit their ability to align net interest expense and EBITDA in each entity. For these groups, some of the elements within the best practice approach, such as applying an uplift to net third party interest expense (discussed in the section on Calculation of net third party interest expense below), and carry forward/carry back provisions (discussed in Chapter 8), may reduce the impact of these constraints. Simple illustrations of how a group ratio rule in this form would allow an entity which exceeds the benchmark fixed ratio to deduct more interest expense up to its group’s net third party interest/EBITDA ratio are included in Example 6 in Annex D. It is recognised that to date no country applies a group ratio rule based on this approach. Therefore, this report sets out a framework for a group ratio rule using a net third party interest/EBITDA ratio, but further technical work on the design and operation of such a rule will be undertaken and completed in 2016.
第7章
集团比率规则

集团比率规则的目的

115. 在建议的固定比率规则下，实体或当地集团可以扣除相当于 EBITDA 某一固定比例的净利息费用。但规定比率规则并未考虑不同地区集团的杠杆率可能不同的事实，即使排除地域差异因素，一些集团的杠杆率也总是高于其他集团。因此，如果单独引入一个固定比率，第三方净值/EBITDA 率高于基准固定比率的集团将无法扣除所有的第三方利息费用限额。为了降低对杠杆率更高的集团的影响，建议各国考虑将第6章所描述的固定比率规则与集团比率规则结合使用。这将有助于高杠杆率集团中的实体根据集团在世界范围内的相关财务比率，扣除超出在固定比率规则下所允许的净利息费用限额。这意味着可以维持较低的基准固定利率，尤其是对大型跨国集团的实体来说，既确保了固定比率规则在对抗 BEPS 方面的有效性，同时也通过集团比率规则来弥补前者的不足。

116. 集团比率规则可作为一项单独的新增规则引入，或者作为包括固定比率规则在内的整体规则的一部分。比如，当国家采用基于实体的比率 EBITDA 率的方法时，则单一规则可以规定实体可扣除税前扣除以基准固定比率和集团比率中较高者计算的利息，最终决定将固定比率规则和集团比率规则分开执行，还是将后者作为前者的一部分实施，取决于一国是否有不同的元素一起运作。比如，如果国家确定固定比率和集团比率规则都应运用实体基于税后数据和相同加权/转回规定计算的相同 EBITDA，则采用含有两个部分组成的单一规则可能更为简单。

117. 本章包括了对最佳实践规则的描述，该规则允许超过基准固定比率的实体在集团第三方资产负债表/EBITDA 率更高情况下，按集团第三方资产负债表/EBITDA 率计算可扣除的净利息费用。当实体的净利息资产负债表/EBITDA 率高于集团的净利息资产负债表/EBITDA 率时，则实体可以扣除最高以集团比率计算的利息。净利息费用只存在于同时高于基准固定比率和集团比率计算的利息时，才予以扣除。虽然基于第三方资产负债表/EBITDA 率的规则在处理 BEPS 方面非常有效，我们也承认一些集团因受制于法律和实务限制，统一旗下每个实体的净利息费用和 EBITDA 的能力有限。对这些集团来说，包含在最佳实践范围中的某些元素，比如第三方净利息费用（参见下文 “第三方净利息费用计算” 部分的讨论），以及结转/转回规定（在第8章中讨论），可能会降低上述限制条件的影响。附录 D 的示例 6 简单说明了这种形式的集团比率规则可以如何允许超过基准固定比率的实体对多扣除以集团第三方资产负债表/EBITDA 率计算的利息。我们承认，至今没有国家基于该方法使用集团比率。因此，在报告为基于第三方资产负债表/EBITDA 率确定的集团比率规则制定了框架，但是有关该项规则的设计和运营的进一步技术性工作将在 2016 年开展和完成。
Option to apply different group ratio rules, or no group ratio rule

118. A number of countries currently apply a fixed ratio rule in combination with a group ratio rule using an assets-based ratio, such as equity/total assets. For example, under the 'equity escape' rule applied in Finland and Germany (described in Annex C), the fixed ratio rule based on net interest/EBITDA does not apply if an entity can show that its equity/total assets ratio is equal to or exceeds that of its group (within a small tolerance). This approach has a stricter outcome for many groups as, where an entity is more highly leveraged than its group, it remains subject to the fixed ratio rule whereas, under the net third party interest/EBITDA rule described in this chapter, only net interest that exceeds both the benchmark fixed ratio and the group’s ratio is disallowed. However, for a loss-making entity, the equity escape rule could be more generous, as the entity may still deduct its net interest expense if it can demonstrate that the requirements of the rule are met. Where a country applies a group ratio rule which differs from the net third party interest/EBITDA rule in this report, the country’s rule is included in the best practice so long as it only permits an entity to exceed the benchmark fixed ratio based on a relevant financial ratio of its group (such as equity/total assets).

119. There will be cases where countries decide to apply a fixed ratio rule in isolation, without a group ratio rule. This could be because a country wishes to reduce the tax bias between funding using debt or equity for all entities, or where, for constitutional or other reasons, a country wants to apply the same benchmark fixed ratio to all entities, without reference to the leverage position of the wider group. Where a country does not apply a group ratio rule, it should apply the fixed ratio rule consistently to entities in multinational and domestic groups, without improper discrimination.

120. Whether a country applies the group ratio rule described in this chapter, a different group ratio rule, or no group ratio rule, in all cases, a best practice approach must include a fixed ratio rule with a benchmark fixed ratio set within the corridor and based on the factors described in Chapter 6.

Obtaining financial information on a group

121. The group ratio rule requires an entity to be able to determine the net third party interest/EBITDA ratio of its worldwide group. This means that an entity must obtain information on its group which can be audited by its local tax authority, reducing the need for the local tax authority to obtain information from tax authorities in other countries. Therefore, it is important that a best practice approach be designed with this need in mind, so that a rule can be reasonably simple to apply by groups and tax authorities. Where an entity is unable to obtain information on its group necessary to apply the group ratio rule, it can still apply the fixed ratio rule and deduct interest up to the benchmark fixed ratio.

122. Consolidated financial statements provide the most reliable source of financial information on a worldwide group. Therefore, where possible, the group information required to apply a group ratio rule should be taken from a group’s consolidated financial statements. A national tax authority will typically not be in a position to confirm the accuracy of group financial data, and so it is recommended that consolidated financial statements should be audited by an independent regulated accountant. However, a country may allow unaudited financial statements to be used so long as these are subject to some form of reliable independent confirmation, or are reviewed by the tax authority.

123. It is recommended that, as a minimum, countries should accept consolidated financial statements prepared under local Generally Accepted Accounting Principles (GAAP) and the most common accounting standards used by large listed multinational groups (i.e. International Financial Reporting Standards (IFRS), Japanese GAAP and US GAAP). In order to enable non-listed groups to prepare a single set of consolidated financial statements for use in all countries in which they operate, countries should consider accepting consolidated financial statements prepared under other accounting standards, but it is left to each
应用不同集团比率规则，或者不采用集团比率规则的方案

118. 一些国家目前使用基于资产的比率，比如权益 / 总资产比率，以综合应用固定比率规则和集团比率规则。比如，在芬兰和德国的"权益比例"规则（见附录 C）下，如果实体显示它的权益 / 总资产比率等于或大于集团权益 / 总资产比率（在有限范围内），则不适用基于利息/EBITDA 的固定比率规则。对许多集团来说应用条件更为严格，比如实体的杠杆率高于集团时仍应遵守固定比率规则，而在本文所描述的第三方净利息/EBITDA 比率规则下，只有在净利息同时超过以基准固定比率和集团比率计算的利息时，才不允许利息扣除。但是，对于亏损实体而言，权益比率规则可能更为宽松，因为实体如果能证明符合了规则要求，则仍然能够扣除其净利息费用。当一个国家应用了与本报告中的第三方净利息/EBITDA 比率不同的集团比率规则时，只要它仅允许实体比率超过基于集团相关比率（比如权益 / 总资产）制定的基准固定比率，则该国的规则将被纳入最佳实践。

119. 在某些情况下，国家可能决定单独运用固定比率规则，而不采用集团比率规则。这可能是因为国家希望为所有实体减少债务融资或权益融资之间的税赋不平等问题；或者在国出于结构性或其他原因，不希望考虑实体所在集团的杠杆水平，而是单独考虑同一基准固定比率。如果一国不采用集团比率规则，则它应该对跨国集团和国内集团内实体统一采用固定比率规则，而不做任何不恰当的偏见。

120. 不管是采用本章所描述的集团比率规则，还是其他集团比率规则，或不采用集团比率规则，在所有情况下，最佳实践方法都必须包括将基准固定比率设定在第 6 章所描述的区间内且基于第 6 章所描述因素所制定的固定比率规则。

获取集团财务信息

121. 集团比率规则要求实体能够确定其所在集团在全球范围内的第三方净利息/EBITDA。这意味着实体必须获取当前债务结构能够审计的集团信息。这可能需要从其他国家的债务数据中获取必要的信息。因此，在设计最佳实践方案时通向这一点是非常重要的。这样才能合理地简化一个规则，避免集团和债务机构的使用。如果一个实体无法获取特定集团比率规则所要求的集团信息，它仍然可以采用固定比率规则，并可就最高按以基准固定比率计算的利息进行税前扣除。

122. 合并财务报表提供了最可靠的集团全球财务信息来源。因此，只要可能，就应该从合并财务报表中获取应用于集团比率规则所要求的集团信息。国家债务当局通常有权确定集团财务数据的准确性。因此，我们建议应由独立的受监管会计和债务机构对合并财务报表进行审计。但是，国家也可允许使用未经审计的财务报表，只要它们获得了来自可靠机构某个形式的认可，或者由债务当局进行了复核。

123. 建议各国应至少接受按当地的 GAAP 以及大型上市跨国集团所采用的最常用的会计准则（即 IFRS、日本 GAAP 和美国 GAAP）编制的合并财务报表。为了帮助非上市集团编制其业务所在国所使用的统一的合并财务报表，各国应考虑接受按照其他会计准则编制的合并财务报表，但各国可以自行决定承认哪种会计准则（考虑地区和海外投资的主要来源）。

124. 对大多数上市集团和非上市集团而言，经审计的合并财务报表可以从集团网站等公开来源获取。在其他情况下，合并财务报表则需集团内的实体直接向债务当局提供。有时候，债务机构可能希望通
country to determine which accounting standards to accept (e.g. taking into account the geographical region and main sources of foreign investment).

124. For most listed groups and many unlisted groups, audited consolidated financial statements will be available from public sources including the group’s website. In other cases, consolidated financial statements will need to be provided directly to the tax authority by entities in a group. In some cases, a tax authority may wish to use exchange of information provisions in applicable international agreements to confirm with the tax authority in the country of the group’s parent company that the consolidated financial statements they have been provided with are the same as those provided by the parent, to ensure the group is using the same consolidated numbers in different countries.

Definition of a group

125. Given consolidated financial statements provide the most complete and objective source of financial information on multinational groups, a practical and workable definition of a group is one that is based on a consolidated group for financial accounting purposes. Therefore, for the purposes of applying a group ratio rule, a group includes a parent company and all entities which are fully consolidated on a line-by-line basis in the parent’s consolidated financial statements.

126. In general, the parent should be the top level company in a holding structure. Where a group prepares consolidated financial statements at different levels (e.g. for local reporting or regulatory purposes), the group will be based on the consolidated financial statements prepared by the top level company (i.e. the highest level of consolidation). A group cannot be headed by an individual or entity other than a company. A group does not include entities which are included in the consolidated financial statements but are not fully consolidated on a line-by-line basis. In other words, it does not include entities which are included using equity accounting, proportionate consolidation or at fair value. In limited situations, an entity may be controlled by a company but not consolidated in that company’s consolidated financial statements. This may arise for example where the company is an investment entity which makes investments for the purposes of capital appreciation and/or investment income, and may account for these investments at fair value. In these situations, even though the controlled entity is not the top level company in the holding structure, it may be the parent of a separate group (including itself and any entities that it includes in its consolidated financial statements). Illustrations of how this definition would apply to groups in different scenarios are included as Example 7 in Annex D.

127. As set out in Chapter 9, a group ratio rule should be supported by a targeted rule to address the risk that a group ratio could be inflated using interest paid to a related party outside the group. A targeted rule should be an effective solution to this risk, and also has the benefit that only groups which make interest payments to related parties would be required to make an adjustment under the rule. However, a country may choose to address this risk by including specified related parties, such as those under the common control of an individual or non-corporate entity, within the definition of a group. This approach is currently taken by some countries which apply a group ratio rule based on an equity/total assets ratio. A country may also address this risk by excluding all interest paid to related parties from the calculation of the group’s net third party interest expense (as set out in the section Calculation of net third party interest expense below).

128. Where a country applies the best practice approach to the position of the local group rather than to each entity separately, attention will need to be paid to issues arising from differences between a group for financial reporting purposes (which in broad terms is based on a 50% control test) and a group for tax purposes (which is usually based on a higher level of control). A country’s local group for the purposes of applying the group ratio rule may therefore include entities which are not included in a group for other tax
过国际合约中适用的信息互换规定，与集团母公司所在地的税务当局确认他们获得的合并财务报表与母
公司所提供的合并财务报表一致，并确保集团在不同国家使用的是相同的合并数据。

集团的定义

125. 鉴于合并财务报表提供了跨国集团财务信息最完整和客观的来源，对于“集团”的一个实用而可
行的定义就是基于财务会计考虑合并为一个整体核算的单位。因此，为了应用集团比率规则，集团需包
括母公司本身以及在母公司的合并财务报表中的每个科目层而完全合并的所有实体。

126. 一般说来，母公司应该是控制集团中最高层级的公司。如果集团要在不同层级上编制合并资
产负债表（比如出于当地报告或监管目的），则这些报表要在高层次公司编制的合并资产负债表（即高度
层级合并）基础上编制。集团只能由一家公司，而不是某一个人或实体来领导。集团不包括那些虽被纳入
合并财务报表，但并未在每一科目层而充分合并的实体。换句话说，它包括使用权益会计法、比例合并
法，或者以公允价值法核算的实体。在有限情况下，实体可能因一家公司控制，但并未合并入该公司的合
并财务报表。这往往出现在公司作为投资实体，其投资被会计准则规定为投资，或以公允价值计量投资的情
况下。此时，即使被控制实体不是控制结构中的最高层级公司，它也可能是某一独立
集团的母公司（该集团包括该母公司本身，还有被纳入合并财务报表的任何实体）。附录 D 的示例 7 阐释了
该定义如何在不同情况下应用于集团。

127. 如在第 9 章中所述，集团比率规则应该辅以一条针对性规则，以解决集团比率因支付给集团外第
三方的利息而增加的风险。为制定针对性规则应该可以有效处理这种风险，此外另一益处是，只有向关联
方进行利息支付的集团才需要在该规则下做出调整。然而，国家可能会通过纳入特定关联方来处理该风
险，比如以同受某一个或非公司实体控制的其他实体为关联方（在集团定义范围内）。目前一些采用基于
权益 / 总资产比率制定集团比率规则的国家就使用了这一方法。一国也可以将支付给第三方的所有利息按
照在集团的第三方净利息费用（如下文“第三方净利息费用”部分所阐述的）之外，从而处理这一风险。

128. 如国家在当地集团层面，而不是在单个实体层面应用最佳实践方法，则需要注意基于财务报告目的
的（从广义上说是基于 50% 的控制测试）的集团和基于纳税目的（通常基于更高的控制层级）的集团之间的
差异而产生的问题。应用集团比率规则的当地集团可能因此包括那些在基于纳税目的的集团中没有包含的
实体。在出现这种情况时，需要考虑与税收整合、亏损转让和利润贡献规则之间的相互影响。第 11 章中
考虑了这些问题。

集团比率规则的运用

129. 确定在集团比率规则下可税前扣除的利息费用净额将涉及两个阶段的测试：

1. 确定集团的第三方净利息 EBITDA 比率

   第三方净利息费用 / 集团 EBITDA 的比率 = 集团比率

2. 将集团比率应用于实体的 EBITDA
purposes. Where this is the case, the interaction with, for example, tax consolidation, loss surrender and
profit contribution rules may need to be considered. These issues are considered in Chapter 11.

Operation of a group ratio rule

129. Determining the amount of net interest expense deductible under a group ratio rule involves a
two stage test.

1. Determine the group's net third party interest/EBITDA ratio

   \[ \frac{Net \ third \ party \ interest \ expense}{Group \ EBITDA} = \text{Group \ ratio} \]

2. Apply the group's ratio to an entity's EBITDA

   \[ \text{Group \ ratio} \times \text{Entity \ EBITDA} = \text{Limit \ on \ net \ interest \ deductions} \]

Stage 1: Determine the group's net third party interest/EBITDA ratio

130. The first stage in applying the group ratio rule is to calculate the worldwide group's net third
party interest/EBITDA ratio. To ensure that a rule is as straightforward as possible for a group to apply and
for tax authorities to audit, this should be based on information which can be obtained from the group's
consolidated financial statements.

Calculation of net third party interest expense

131. As described in Chapter 2, a best practice approach should address base erosion and profit
shifting involving interest and payments economically equivalent to interest. Accounting standards vary in
their treatment of a group's financial income and expense, but must take a broad approach which includes
interest and payments economically equivalent to interest. It is therefore recommended that when
calculating a group's net third party interest/EBITDA ratio, net third party interest expense should be based
on financial accounting figures.

132. Within this approach, a group's net third party interest expense could be determined in three
ways. These represent increasing degrees of accuracy but, at the same time, increasing degrees of
complexity.

Approach 1: Using unadjusted financial reporting figures

133. The most straightforward approach to determining net third party interest expense would be to
take income and expense figures directly from a group's consolidated financial statements without
adjustment. Depending upon the accounting standards and policies applied, these may be described as
interest income and expense, finance income and expense, or a similar term. This would be a simple
approach to apply which in many cases should provide effective protection against serious base erosion
and profit shifting. However, a risk remains as using unadjusted figures could mean that a group's net third
party interest expense may be overstated or understated, resulting in a limit on an entity's net interest
deductions which is too high (giving rise to possible base erosion and profit shifting) or too low (giving
rise to double taxation). This approach would also mean that a group's net third party interest expense
would vary depending on the accounting standards applied, and the ability for interest income or expense
to be included in a different line of the group's income statement. For example, in some cases accounting
集团比率 x 实体 EBITDA = 净利息扣除上限

阶段 1：确定集团的第三方净利息/EBITDA 比率

130. 应用集团比率的第一阶段就是计算集团在全球范围内的第三方净利息/EBITDA。为了确保规则尽可能直观明了，便于集团使用，也便于税务当局审计，它必须基于能够从集团合并财务报表中获得的信息。

第三方净利息费用的计算

131. 正如在第 2 章中所描述的，最佳实践方法应该解决利息和经济上等同利息的支付所带来的 BEPS 问题。各类会计准则在处理集团财务收入和开支的方法上有所不同，但是大多数都采用了包含利息和经济上等同利息的支付的广泛方法。因此在计算集团的第三方净利息/EBITDA 时，应基于财务会计数据来核算第三方净利息费用。

132. 在该法下，集团的第三方净利息费用可以按以下三种方式确定，每种方式都比前一种精确度更高，当然复杂性也更强。

方法 1：使用未经调整的财务报告数据

133. 确定第三方净利息费用的最直观的方法就是直接从未经调整的集团合并财务报表中收集收入和费用数据。根据所应用的会计标准和政策的不同，这些数据可能被描述为利息收入和费用。财务收入和费用，或类同的用语。这是一种运用起来较为简单的方法，在许多情况下应可以有效保护集团免受严重的 BEPS 影响。然而，使用未经调整的数据存在一个风险，即第三方净利息费用可能被高估或低估，导致实体的净利息扣除上限过高（引起可能的 BEPS）或过低（引起双重征税）。这种方法也意味着集团第三方净利息费用将取决于会计准则的应用，以及集团数据库不同科目中包含的利息收入和费用。例如，如果某些情况下会计准则允许某些收入和费用项目，那么具体情况下会考虑这些收入和费用，或作为单独项目计入合并损益表。最后，使用未经调整的数据可能导致集团第三方净利息费用的大幅波动。比如，当按 IFRS 制定合并财务报表的集团将金融资产和负债公允价值的变动计入财务收入和费用时。

方法 2：使用根据特定金额调整的财务报告数据

134. 国家可以要求实体对数据进行调整以包含或排除某些支付金额，而不是直接从未经调整的集团合并财务报表中收集数据。这会导致一个较为复杂的规则，但有助于解决部分会计准则的差异，也更精确地反映第 2 章所描述的金额。国家可要求实体在确定第三方净利息费用的过程中进行以下调整：

- 排除经济上并不等同利息的支付。这可能包括 (i) 股息收入，(ii) 处置金融工具的利得和损失，(iii) 金融工具的公允价值变动利得和损失，及 (iv) 名义利息金额，不包括实际的利息支付。在许多情况下这些金额可从集团合并财务报表中获得。
standards allow flexibility for certain items of income and expense to be recognised in operating profit, in finance income and expense, or as a separate item on the face of the consolidated income statement. Finally, using unadjusted figures could result in significant volatility in a group's net third party interest expense, for example where a group preparing consolidated financial statements under IFRS includes fair value movements on financial assets and liabilities within finance income and expense.

**Approach 2: Using financial reporting figures adjusted for certain amounts**

134. Rather than using figures taken directly from a group's consolidated financial statements without adjustment, a country could require an entity to make adjustments to include or exclude certain payments. This would result in a slightly more complex rule, but one which addresses some of the differences between accounting standards and more accurately reflects the amounts described in Chapter 2. Possible adjustments which a country could require an entity to make in determining net third party interest expense include the following:

- **The removal of payments which are not economically equivalent to interest.** This could include (i) dividend income, (ii) gains and losses on the disposal of financial instruments, (iii) fair value gains and losses on financial instruments, and (iv) notional interest amounts which do not include actual payments of interest. In many cases these amounts should be identified in a group's consolidated financial statements.

- **The addition of capitalised interest.** Capitalised interest is included in the balance sheet valuation of an asset and is not included in the group's finance expense. In general, the amount of interest capitalised in a year should be identified in a group's consolidated financial statements. An adjustment for capitalised interest may be made in the period where the interest is incurred, or as it is amortised over the life of the related asset.

- **The addition of interest income or expense recognised within a different category of income or expense.** This could include interest income which is included within gross revenue, or interest expense which is included within cost of sales or in the tax line. In some cases these amounts may not be identified in a group's consolidated financial statements, and will need to be obtained from underlying financial information. Groups may be able to introduce processes to identify these payments more easily, in particular where this would mean an increase in total net third party interest expense.

135. Where a country applies this approach, it could require an entity to have the amount of each adjustment to be confirmed by an independent regulated accountant. Alternatively a tax authority may conduct its own enquiries to confirm the adjustments.

**Approach 3: Using a financial reporting valuation of interest and other payments specified in Chapter 2**

136. The most accurate, but potentially the most complex, approach would be to require an entity to provide a valuation of the amounts included in the definition of interest and payments economically equivalent to interest set out in Chapter 2, based on the amounts included in its group's consolidated financial statements.

137. In most cases this should give substantially the same value for net third party interest expense as under Approach 2. However, where there is a difference between the items included in a group's finance income and expense and those included in the definition contained in Chapter 2, which is not represented by adjustments set out above, this approach should give the more precise and targeted result. On the other hand, it may be more difficult for this value of net third party interest expense to be confirmed directly.
• 资本化利息的增加。资本化的利息被纳入资产的资产负债表估值，而不纳入该集团的财务费用。一般情况下，年度资本化的利息金额可从集团合并财务报表中获得。资本化利息可能在利息产生的期间内，或者在相关资产存在期间内进行摊销时做调整。

• 在不同类别中的收入或费用中确认的信息收入或费用的增加。这可能包括被纳入毛收入的信息收入，或纳入销售成本或税务科目的利息费用。在某些情况下，这些数额可能无法从集团合并财务报表中获得，而需要从相关财务信息中获取。集团或可引入特定流程以方便获得这些支付，特别是在这意味着第三方净利息费用增加的情况下。

135. 国家应用该方法时，它可能要求实体由一个独立的受监管会计事务所来确认每笔调整的金额。另外，税务机关也可能自己进行询问，以确定调整。

方法 3：采用第 2 章中阐述的利息及其他支付的财务报告估值

136. 最准确，但也可能是最复杂的方法是要求实体根据纳入集团合并财务报表的金额，提供符合第 2 章中阐述的有关利息和经济上等同利息的支付的估值。

137. 在大多数情况下，该法得到的估值与第 2 章下对第三方净利息费用的估值基本一致。但是，当集团财务收入和费用项目与符合第 2 章下所述定义的项目之间存在差别，而且也没有进行上述调整的情况下，这种方法应能带来更为精确和有针对性的结果。另一方面，使用者可能更难用集团合并财务报表进行这种比较。
using a group's consolidated financial statements and so this approach should only be used if a country is confident that it is able to audit a group's underlying books and records.

**Proposed approach**

138. The calculation of net third party interest income should be based on figures taken from a group's consolidated financial statements. While the use of unadjusted figures is currently considered an acceptable approach, there are risks that net third party interest expense could be overstated or understated and it is likely that most countries will wish to make some adjustments to these figures, although in the interests of simplicity these adjustments should be kept to a minimum. Further work is required to assess the feasibility of each of the above approaches, how information may be obtained from financial statements prepared under different accounting standards and, where adjustments to financial reporting figures are to be made, what amounts should be included and excluded from net third party interest expense.

139. Under all three approaches, a country can choose to allow an uplift of net third party interest expense of up to 10%. This would reduce the risk that all of a group's actual net third party interest expense is not taken into account. It would also reduce the impact of constraints which mean that, even in the long term, a group may not be able to precisely align its net interest expense and EBITDA. An illustration of how an uplift could be applied is included in Example 6c in Annex D.

140. As discussed above in the section on Definition of a group, under a group ratio rule there is a risk that a group's net third party interest expense may be inflated using interest paid to related parties outside the group. This would have the effect of increasing the group's net third party interest/EBITDA ratio, and increase the limit on net interest deductions applicable to each group entity. A country may address this risk by providing that net third party interest expense should exclude any payments made to related parties. Alternatively, where a country allows interest paid to related parties to be included in net third party interest expense, it should introduce targeted rules as described in Chapter 9 to ensure that these payments are not used to reduce the effectiveness of the rule in tackling base erosion and profit shifting.

**Calculation of group EBITDA**

141. EBITDA is an objective measure of economic activity in a group, which can be applied to groups operating in most sectors (with the exception of the banking and insurance sectors, which are considered in Chapter 10). EBITDA is not generally included on the face of a group's consolidated income statement, but for the purposes of applying a group ratio rule, it should be calculated using figures which are readily available from a group's consolidated financial statements.

142. Within a best practice, as a starting point group EBITDA should be profit before tax plus net third party interest expense, depreciation and amortisation (including impairment charges). To avoid double counting, where net third party interest expense has been adjusted to include capitalised interest (or the amortisation of capitalised interest), depreciation and amortisation should be adjusted to strip out any amounts that represent the amortisation of interest included in the value of capitalised assets. Further work will be conducted to refine the definition of group EBITDA, including for example whether or not it should exclude items such as dividend income (and whether this should be dependent on if the dividends would be taxable if received in the country applying the rule), other finance income and expense not included in net third party interest expense, one-off items resulting from restructurings and mergers, and the share of profit from associates and joint venture entities which are included in the consolidated financial accounts under equity accounting but are not part of the group for group ratio rule purposes.
来直接检验第三方净利息费用的估值，因此只有在国家相信其有新力量审计集团的相关账户和记录的情况下才能使用这种方法。

### 建议的方法

138. 第三方净利息收入的计算应基于自集团合并财务报表的数字。虽然使用未经调整的数据可能存在一些问题，但该法存在第三方净利息费用被高估或者被低估的风险。因此大多数国家很可能希望对这些数字做一些调整，尽管为简单起见，这些调整应减至最低限度。我们还需进一步的工作以评估上述每个方法的可行性，如从不同会计准则编制的财务报表中获取信息，以及在对财务报告数字进行调整时，应考虑在第三方净利息费用中纳入或排除哪些金额等。

139. 在所有这三种方法下，国家可以选择允许将第三方净利息费用提高上限 10%。这将减少未考虑到集团所有实际第三方净利息费用的风险。这也将减少制约条件的影响。这里的制约条件是指，即使在长远看来，在集团也不可能精确统一其净利息费用和 EBITDA。附件 D 的示例 6c 说明了该如何上调第三方净利息费用。

140. 如上文“集团定义”部分所讨论的。在集合比率规则下，存在集团第三方净利息费用因支付给集团外关联方的利息而增加的风险。要处理这一风险，国家可能规定第三方净利息费用中应排除向任何关联方的支付。此外，如果国家允许把向关联方的支付纳入第三方净利息费用，则它应引入第 9 章中描述的针对性规则，以确保这些款项不会降低集合比率规则处理 BEPS 风险的有效性。

### 计算集团 EBITDA

141. EBITDA 是集团经营活动的一个客观衡量指标，可以应用于大多数行业内运作的集团（银行和保险业除外，参见第 10 章的讨论）。EBITDA 一般不纳入集团合并损益表内，但出于应用集团比率规则的目的，应使用集团的合并财务报表中现成的数据来计算 EBITDA。

142. 在实际实践中，作为一个起点，集团 EBITDA 应是税前利润加第三方净利息费用、折旧和摊销（包括减值损失）。为了避免重复计算，在对第三方净利息费用进行调整，以纳入资本化的利息（或资本化利息的摊销）时，应调整折旧和摊销，以剔除任何被纳入资本化资产价值中的利息摊销金额。进一步的工作还需展开以完善集团 EBITDA 的定义，包括它是否应该排除诸如股息收入等项目（以及这是否取决于股息若从应用相关规则的国家获得，其是否属于应税项目的问题），其他并未纳入第三方净利息费用的财务收入和费用，重组和并购带来的一次性项目，以及在权益会计法下被纳入合并财务报表，但出于应用集团比率规则的目的不作为集团一部分的，联合和合营实体利润中的份额和利润。”
Stage 2: Apply the group’s ratio to an entity’s EBITDA

143. Once a group’s net third party interest expense and EBITDA have been established, it is possible to calculate the group’s net third party interest/EBITDA ratio. This ratio may then be applied to the EBITDA of an individual entity within a group to determine the limit on net interest deductions that may be claimed under a group ratio rule. Within the best practice, a country may provide for entity EBITDA to be calculated using either tax or accounting principles. A summary of how to determine an entity’s tax-EBITDA and accounting-EBITDA under a best practice approach is set out below. More detail, including illustrations of how these approaches may give rise to different results, is included in Example 8 in Annex D.

Determining an entity’s tax-EBITDA

144. An entity’s tax-EBITDA is equal to its taxable profit after adding back tax values for net interest expense, depreciation and amortisation. These values are determined under the tax rules of the country applying the rule. Non-taxable income such as branch profits or dividend income that benefit from a participation exemption should not be included within tax-EBITDA. Appropriate adjustments should also be made for taxable branch profits and dividend income to the extent that they are shielded from tax by foreign tax credits, to address the base erosion and profit shifting issues which are the subject of this report. A group’s net third party interest/EBITDA ratio can be applied to an entity’s tax-EBITDA to give a tax-based limit on net interest deductions. This limit is compared directly to the entity’s net interest expense for tax purposes to determine the amount which may be deducted.

145. Determining EBITDA using tax principles is consistent with the approach recommended for calculating entity earnings under the fixed ratio rule. It is also straightforward for groups to apply and tax authorities to audit, and as an approach to tackle base erosion and profit shifting it has the benefit that an entity’s interest deductions are linked to its level of taxable income. This means that where an entity’s taxable income is higher than its accounting income, its ability to deduct interest expense will be correspondingly greater. Similarly, if an entity undertakes planning to reduce its taxable income, it will be able to deduct less net interest expense. Where a country applies the group ratio rule to the position of the local group, rather than to each entity separately, the local group’s tax-EBITDA should be reasonably straightforward to calculate, by aggregating the tax-EBITDA of each entity (with adjustment where a local group includes entities which have different periods for tax purposes).

Determining an entity’s accounting-EBITDA

146. An entity’s accounting-EBITDA should be determined using the same formula as for group EBITDA. However, any income which is not subject to tax, such as dividends or branch profits which fall within a participation exemption, should be excluded. This is to ensure that an entity does not attract a higher level of interest capacity as a result of receiving tax exempt income, which could give rise to base erosion and profit shifting.

147. In principle, an entity’s accounting-EBITDA should be based on financial reporting figures prepared under the same accounting rules as used in the consolidated financial statements. However, for many groups this would impose a significant burden, as entity financial statements may only currently be prepared under local GAAP. Therefore, in light of the fact that for groups in most sectors the elements of EBITDA are recognised and valued in a broadly consistent way under the main accounting standards, countries should consider accepting entity EBITDA prepared under local GAAP as a practical alternative. In deciding whether to accept entity EBITDA prepared under local GAAP, a country may consider the extent to which local GAAP is aligned with IFRS and other major accounting standards.
阶段2：将集团比率应用于实体的 EBITDA

143. 一旦确认集团的第三方净利息费用和 EBITDA，就可以计算集团的第三方净利息/EBITDA 率。然后将这一比率应用于集团内单独实体的 EBITDA，以确定在集团比率规则下，净利息扣除的上限。在最佳实践方法下，国家可以根据实体采用税务会计原则来计算 EBITDA。下文将概述如何在最佳实践方法下确定实体的税务–EBITDA 和会计–EBITDA，更多细节，包括关于这些方法如何导致不同结果的说明，见附件 D 示例 8。

如何确定实体的税务 EBITDA

144. 实体的税务–EBITDA 等于其的应税利润在根据净利息费用、折旧和摊销税后税务价值后的金额。税务价值是根据采用相关原则的国家的税法确定的。非应税收入，比如分公司利润或得益于参与豁免条件的股息收入则不应计入 EBITDA。应纳税分公司利润和股息收入也应进行适当的调整，以境外税收抵免规定允许免税的金额为限，从而解决本报告所关注的 BEPS 问题。集团第三方净利息/EBITDA 率可以应用于实体的税务–EBITDA，从而为税前扣除净利息额设定一个上限。该上限可以直接与实体税前扣除净利息费用相比较，以确定可扣除的金额。

145. 使用税收原则确定 EBITDA 符合在固定比率规则下计算实体权益的建议方法，而且直观明了，便于实体应用和税务机关审计。作为解决 BEPS 的方法，它还有一个好处，即实体的利息扣除与其应税收入相挂钩。这意味着，如实体应税收入高于其会计收入，则其可扣除利息费用相应增加。同样，如果一个实体通过规则减少其应税收入，可扣除利息费用也会减少。如国家将集团比率规则应用于当地集团层面，而不是针对每个实体，则当地集团的税务–EBITDA 应通过加总每个实体的税务–EBITDA 以直观明了的合理方式计算（如集团包括出于税务目的而设的不同核算期间的实体，则需进行调整）。

确定实体的会计 —— EBITDA

146. 实体的会计—EBITDA 应采用与集团 EBITDA 相同的计算公式来确定。然而，任何免税收入，如股息参与豁免条件下的分公司利润，应被排除在外。这是为了确保实体不会为取得免税收入而追求更多的利息扣除，乃至引起 BEPS。

147. 原则上说，计算实体会计—EBITDA 所基于的数据应该根据编制合并财务报表所用的会计规则来编制。然而，对许多集团来说，这会造成重大的负担，因为实体财务报表可能只按照当地 GAAP 编制。所以，鉴于对大多数行业内的集团来说，EBITDA 在几种主要的会计准则下，均以大致相同的方式确认和计算，各国应该将按照当地 GAAP 编制的实体 EBITDA 作为一种实用的替代。在决定是否接受根据本地 GAAP 编制实体 EBITDA 时，国家可以考虑当地 GAAP 与 IFRS 和其他主要的会计准则之间的趋同程度。
148. In determining an entity's accounting-EBITDA, it is also recommended that no adjustments should be made to strip out the profit or loss arising from intragroup transactions. This will mean that in some cases the aggregate EBITDA of the entities in a group may exceed the consolidated EBITDA of the group as a whole. This may arise, for example, where one entity in a group recognises the profit arising on the sale of goods to another group entity, but the purchase price is not included in the second entity's cost of sales as the goods have not yet been sold outside the group. However, this approach should ensure that the EBITDA of each entity reflects its level of economic activity, even where this is a result of dealing within its group. Where a country applies the group ratio rule to the position of a local group as a whole, the accounting-EBITDA of the entities in the local group should be aggregated. In this case, to the extent intragroup transactions within the local group do not offset against each other, these may be eliminated.

149. A group's net third party interest/EBITDA ratio can be applied to an entity's accounting-EBITDA to give an accounts-based limit on net interest expense. This limit could be compared directly to the entity's net interest expense for tax purposes, to determine how much may be deducted. Alternatively, the accounts-based limit may be adjusted to take into account differences between the entity's net interest expense for accounting and tax purposes. A possible approach to achieve this is set out in Example 8e in Annex D.

Addressing the impact of loss-making entities on the operation of a group ratio rule

150. In general, under a group ratio rule an entity is able to claim deductions for interest expense up to the net third party interest/EBITDA ratio of its group. However there are two scenarios, both of which may arise as a result of the presence of loss-making entities within a group, which mean that this general approach needs to be limited.

151. The first scenario concerns a group which has a positive EBITDA, but this includes the results of a loss-making entity. The impact of this is that group EBITDA is reduced and the group's net third party interest/EBITDA ratio is increased. Under a group ratio rule, this would increase the capacity of profitable entities in the group to deduct interest expense, possibly to an extent that exceeds the actual net interest expense of the entire group. Where a carry forward of unused interest capacity is permitted, this interest capacity could be used to shelter interest deductions in future periods. This is illustrated by Example 9a in Annex D. This risk could be dealt with in part by a general principle that places an upper limit on the interest capacity of any entity applying the group ratio rule, equal to the net third party interest expense of the entire group. This upper limit should not mean that an entity's net interest deductions are lower than they would have been under the group ratio rule if group EBITDA had not been reduced by losses. This approach does not remove the risk that the total net interest deductions of all group entities could exceed the group's actual net third party interest expense. However, it should prevent an individual entity receiving a very high level of interest capacity that could be used for base erosion and profit shifting purposes. How this upper limit would operate is shown in Example 9b in Annex D.

152. The second scenario concerns groups which have negative EBITDA at a consolidated level, but which include some profitable entities. In this situation, it is not possible to calculate a meaningful net third party interest/EBITDA for the group, as the ratio will be negative. However, a profitable entity within the group is still making a positive contribution to the group's results, which should be recognised. In this case, under the best practice approach an entity with positive EBITDA which is part of a loss-making group could receive interest capacity equal to the lower of the entity's actual net interest expense and the net third party interest expense of the group. As shown in Example 9c in Annex D, this allows the entity to deduct its actual net interest expense, subject to an upper limit based on the actual net interest expense of its group. Given in these circumstances a group ratio cannot be calculated, this is the most straightforward way of linking an entity's interest deductibility to the position of its group.
148. 在确定实体的会计－EBITDA 时，还建议不要进行任何调整来剔除集团内交易所产生的利润或亏损。这将意味着在某些情况下，集团内实体的加总 EBITDA 可能超过整个集团合并 EBITDA。这种情况，比如说，会发生在集团内某一实体确认了向集团内其他实体出售商品的所得利润，但采购价格却未包含在第二个实体的销售成本中，因为该商品尚未在集团外出售。然而，这种方法应能确保每个实体的 EBITDA 反映其经营活动水平，即使这是集团内交易的结果。当国家的集团比率规则适用于本地集团整体层面上时，则本地集团内实体的会计－EBITDA 应进行加总。在这种情况下，如本地集团内交易无法相互抵消，则余数部分可以直接消除。

149. 集团的净第三方利息/EBITDA 率可以应用于实体的财务报表－EBITDA，以对净利息费用设定基于财务报表的限额。此限额可以直接与以税务报表的净利息费用相比较，以确定可扣除的金额。或者，可以考虑该实体于财务报表和税务报表两面计算的净利息费用之间的差异，来调整基于会计报表的限额。实现该目的的可能方法请参见附件 D 的示例 8c。

解决亏损实体对集团比率规则运用的影响

150. 一般说来，在集团比率规则下，实体可以在税前扣除的利息费用金额最高为根据集团的净第三方利息/EBITDA 率计算的利息。但是有两种情况下将对这种一般方法的使用有所限制。这两种情况会在集团内有亏损实体的情况下产生。

151. 第一种情况是集团的 EBITDA 为负，但其中包含了亏损实体的结果。这种情况的影响是，集团 EBITDA 减少，而集团的第三方净利息/EBITDA 率增加。在集团比率规则下，这将增加集团内盈利实体的利息税前扣除的能力。最高可能超过整个集团的实际净利息费用。在允许将未使用的利息扣除限额结转的情况下，该利息扣除限额可以在未来期间内用于利息扣除。附录 D 示例 9a 中对此进行了说明。这种风险可以通过一个一般原则来部分处理，即对采用集团比率规则的实体设置一个利息扣除限额上限，金额相当于整个集团第三方净利息费用。这个上限的设定并不意味着实体的净利息扣除数额会低于在集团 EBITDA 为负的情况下，根据集团比率规则计算的净利息扣除额。该法并未消除所有集团实体的净利息扣除额超过集团实际第三方净利息费用的风险。但是，它应该阻止了单个实体出于 BEPS 的目的获得更高的利息扣除限额的问题。该上限的运用规则请参见附录 D 示例 9b。

152. 第二种情况下，集团在合并层面的 EBITDA 为负，但其中包含了盈利实体的结果。这种情况下，它不可能计算出有意义的集团净第三方利息/EBITDA 率，因为该比率负。不过，集团内的盈利实体还是对集团的财务结果做出了积极贡献，这点应予承认。在这种情况下，根据最佳实践方法，作为亏损集团一部分的 EBITDA 为正的实体可以获得的利息扣除限额以实体的实际净利息费用与集团的第三方净利息费用中较低的一个为准。正如附录 D 示例 9c 所示，这将允许实体扣除其实际净利息费用，前提是不超过根据集团实际净利息费用计算的上限。鉴于在这些情况下不能计算集团比率，该法是将实体的利息扣除与集团财务状况挂钩的最直观明了的方法。
153. An alternative approach would be to exclude loss-making entities from the calculation of a group's EBITDA. This would remove the risk that any entity would receive an excessive amount of interest capacity. However, in general it would not be possible to obtain information on loss-making entities within a group from the consolidated financial statements. It may be possible for an entity to provide this information directly to a country's tax authority, but it may be very difficult for the tax authority to confirm the accuracy of this information and ensure that all loss-making entities in a group have been identified and excluded. Illustrations of how this approach could operate in practice are shown in Examples 9d and 9e in Annex D.

154. Further work will be conducted on the impact of losses on the operation of a group ratio rule, and the feasibility of different approaches to address this impact. Issues surrounding the impact of losses on a group ratio rule only arise where the rule uses an earnings-based ratio. Where a different rule is applied such as one based on an equity/total assets ratio, there should be no need to have specific provisions to deal with the effect of losses.

NOTES

18 Chapter 11 includes a summary of different approaches that a country may use in applying a fixed ratio rule to a local group, depending upon the structure of its tax system.

19 The term 'related party' is defined in Chapter 9.

20 For financial reporting purposes, 'associates' are entities over which a group has significant influence, but this influence is not sufficient for the group to exercise control. In broad terms, this is typically where a group controls between 20% and 50% of the voting power in the entity.
153. 一种替代方法是，将亏损实体排除在集团 EBITDA 的计算之外。这将消除任何实体获得过度利息扣除限额的风险。然而，在一般情况下我们不可能从合并财务报表中获得有关集团内亏损实体的信息。实体有可能将该信息直接提供给国家税务机关，但税务机构很难确认这些信息的准确性，也无法保证该信息已经将集团内的所有亏损实体识别并排除在外。附录 D 的示例 9d 和 9e 例释了该法的实际运用。

154. 仍需进一步开展工作以了解亏损对集团比率规则运用的影响，并分析采用不同的方法来解决这一影响的可行性。亏损对集团比率规则运用的影响问题只有在该规则采用了基于收益的比率时才会出现。如果采用基于权益/总资产率的其他规则，则不需要制定具体规则来处理亏损的影响。

注释

"第 11 章描述了国家在根据纳税体系的结构、对当地集团采用固定比率规则时可能使用的不同方法。

"“关联方”的定义见第 9 章。

"如以财务报告为目的，“联营”企业或是集团对其具有重大影响，但是该影响不足以让集团行使控制权的实体。宽泛地讲，一般指集团控制了实体 20%到 30%具有投票权股份的情况。"
CHAPTER 8

ADDRESSING VOLATILITY AND DOUBLE TAXATION

155. An important issue under a best practice approach which links net interest deductions to the level of an entity’s EBITDA is how to deal with volatility in earnings which impacts an entity’s ability to deduct its interest expense. Where earnings volatility or mismatches in the timing of interest expense and EBITDA result in an entity exceeding the benchmark fixed ratio under a fixed ratio rule, the group ratio rule described in Chapter 7 may provide a solution by allowing the entity to deduct net interest expense up to the group’s net third party interest/EBITDA ratio where this is higher. This could also be achieved using a group ratio rule based on an equity/total assets ratio, such as an ‘equity escape rule’ described in Annex C, which could also be used by an entity with negative EBITDA if it is able to demonstrate that the requirements of the rule are met. Otherwise, these issues may be addressed to an extent by using average EBITDA over a number of years or by permitting an entity to carry disallowed interest expense and unused interest capacity for use in earlier or later periods.

Measuring economic activity using average EBITDA

156. Rather than linking an entity’s ability to deduct net interest expense to economic activity in a single year, the impact of short term volatility could be reduced through the use of average figures. For example, under a fixed ratio rule the ratio could be applied to the average of EBITDA in the current year and, say, the previous two years. In this case, the impact of a single year fall in EBITDA would be spread over a three year period, with the lower earnings in one year offset against higher earnings in other years. The use of averaging within a group ratio rule would be more complicated, as it would need to be used in calculating the EBITDA of the group as well as of each entity. This would give rise to additional issues that would need to be considered, such as how to deal with cases where the composition of a group changes during the period used for calculating the average. However, the use of averaging could reduce the impact of losses on the operation of a rule, in particular where an entity is only in a loss-making position for one or two years.

157. The use of averaging could provide an entity with some protection against short term volatility, but would provide no protection against longer term volatility outside of the period used for calculating an average. Averaging would also not help an entity which incurs interest expense to fund a project or investment that gives rise to EBITDA more than, say, two years later.

158. Overall, the use of averages is likely to make a rule more complex but it could help address volatility. Therefore, this is an option that countries may choose to apply under the best practice approach. However, to reduce the risk of arbitrage it is suggested that an election to use average figures should apply to all entities in a local group. An illustration of how three year averaging could be applied to a fixed ratio rule is included as Example 10 in Annex D.

Carry forward and carry back of disallowed interest and unused interest capacity

159. Where a payment of interest relates to a specific transaction intended to give rise to base erosion or profit shifting, or the entity consistently has a level of net interest expense in excess of the benchmark fixed ratio and group ratio, a permanent disallowance of net interest expense may be an appropriate result.
第 8 章

应对波动与双重征税

155. 最佳实践方法下根据某个实体的 EBITDA 来进行利息扣除带来的一个重要问题是如何处理影响实体利益费用扣除能力的收益波动性。在收益发生波动，或利息费用与 EBITDA 在时点上的不匹配导致实体在固定比率规则下超过基准固定比率时，则第 7 章所描述的集团比率规则或可提供解决方案。因为它可以采用与配置于第三章利息/EBITDA 率（如果该比率更高）计算的净利息费用。不过集团也可以采用基于股权资本/总资产率的集团比率规则，如第 4 章所描述的“资本再调整规则”。解决这个问题。EBITDA 为负的实体也可以使用更恰当集团比率规则，前提是它能够证明其有配置规则要求。或者也可以通过使用一定年度内的平均 EBITDA，或允许实体将当期不允许扣除的利息费用以及未使用的利息扣除金额转移至以前年度使用，以便解决上述问题。

使用平均 EBITDA 计量经济活动

156. 与其将实体的利息费用扣除限额与当年的经济活动挂钩，考虑通过平均法来降低短期波动的影响。比如在固定比率法下，该比率可用于当年及（比如）前两年的平均 EBITDA。在这种情况下，EBITDA 一年的下跌就可以分摊到三年期间，收益较低的年份可以与收益较高的年份相互抵消。在集团比率规则下利用平均法可能会增加复杂性，因为它将用于计算集团的 EBITDA，以及每个实体的 EBITDA。这会引发其他考虑不周的原因，比如在计算平均数的期间内集团的构成发生改变的问题。但是，采用平均数可以减少对规则适用的影响，尤其是当实体仅仅在一两年内处于亏损状态的情况下。

157. 采用平均法可以使实体免遭一些短期波动的影响，但在计算平均数的期限之外影响长期波动的影响。对于那些为了给 EBITDA 在两年以后才会产生的项目或投资进行融资而产生利息费用的实体，平均法计算没什么帮助。

158. 总的来说，使用平均法可能使规则更为复杂，但它有助于应对波动的影响。因此，这对那些在最佳实践方法下已经选择平均法的一个方法。然而，为了减少套利风险，建议选择平均法，而本地集团中的所有实体都应使用平均法。附录 D 中的示例 10 说明了如何对固定比率规则采用三年平均法。

不允许扣除的利息费用和尚未使用的利息扣除限额的结转和转回

159. 当支付的利息涉及一在引起税基侵蚀或利润转移的特定交易时，或当实体的净利息费用始终超过以基准固定比率和集团比率计算的利息时，永久不允许扣除净利息费用可能是一个适当的方法。然而，有些情况下，仅仅因为在未来期间将被纠正的时间错配，实体中的利息费用将会超出允许扣除的利息费用。这可能导致在实体为每在未来期间产生利息的项目或投资进行融资而产生利息费用的情况下。此外也存在实体 EBITDA 的波动原因在其控制之外的原因，比如市场条件的不断变化，导致扣除了的利息费用的增加或减少的情况。另外，在集团比率规则下，实体可以扣除的净利息费用金额可能会受到集团其他实体 EBITDA 波动的影响。在这些情况下，永久不允许扣除利息费用将会导致集团带来一
However, there may be cases where the amount of interest expense in an entity exceeds that which is allowable merely as a result of a timing mismatch which will correct in a future period. This may arise, for example, where an entity incurs interest expense to fund a project or investment that will give rise to earnings in a future period. There may also be cases where an entity’s EBITDA fluctuates for reasons outside of its control, for example as a result of changing market conditions, increasing or reducing the amount of net interest expense it may deduct for tax. In addition, under a group ratio rule, the amount of net interest expense that an entity can deduct may be impacted by volatility in EBITDA elsewhere in the group. In these cases, a permanent disallowance of interest expense would introduce a level of uncertainty for groups which could make long term planning difficult and which a country may view as undesirable. A permanent disallowance of interest expense may also result in double taxation, if the lender is taxed on the corresponding interest income.

160. Both a fixed ratio rule and a group ratio rule establish a limit on the ability of an entity to deduct net interest expense (i.e. its interest capacity). Except in cases where an entity’s interest capacity precisely matches its net interest expense, the operation of a rule will result in an entity either incurring an interest disallowance (i.e. where its net interest expense exceeds the maximum permitted), or having unused interest capacity (i.e. where its net interest expense is below the maximum permitted). Allowing disallowed interest expense and unused interest capacity to be used in other periods through carry forward or carry back provisions would have clear benefits for entities, reducing the risk of a permanent disallowance of interest expense where interest expense and EBITDA arise in different periods. From a country’s perspective, this could also support a policy that the level of an entity’s net interest deductions should be linked to its level of earnings over time.

161. Under the best practice approach, there is no requirement for a country to allow an entity to carry forward or carry back disallowed interest expense or unused interest capacity. However, a country may choose to allow an entity:

- to carry forward disallowed interest expense only
- to carry forward disallowed interest expense and unused interest capacity
- to carry forward and carry back disallowed interest expense.

162. An entity’s disallowed interest expense that may be carried forward or carried back under these provisions will generally be the deductible net interest expense that is in excess of the amount permitted under the fixed ratio rule and group ratio rule. Interest expense disallowed under targeted rules will generally relate to transactions or arrangements which give rise to specific base erosion and profit shifting risks, and should not be available for carry forward or carry back.

163. Where a country allows an entity to carry forward unused interest capacity, this may be limited to the amount by which an entity’s net interest expense is below that permitted under the fixed ratio rule only. Alternatively, a country may allow the carry forward of unused interest capacity based on the level of net interest permitted under the group ratio rule. This would reduce the impact of volatility in group earnings on an entity’s ability to deduct net interest expense, and is consistent with the principle of allowing a group to deduct an amount equivalent to its net third party interest expense. In either case, a carry forward of unused interest capacity could allow an entity that has already deducted all of its net interest expense to build up a potentially significant carry forward.

164. Allowing disallowed interest expense and unused interest capacity to be carried forward or back and used in other periods does introduce potential base erosion and profit shifting risks. This is particularly the case for unused interest capacity, where a long or unlimited carry forward could give rise to a sizeable
定的不确定性，给长远规划造成困难，这也是国家所不希望看到的。在借出方要为相应的利息收益纳税的情况下，永久不允许扣除利息费用可能会导致双重征税。

160. 固定比率规则和集团比率规则均对实体扣除净利息费用的能力（即其利息扣除限额）做出了限制。除了在实体的利息扣除上限与其净利息费用相匹配的情况下，规则的运用将导致实体部分利息不允许扣除（即在其净利息费用超出最大允许值时），或产生未使用的利息扣除限额（即当其净利息费用低于允许的最大值）。通过结转或转回规则，允许在其他期间使用不允许扣除的利息费用和未使用的利息扣除限额可以给实体带来明显的收益。在利息费用和 EBITDA 出现在不同期间时，可以降低利息费用永久不允许扣除的风险。从国家的角度来看，这也可以支持将实体的净利息扣除水平与随时间变化的收益水平相挂钩的政策。

161. 在最佳实践方法下，不强制要求国家允许实体将不允许扣除的利息费用和未使用的利息扣除限额结转或转回。但是，国家可以选择允许实体：

- 结转不扣除允许扣除的利息费用
- 结转不扣除的利息费用和未使用的利息扣除限额
- 结转和转回不扣除允许扣除的利息费用

162. 在这些规则下实体可以结转或转回的不允许扣除的利息费用，往往是在固定比率规则和集团比率规则下超过允许扣除金额的净利息费用。在针对性法规下不允许扣除的利息费用一般涉及可能引起特定税基侵蚀和利润转移风险的交易或安排，这些利息费用不应予以结转或转回。

163. 国家允许实体结转未使用的利息扣除限额，可以将其额度限制于实体的净利息费用低于免在固定比率规则下所允许金额的差额。此外，国家可以允许结转基于集团比率规则下所允许的净利息费用的未使用的利息扣除限额。这将降低集团收益波动对实体扣除净利息费用的能力的影响，并与允许集团扣除相当于其净第三方利息费用的利润转移风险的原则一致。在任一情况下，结转未使用的利息扣除限额将帮助一个已经扣除除了所有净利息费用的实体建立潜在的重大结转金额。

164. 允许将当期不允许扣除的利息费用或未使用的利息扣除限额进行结转或转回，并应用于其他期间。尽管可能导致税基侵蚀和利润转移的风险，尤其是在允许结转或转回所使用的利息扣除的情况下，未来或未限制的结转可能产生大量税务资产。在这种情况下，通过增加实体的净利息费用水平或降低未来期间的 EBITDA 才能使用，而这种行为不应被看作是解决税基侵蚀和利润转移问题的规则鼓励。在转回不允许扣除的利息费用时也存在类似的情形。另一方面，长期或未限制结转不允许扣除的利息费用可能会鼓励实体增加其利息费用，直至允许的最大金额。因为它知道，如果在某一期间允许结转的利息扣除限额，超出部分将在未来期间内予以扣除。但是，判断这个风险并不像结转不允许扣除的利息费用，或结转未使用的利息扣除限额所带来的风险那样重大，因为这两种结转或转回规则提供了更大的直接货币化的机会。

165. 因此，如果允许结转或转回，国家可能要对时间点和/或价值作出限制。这对于结转未使用的利息扣除限额和转回不允许扣除的利息费用来说特别重要，因为它们可能引起更重大的税基侵蚀和利润转移风险。结转或转回的限制可以包括：
tax asset which can only be realised either by increasing the level of the entity's net interest expense, or by reducing the level of EBITDA in a future period, neither of which should be incentivised by a rule to tackle base erosion and profit shifting. Similar concerns exist with respect to carry backs of disallowed interest expense. On the other hand, a long or unlimited carry forward of disallowed interest expense could encourage an entity to increase its interest expense up to the maximum amount permitted, in the knowledge that if it exceeds the amount of interest allowed in a year, the surplus may be deducted in future periods. However, this risk is not judged to be as significant as the risks associated with a carry back of disallowed interest expense or carry forward of unused interest capacity, as these latter types of carry over provisions offer greater possibility of immediate monetisation.

165. Therefore, where carry forwards or carry backs are permitted, a country may consider imposing limits in terms of time and/or value. This is particularly important with respect to a carry forward of unused interest capacity and carry back of disallowed interest expense, which give rise to greater potential base erosion and profit shifting risks. Limits on carry forwards and carry backs could include the following:

- The number of years for which disallowed interest expense or unused interest capacity may be carried forward, or disallowed interest expense may be carried back, could be limited.
- The value of carry forwards could reduce over time (e.g. by 10% each year).
- The value of a carry forward or carry back could be capped at a fixed monetary amount.
- The amount of a carry forward or carry back that may be used in a single year could be limited (e.g. providing that no more than 50% of current net interest expense may be set against unused interest capacity carried forward from previous years).
- Carry forwards should be reset to zero in certain circumstances, following normal practice applied to loss carry forwards (e.g. where a company changes ownership and also changes the nature of its economic activity).

166. Where a country applies a fixed ratio rule in combination with a group ratio rule, it may apply a single carry forward provision to deal with disallowed interest under both rules. Alternatively, a country could impose different limits depending upon whether interest expense is disallowed under the fixed ratio rule or the group ratio rule. However, this approach is likely to be considerably more complex to apply and administer. For example, groups may be required to maintain a separate carry forward pool under each rule. The country would also need to consider how disallowed interest carried forward in each pool can be used (e.g. whether one pool should be used first, or whether interest disallowed under one rule may only be set against interest capacity arising under the same rule).

167. Where a country applies interest limitation rules to the position of the local group rather than each entity separately, it should also consider how this will impact any carry forward or carry back provisions (e.g. whether an entity should be able to utilise disallowed interest expense carried forward from a period prior to the time it joined the group).
- 不允许扣除的利息费用或未使用的利息扣除限额可结转的年数，或者不允许扣除的利息费用可转向的年数都可以受限。
- 结转的价值可以被时间的推移减少（即每年减少10%）。
- 结转或转向的价值可以根据一个固定的货币化金额进行上设。
- 一年内可以使用的结转或转向的价值可能受限（比如，规定不超过50%的当期净利息费用可以与前几年度结转而来的未使用的利息扣除限额相抵消）。
- 在某些情况下，结转金额应根据亏损结转的常规惯例重设为零（比如，在公司所有权变更，经济活动性质随之改变的情况下）。

166. 如果国家将固定比率规则与集团比率规则结合使用，可以应用单一的结转规则来处理两种规则下不允许扣除的利息。或者，国家可以根据利息费用具体是在在固定比率规则下或在集团比率规则下不允许扣除来设定不同的上限。然而，这种做法在应用和管理上可能要复杂得多。例如，它可能要求集团在每种规则下建立单独的结转池。国家还需要考虑如何使用结转到每个池中的不允许扣除的利息费用（比如，是否应该首先使用某一个池，或者一个规则下不允许扣除的利息费用只能抵消同一规则下的利息扣除限额）。

167. 如果国家对本地集团，而非单独对每个实体应用利息限制规则，它还应考虑这将如何影响任何结转或转向规则（例如实体是否能够利用前期结转到它加入集团之时的不允许扣除的利息费用）。

99
CHAPTER 9

TARGETED RULES

The aim of targeted rules

168. Targeted interest limitation rules include any provisions which apply to restrict interest deductions on payments made under specific transactions or arrangements. These may be contrasted with general interest limitation rules, such as the fixed ratio rule and group ratio rule, which impose an overall limit on an entity’s interest deductions. A number of countries do not currently apply any general interest limitation rule and rely solely on targeted rules. One benefit of such an approach is that it reduces the risk that a rule could negatively impact entities which are already appropriately capitalised and also avoids any incentive for groups to increase the level of net interest expense of local entities up to the level allowed under a fixed ratio rule. The use of targeted rules also allows countries to address specific areas of concern, potentially minimising compliance costs for entities, in particular those which do not engage in base erosion or profit shifting. However, such an approach has drawbacks. Most importantly, to some extent targeted rules will always be a reactive response, requiring countries to be aware of specific base erosion and profit shifting risks as they emerge. There is a risk that some groups may consider all arrangements not covered by targeted rules to be acceptable, meaning that over time new targeted rules may be required. Targeted rules also require active application, meaning the tax administration must be able to recognise situations where a rule could apply, often as part of a complex transaction, and then engage with a group to determine the correct result. Overall, an approach based entirely on targeted rules may result in a large number of rules which will increase complexity, as well as increasing compliance and administrative costs. If the rules are not comprehensive then they are unlikely to deal with all base erosion and profit shifting risks. On the other hand, an approach which uses a general rule supplemented by targeted rules in key areas should provide countries with the comfort that the main risks posed by base erosion and profit shifting are addressed, while ensuring that groups are able to obtain relief for their real net third party interest expense.

169. While the best practice approach in this report recommends general interest limitation rules, it is recognised that targeted rules can also provide an effective solution to some base erosion and profit shifting risk. This chapter sets out a number of specific risks that may not be addressed by the fixed ratio rule and group ratio rule, where targeted rules may be required. Countries may also continue to apply existing targeted and general interest limitation rules, where these address specific risks. For example, a country may apply a thin capitalisation rule based on a fixed debt/equity ratio to disallow interest on excessive debt in addition to the fixed ratio rule and this could apply to disallow interest even where an entity does not exceed the level of net interest expense permitted under the fixed ratio rule.

170. The impact of a targeted rule applying to an arrangement will vary depending upon the nature of the arrangement and the risk the rule is intended to address. In some cases it may be appropriate for a rule to deny a deduction for a gross interest payment under a transaction. In other cases it may be more appropriate for a rule to apply to part of a payment, or to net interest payments after taking into account income under the same transaction. Where the result of a transaction is to increase the level of net third party interest expense under a group ratio rule, a rule may simply operate to disregard this increase, with no specific disallowance.
第9章
针对性规则

针对性规则的目标

针对性的利息限制规则包括以限制特定交易或安排之下支付的利息扣除的任何规定，这些可能
与一般的利息扣除限额规则不一致。例如对实体的利息扣除限额设置整体限额的固定比率规则和集团比率规
则。一些国家目前并未采用任何一般利息扣除限额规则，而完全依靠针对性法规。这种方法的一个好处
是，对已经完全资本化和中等规模的实体，该法降低了规则对实体产生不利影响的风险。同时，它也避免了激
发集团增加当地实体的净利息费用水平，直至固定比率法规所允许扣除的最高水平。针对性规则也可协
助国家应对特定领域的一些问题，并帮助实体实现合规的成本最小化，尤其是不参与BEPS的实体。
但是，这个方法也存在弊端。最重要的是，从某种程度上说，针对性法规往往只能做出被动反应，因
此要求国家在出现BEPS风险时能够意识到风险。同时，也存在有些集团可能认为在得不针对
性规则的覆盖面内的安排可接受的风险。这意味着随着时间的推移，可能需要制定新的针对性规则。
针对性规则也需要进行积极应用，也就是说政府管理当局必须能够识别出可以应用相关规则的情况（通
常为复杂交易的一部分），然后与集团一起确定正确的结果。总体而言，完全基于针对性规则的方法可能
会衍生出大量的规则，从而增加复杂性，提高合规成本和行政费用。如果规则不全面，则很难处理所有
的BEPS风险。而另一方面，在关键领域采用一般规则辅以针对性规则的方法则可以帮助国家确保
BEPS带来的主要风险得到了处理，同时也确保集团能够为其真实的净第三方利息费用获得税收减免。

虽然本报告中的最佳实践经验方法建议采用一般利息扣除限额，大家也承认，针对性规则也是一些
BEPS风险提供了解决方案。本章列举了固定比率规则和集团比率规则不可能将之，而要采用
针对性规则的若干特定风险。针对现有关联的针对性和一般利息扣除限额规则能够处理特定风险，国家也
可以参考采用该法。例如，一个国家可以在固定比率规则之外再应用根据固定债务/权益比率的资本弱
化规则以不允许扣除由过度负债产生的利息费用，而此方法可以用来不允许扣除那些即使未超过固定比
率规则下所允许的净利息费用。

应用于一项交易安排的针对性规则和规则对未发生于该交易的性质以及规则对相关风险的性质的
在某些情况下，一项规则可以拒绝某些交易的利息扣除。在其他情况下，更恰当的方法是将一
项规则应用于一些特定交易，或者应用于同一交易下的其他交易。而在交易结果提高了集团比率规
则下净第三方利息费用的水平时，可以运用一项规则以允许这种提高，无需具体的
不允许扣除的规定。
Targeted rules to prevent avoidance of the general rules

171. A best practice approach should be robust against attempts to avoid the effect of a rule. A fixed ratio rule (and group ratio rule where applied) should therefore be supported by targeted rules to counteract planning undertaken by groups to reduce the impact of these rules. To achieve this, it is recommended that countries also introduce targeted rules to address the following risks:

- An entity with net interest expense enters into an arrangement to reduce the net interest expense subject to the fixed ratio rule (e.g. by converting interest expense into a different form of deductible expense, or by converting other taxable income into a form which is economically equivalent to interest).

- An entity which is part of a group enters into an arrangement with a related party or third party in order to increase the level of net third party interest expense under the group ratio rule (e.g. by making a payment to a related party or to a third party under a structured arrangement, or by converting interest income into a different form).

- A group is restructured to place an unincorporated holding entity at the top of the structure, to create two groups. This may be to prevent a fixed ratio rule applying (e.g. in a country where the rule does not apply to standalone entities) or to separate the original group into two parts for group ratio rule purposes.

172. The above risks may be addressed by standalone rules, specific provisions within the fixed ratio rule and group ratio rule, or by other tax rules (such as, for example, a country’s general anti-avoidance rule). These rules should be applicable to all entities which are subject to the fixed ratio rule, and group ratio rule where this applies. The terms ‘related party’ and ‘structured arrangement’ are defined below.

Targeted rules to address other base erosion and profit shifting risks

173. The fixed ratio rule and group ratio rule described in this report provide an effective solution to tackle most base erosion and profit shifting involving interest and payments economically equivalent to interest. However, as set out in Chapter 3, in certain situations, a country may restrict application of the fixed ratio rule and group ratio rule to entities in multinational groups. Therefore, targeted rules may be required to address base erosion and profit shifting risks posed by entities which are not subject to the general interest limitation rules. Even where the fixed ratio rule and group ratio rule apply, a number of specific base erosion and profit shifting risks remain. Therefore, it is recommended that countries consider introducing rules to address the risks listed below:

- An entity which would otherwise have net interest income enters into an arrangement which involves the payment of interest to a group entity outside the country or a related party to reduce the level of interest income subject to tax in the country.

- An entity makes a payment of interest on an ‘artificial loan’, where no new funding is raised by the entity or its group.

- An entity makes a payment of interest to a third party under a structured arrangement, for instance under a back-to-back arrangement.

- An entity makes a payment of interest to a related party, which is excessive or is used to finance the production of tax exempt income.
防止规避一般规则的针对性规则

171. 最佳实践方法应有效对抗规避规则效力的企图。因此，应以针对性规则来支持固定比率规则(及集团比率规则，如适用)，以对抗集团用以降低这些规则影响的筹划。为此，建议国家也推出针对性规则来处理下列风险：

- 有净利息费用的实体进入一项交易安排，以减少固定比率规则下的净利息费用(例如通过将利息费用转换成不同形式的可扣除的费用，或将其他应税收入转换成经济上等同利息收入的形式)。
- 作为集团一部分的实体与关联方或第三方进入一项交易安排，以增加集团比率规则下净第三方利息费用的水平(例如通过向结构性安排下的关联方或第三方支付费用，或将其他利息收入转换成其他形式)。
- 对集团进行重组，以将一个非法人控股实体置于该结构顶部，以创建两个集团。这可能有助于防止应用固定比率规则(例如在规则不适用于单独实体的国家)，或出于应用集团比率规则的目的将原始集团拆分为两部分。

172. 上述风险可以通过施立的规则，包含于固定比率规则和集团比率规则中的具体规定、或者其他税务法规(例如，国家的一般反避税规则)来解决。这些规则应适用于所有受制于固定比率规则(以及集团比率规则，如适用)的实体。“关联方”和“结构性安排”的定义见下文。

处理 BEPS 风险的针对性规则

173. 本报告中所描述的固定比率规则和集团比率规则提供了一个有效的解决方案，以解决涉及利息和经济上等同利息的支付的大多数 BEPS 问题。不过，正如第 3 章所述，在某些情况下，国家可能会限制固定比率规则和集团比率规则应用到跨国集团中的实体上。因此需要采用针对性规则来解决不受一般利息扣除限制规则约束的实体所面临的 BEPS 问题。假使在适用固定比率规则和集团比率规则的情况下，一些特定的 BEPS 风险仍然存在。因此，建议国家考虑引入规则以解决以下风险：

- 一个本身有利息收入的实体，进入一项交易安排涉及向国外集团的实体或其关联方支付利息，以减少在我国应纳税的利息收入。
- 实体为一项“人为贷款”支付利息，而实际上实体或其集团并未筹集新的资金。
- 实体在一项结构性安排下向第三方支付利息，例如在一个背靠背安排下。
- 实体向关联方支付利息，利息金额过高，或者被用来为产生免税收入的活动提供融资。
• An entity makes a payment of interest to a related party, which is subject to no or low taxation on the corresponding interest income.

174. Rules to address the risks above should ideally be applicable to all entities, irrespective of whether they are also subject to the fixed ratio rule and group ratio rule. However, these rules are particularly important where an entity is not subject to a fixed ratio rule as described in Chapter 6.

Definition of 'related parties' and 'structured arrangements'

175. A number of the specific risks listed above refer to transactions with or payments made to a related party or to a third party under a structured arrangement.

Related parties

176. An entity which is part of a group may also be related to individuals or entities which are not part of the group, but where a significant relationship exists. For the purposes of this report, two persons (including individuals and entities) are related if they are not in the same group but they meet any of the following conditions:

• The first person has an investment that provides that person with effective control of the second person or there is a third person that holds investments which provide that person with effective control over both persons.

• The first person has a 25% or greater investment in the second person or there is a third person that holds a 25% or greater investment in both.

• They can be regarded as associated enterprises under Article 9.

177. A person will be treated as holding a percentage investment in another person if that person holds directly or indirectly through an investment in other persons, a percentage of the voting rights of that person or of the value of any equity interests of that person.

178. For the purposes of this related party definition, a person who acts together with another person in respect of the ownership or control of any voting rights or equity interests will be treated as owning or controlling all of those voting rights and equity instruments.

179. Two persons will be treated as acting together in respect of ownership or control of any voting rights or equity interests if they meet any of the following conditions:

• They are members of the same family.

• One person regularly acts in accordance with the wishes of the other person in respect of ownership or control of such rights or interests.

• They have entered into an arrangement that has material impact on the value or control of any such rights or interests.

• They each directly or indirectly hold debt in the entity in proportion to their voting rights or equity interests.
实体向关联方支付利息，后者相应的利息收入可以免税或享受低税率。

174. 处理上述问题的规则最好应能适用于所有实体，不论它们是否同时受制于固定比率规则，或是集团比率规则。但是，当实体不受制于第 6 章所描述的固定比率规则时，这些规则尤为重要。

“关联方”和“结构性安排”的定义

175. 以上所列的若干特定风险中的很多条指的是结构性安排下与关联方的交易，或结构性安排下对关联方或对第三方的支付。

关联方

176. 作为集团一部分的实体也可能是与非集团一部分，但与之存在重要关系的个人或实体相关联。在本报告中，如果双方（包括个人和实体）不在同一集团中，但符合下列任何条件，那就是相关联的：

- 一方的投资赋予其对另一方的控制，或有第三方持有对这两方实行控制的投资。
- 一方在另一方中持有 25% 及以上表决权，或者有第三方在这两方中持有 25% 或更多的投资。
- 它们在第 8 条下被视为联营企业。

177. 如果一方通过直接或间接控制持有另一方一定比例的表决权，或一定的权益价值，则可视一方持有另一方一定比例的权益。

178. 从关联方的定义来看，一方如果在任何表决权和权益的所有权或控制权上与另一方行动一致，则可被视为拥有或控制所有这些表决权和权益工具。

179. 双方如果符合以下条件，则被认为在任何表决权和权益的所有权或控制权上它们行动一致：

- 它们是同一家庭成员。
- 一方经常性地根据另一方在此类表决权或权益的所有权或控制权上的意愿行事。
- 它们签订了对此类表决权或权益的所有权或控制权有重大影响的交易安排。
- 它们每个都在实体中持有与其表决权或权益成比例的债务。
The ownership or control of any such rights or interests is managed by the same person or group of persons. In respect of any taxpayer that is a collective investment vehicle (CIV), if the investment manager can establish to the satisfaction of the tax authority from the terms of the investment mandate and the circumstances in which the investment was made that two funds were not acting together in respect of the investment, then the interests held by those funds should not be aggregated under this part of the ‘acting together’ test.

180. For these purposes a CIV is any vehicle which is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established. It is left to countries to determine the types of vehicle which would meet this definition. For example, countries may consider certain types of CIVs to be widely-held if their shares or units are listed for quotation on a stock exchange or can be readily purchased or sold by the public (i.e. the purchase or sale of shares or units is not implicitly or explicitly restricted to a limited group of investors). However, a country may apply a different test to determine whether a CIV is widely held.

**Structured arrangements**

181. Targeted rules may also apply where an entity makes a payment of interest to a third party under a structured arrangement. A structured arrangement is any arrangement where the entity, its group and its related parties, taken together, do not bear the entire cost of the interest payment.

182. An example of a structured arrangement would be a ‘back-to-back’ arrangement whereby an entity makes a payment of interest to a third party in circumstances where the third party also makes a payment to the entity, a member of the entity’s group or a related party of the entity. This second payment may be in a form other than interest.
• 对此类表决权或权益的任何所有权或控制权均是由相同的个人或群体管理的。对于任何一位属于集合投资工具（CIV）的经理人来说，如果投资经理可以从投资授权条例和投资条件等方面让税务机关相信，两个基金在投资上行动不一致，则由这些基金所持的权益不应该在“一致行动”测试的这部分下合并。

180. 为此，CIV 是被广泛持有的一一个工具，拥有一个多元化证券投资组合，并受制于一定的市场国家内的投资者保护法规。需由各国自行确定符合这一定义的工具类型。例如，如果某些类型的 CIV 的股份或单位在股票交易所挂牌交易，或者可以随时被公开买卖，则国家可以认为这些 CIV 是被广泛持有的（即股份或其他单位的买卖并未明示或默认其仅局限于某个有限的投资群体）。但是，国家可以应用不同的测试以确定一个 CIV 是否被广泛持有。

结构性安排

181. 针对性规则也适用于实体在结构性安排下向第三方支付利息的情况。结构性安排是指实体、其集团及其关联方加总起来看并未承担全部利息费用的安排。

182. 结构性安排的一个例子就是“背靠背”安排，即实体向第三方支付利息，而第三方也向该实体的实体所在集团的成员或实体关联方进行支付款项。这第二次支付可能以利息之外的形式支付。
CHAPTER 10
APPLYING THE BEST PRACTICE APPROACH TO BANKING AND INSURANCE GROUPS

183. In developing a best practice approach to combat base erosion and profit shifting involving interest, a number of particular features of groups in the banking and insurance sectors need to be taken into account.

184. An important consideration is that the role interest plays in a banking or insurance business is different to that in other sectors. Banks and insurance companies hold financial assets and liabilities as an integral part of their main business activities. In addition, financial sector businesses in most countries are subject to strict regulations which impose restrictions on their capital structure. In 2011 Basel III introduced a leverage ratio standard intended to constrain leverage in the banking sector, helping to mitigate risks which in the past have damaged the financial system and the economy.\(^{21}\) The Solvency II Directive introduces a similar system for insurers in the European Union.\(^{22}\) It should be noted however that, although banking and insurance groups are subject to regulation, not all entities within a group are subject to the same obligations and the treatment of branches in particular must be taken into account.

185. Despite the restrictions imposed by regulatory requirements, a number of studies have found that the leverage of banks is influenced on average by corporate taxes to the same extent as for groups in other sectors. The influence of tax on leverage is reduced where a bank is capital constrained, but in practice many groups hold a buffer of capital above the minimum amount required by regulations (Heckemeyer and de Mooij, 2013; Keen and de Mooij, 2012).

186. Base erosion and profit shifting by banking and insurance groups could potentially take a number of forms. These include: regulated entities holding a regulatory capital buffer (including a debt component) above the level required to support existing business; routing regulatory capital and ordinary debt issued within a group through intermediate entities in low tax countries, placing excessive interest deductions in branches, which do not need to be separately capitalised for regulatory purposes, and in non-regulated entities; using deductible interest expense to fund assets which are tax exempt or taxed on a preferential basis; and the use of hybrid financial instruments and hybrid entities.

187. Banks and insurance companies typically hold buffers of regulatory capital above the minimum level required, and there are significant commercial drivers to maintain these buffers (e.g. connected to credit rating and cost of capital). Holding capital above the minimum required by regulations allows a group to accommodate changing capital needs, but also provides some opportunities for base erosion and profit shifting.

188. The fixed ratio rule and group ratio rule set out in this report are unlikely to be effective in addressing these base erosion and profit shifting risks for a number of reasons. In particular, banking and insurance groups are important sources of debt funding for groups in other sectors and as such many are net lenders by a significant margin. This means that the main operating companies in these groups, and the groups overall, will often have net interest income rather than net interest expense. As the fixed ratio rule and group ratio rule apply to limit the level of an entity's net interest expense, these rules would have no impact on important entities within banking and insurance groups. In addition, the fact that interest income is a major part of a bank or insurance company's income means that EBITDA would not be a suitable
第 10 章
将最佳实践方法应用于银行及保险集团

183. 在制定最佳实践方法以应对涉及利息的 BEPS 时，有必要将银行业和保险业内的集团的一些特定特征考虑在内。

184. 一个重要的考虑因素是，利息在银行或保险业务中所扮演的角色与其他行业不同。银行和保险公司持有金融资产和负债作为其主要业务活动不可分割的部分。此外，大多数国家金融行业内的企业都会受到严格的监管，以对其资本结构加以限制。2011 年《巴塞尔协议 III》引入杠杆率标准，旨在限制银行业的杠杆率，以帮助减轻银行破产对金融体系和经济的风险。《资本质量标准 II 指令》为欧盟的保险公司引入了一套类似的体系。然而，应该指出，虽然银行和保险集团均受监管，但并非集团内的所有实体都受到相同的义务。对分支机构的处理尤其必须加以考虑。

185. 尽管有监管要求的限制，许多研究已经发现，平均看来，银行的杠杆率受企业税的影响与其他行业内集团受影响的程度是相同的。当银行资本受约束时，税收对杠杆的影响就减少了，但实际上，许多集团在最低监管资本要求上还会自行加上一个缓冲资本金额（Heckmeyer 和 de Mooij，2013 年；Keen 和 de Mooij，2012 年）。

186. 银行和保险集团的 BEPS 可能呈现多种形式。包括：受监管实体在支持现有业务所需的资本水平之上还持有监管资本缓冲（包括债务组成部分）；通过低税率国家的中间实体转换集团内的监管资本和发行的普通股，从而将大量的利息扣除转移至无须出于监管原因单独进行资本化的分支机构和不受监管的实体；对免税或者享受优惠税率的资产产生所扣除的利息费用，以及混合型金融工具和混合型实体的使用。

187. 银行和保险公司通常持有超过最低资本要求的监管资本缓冲，并有重大的业务压力来维持这些缓冲（例如与信用评级和资本成本相关）。持有超过监管规定的最低资本要求的资金有助于集团适应不断变化的资本需求，同时也提供了一些 BEPS 的机会。

188. 本报告中规定的固定比率规则和集团比率规则不可能有效地解决这些 BEPS 风险的问题。原因有多个，特别是，银行和保险集团是其他行业内集团债务融资的重要来源，因此，许多是脱离高利差的净贷款人。这意味着，这些集团的主要经营公司，以及集团整体，往往会有净利息收入，而不是净利息费用。由于固定比率规则和集团比率规则主要用以限制实体的净利息费用水平，因此这些规则对银行和保险集团的重要实体不产生任何影响。此外，由于利息收入是银行或保险公司的收入的重要组成部分，这意味着 EBITDA 不再是衡量这些行业内集团经济活动的恰当指标。最后，银行和保险集团的财务报表通常与行业内的不同，这特别影响了集团比率规则的应用。由于本报告认为固定比率规则和集团比率规则不太可能解决银行和保险业的 BEPS 问题，国家可以考虑将这些行业内经营的集团实体排除在这些规则的适用范围外，在这种情况下，他们应该引入针对性规则，以解决这些行业内的 BEPS 问题（讨论见下）。
measure for economic activity across a group in these sectors. Finally, the financial statements of banking
and insurance groups typically differ from those of groups in other sectors, which in particular could
impact the operation of a group ratio rule. As a fixed ratio rule and group ratio rule in this report are
unlikely to address base erosion and profit shifting in the banking and insurance sectors, countries may
consider excluding entities in groups operating in these sectors from the scope of these rules, in which case
they should introduce targeted rules addressing base erosion and profit shifting in these sectors (as
discussed below).

189. Any exclusion should not apply to treasury companies, captive insurance companies or other
non-regulated entities which carry out quasi-banking or other financial activities where there are no
regulatory restraints, or to investment vehicles whether or not regulated. These entities should remain
subject to the rules contained in the best practice approach.

190. It is not intended that entities operating in the banking and insurance sectors, or regulated
banking or insurance entities within non-financial groups, should be exempted from the best practice
approach to tackle base erosion and profit shifting involving interest. Instead, in order to tackle base
erosion and profit shifting by groups in all sectors, it is essential that a best practice approach includes rules
which are capable of addressing risks posed by different entities. Further work will therefore be conducted
to be completed in 2016, to identify best practice rules to deal with the potential base erosion and profit
shifting risks posed by banks and insurance companies, taking into account the particular features of these
sectors. This will include work on regulated banking and insurance activities within non-financial groups
(such as groups operating in the manufacturing or retail sector). In particular, it is crucial that any
recommended interest limitation rules do not conflict with or reduce the effectiveness of capital regulation
intended to reduce the risk of a future financial crisis. Where a country applies the fixed ratio rule set out in
this report to entities in banking and insurance groups, the country should still apply the specific best
practice rules to be designed to address the base erosion and profit shifting risks posed by these sectors.

NOTES

21. The Third Basel Accord is a comprehensive set of reform measures, agreed upon by members of the Basel
Committee on Banking Supervision, to strengthen the regulation, supervision and risk management of the
banking sector (www.bis.org/bcbs/index.htm?m=3%7C14).

up and pursuit of the business of Insurance and Reinsurance (Solvency II) [2009] OJ L335/1.
189. 任何例外都不应适用于资金管理公司、专属保险公司或其他不受监管的实体，比如在没有监管限制的情况下开展准银行或其他金融活动的实体，或者投资工具公司（无论是否受监管）。这些实体应始终受制于最佳实践方法中包含的规则。

190. 在银行和保险行业中运营的实体，或者非金融集团内受监管的银行或保险实体，都不应受制于旨在解决涉及利息的 BEPS 问题的最佳实践方法。实际上，为了处理所有行业内集团的 BEPS 问题，有必要在最佳实践方法中包括能够解决不同实体风险的规则。因此，进一步的工作将在 2016 年完成，包括考虑行业特殊特征的基础上确定能够处理银行和保险公司的潜在 BEPS 风险的最佳实践规则。这将包括对非金融集团（如在制造业或零售业内经营的集团）中受监管的银行和保险活动。特别是，任何建议的利息扣除限额规则均不能与旨在降低未来金融危机风险的资本管制规则相冲突，或减少资本管制的有效性。如果国家将本报告中所述固定比率规则应用于银行和保险集团中的实体，该国也应运用旨在解决这些行业的 BEPS 风险的特定最佳实践规则。

注释

注释 3《巴塞尔协议 III》是一部全面的改革举措，由巴塞尔银行监管委员会的成员批准，旨在增强银行业的监管、监督及风险管理。[www.bis.org/bcbs/index.htm?n=3%7C14]。

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CHAPTER 11
IMPLEMENTING THE BEST PRACTICE APPROACH

Implementation and co-ordination

191. This report includes recommendations for a best practice approach to tackle base erosion and profit shifting involving interest. As set out in Chapter 1, a country may supplement this approach with other general or targeted interest limitation rules, either to address base erosion and profit shifting risks it faces or to achieve wider tax policy aims.

192. Further work will be conducted on particular areas of the best practice approach for instance guidance on the detailed operation of the group ratio rule. Work will also be conducted on the design of special rules to address base erosion and profit shifting in the banking and insurance sectors, taking into account the specific issues that groups operating in these sectors face. This work will be completed in 2016.

193. The design and content of the best practice approach set out in this report, including the corridor for setting a benchmark fixed ratio and the optional exclusion for interest funding certain public-benefit projects, will initially be reviewed by countries involved in the BEPS Project by no later than the end of 2020. This review will include consideration of the experience of countries which have introduced rules in accordance with the best practice and the impact on the behaviour of groups. The review will also consider any additional available data that could assist in assessing the effectiveness of the agreed corridor. To this end, countries are encouraged to collect tax data on the level of net interest expense and EBITDA of entities and local groups in that country, as well as those of multinational groups operating in the country where available. Following this review, elements of the best practice may be revised.

Transitional rules

194. The best practice approach set out in the report should address base erosion and profit shifting involving interest. However, it is recognised that any rule to limit tax deductions for an entity’s interest expense could involve a significant cost for some entities. Therefore, it is expected that a country introducing a fixed ratio rule and group ratio rule would give entities reasonable time to restructure existing financing arrangements before the rules come into effect.

195. A country may also apply transitional rules which exclude interest on certain existing loans from the scope of the rules, either for a fixed period or indefinitely. In this case it is recommended that these transitional rules are primarily restricted to interest on third party loans entered into before the rules were announced. Interest on any loans entered into after the announcement of the new rules should not benefit from any transitional provisions. Alternatively, a country may apply no transitional rules.

Separate entity and group taxation systems

196. Countries currently apply corporate tax systems which include different types of group taxation and separate entity taxation. The best practice approach described in this report should be compatible with
第11章
实施最佳实践方法

实施及协调

191. 本报告建议采用最佳实践方法以解决利息费用扣除带来的 BEPS 问题。正如第 1 章中所述，国家可以以其他一般性或针对性利息限制规则作为对最佳实践方法的补充，不论是为了处理它所面对的 BEPS 风险，还是为了完成更为广泛的税收政策目标。

192. 需对最佳实践方法的特定方面开展进一步的工作，如就集团比率规则的具体操作制定指引，还需努力针对银行业内和保险业的 BEPS 问题的设计特定规则，将这些行业中的集团的具体问题纳入考量。该项工作将在 2016 年完成。

193. 本报告中阐述的最佳实践方法的设计和内容，包括设定基准固定比率的范围，以及为公用福利项目的融资提供选择性税务减免，这些最迟将在 2020 年底由 BEPS 项目所涉及的国家进行初步审核。审核内容将包括各国根据最佳实践引人规则的经验及其对集团行为的影响，也会考虑有助于评估商定的比率范围有效性的额外可获取的数据。为此，我们鼓励国家收集其国内的实体和本地集团，以及在该国运营的跨国集团的净利息费用和 EBITDA 等数据。完成审核后，可以根据结果修订最佳实践的一些方面。

过渡规则

194. 本报告所阐述的最佳实践方法应该解决利息费用扣除带来的 BEPS 问题。但是，我们也承认，任何限制实体利息费用扣除限额的规则对某些实体来说可能涉及重大成本。因此，在集团比率规则和商定比率规则的国家在实施生效前，应该给予各实体合理的时间来对现有财务安排进行重组。

195. 国家也可以采用过渡规则，在实施期内，或无限期地将某些现有贷款的利息费用扣除在规则适用范围之外。在这种情况，建议过渡规则主要应局限于新规则发布前签发的第三方贷款的利息费用。在新规则发布后签发的第三方贷款的利息费用不应受惠于过渡规定。或者，国家也可以不采用任何过渡规定。

区分实体和集团的纳税体系

196. 国家目前采用的公司税体系包含了许多类型的集团和单独的实体公司税。本报告所
any system, although in some cases specific provisions within the best practice approach may require adjustment.

**Countries applying separate entity taxation systems**

197. Where a country taxes each entity within a group separately, the fixed ratio rule and group ratio rule may be applied in any of the following three ways at the discretion of the country:

- The fixed ratio rule and group ratio rule may be applied separately to each entity based on its EBITDA.

- The country may treat entities within a tax group as a single entity for the purposes of applying the fixed ratio rule and group ratio rule. For example, the benchmark fixed ratio would be applied to the tax group’s total tax-EBITDA. Interest capacity would then be allocated within the tax group in accordance with rules developed by the country, which may include allowing a group to determine the allocation of interest capacity between entities. To prevent abuse, transactions within the tax group which do not net off may be stripped out of the tax group’s ‘entity EBITDA’. Under this option, entities which are in the same financial reporting group, but which are not part of the same tax group, would continue to be treated as separate entities and would apply the fixed ratio rule and group ratio rule independently.

- The country may treat all entities in the country which are part of the same financial reporting group as a single entity for the purposes of applying the fixed ratio rule and group ratio rule. Transactions within the financial reporting group which do not net off may be excluded from ‘entity EBITDA’ to prevent abuse. This option may be particularly relevant for a country with a group ratio rule, which applies to entities in a financial reporting group. However, as this could in effect allow the transfer of interest capacity between entities which are not in a tax group, the country may need to consider whether this raises any policy concerns (such as inconsistency with existing loss surrender, profit contribution or similar rules). The operation of other provisions such as carry forwards and carry backs would need to be considered, for example whether an entity should be able to benefit from attributes carried forward from a period before it joined the financial reporting group.

**Countries applying group taxation systems**

198. Where a country taxes entities on a group or consolidated basis, the fixed ratio rule and group ratio rule may be applied in any of the following ways at the discretion of the country:

- The country may treat entities within the consolidated tax group as a single entity for the purposes of applying the fixed ratio rule and group ratio rule. For example, the benchmark fixed ratio would be applied to the consolidated tax group’s total tax-EBITDA, and the amount of interest capacity applied to calculate the permitted net interest deductions for the consolidated tax group as a whole. Under this option, entities which are in the same financial reporting group, but which are not part of the same consolidated tax group, would continue to be treated as separate entities and would apply the fixed ratio rule and group ratio rule independently.

- The country may treat all entities in the country which are part of the same financial reporting group as a single entity for the purposes of applying the fixed ratio rule and group ratio rule. Transactions within the financial reporting group which do not net off may be excluded from ‘entity EBITDA’ to prevent abuse. This option may be particularly relevant for a country with a group ratio rule, which applies to entities in a financial reporting group. However, as this could in
描述的最佳实践方法应与任何一种体系兼容，虽然在某些情况下，最佳实践方法中的具体规定可能需要调整。

采用独立的实体纳税体系的国家

197. 若一个国家对集团内部的各实体单独征税，则该国可以随意选择以下三种方式中的一种来应用固定比率规则和集团比率规则：

- 固定比率规则和集团比率规则可基于 EBITDA 分别应用于各实体。
- 出于应用固定比率规则和集团比率规则的目的，国家可以将税基集团的实体作为单一实体处理。例如，可以对税基集团的税基 - EBITDA 总额应用基础固定比率。随后可以根据国家供应商的税基，将利息扣除限额在税基集团内部进行分配，这可能包括允许集团确定利息扣除限额在实体之间的分配。为防止被滥用，税基集团内部无法相互抵消的债务将从税基集团的“实体 EBITDA” 中消除。这一选择下，在同一个财务报表集团中，但不属于同一税务集团的实体，将被视为单独的实体，并独立应用固定比率规则和集团比率规则。
- 出于应用固定比率规则和集团比率规则的目的，国家可以将该国属于同一财务报表集团的部分所有实体作为单一实体处理。财务报表集团内部无法相互抵消的债务将从“实体 EBITDA” 中消除，以防止被滥用。这一选择对采用集团比率规则的国家来说尤为重要，这适用于财务报表集团内的实体。然而，由于这实际上可能允许在不属于一个税务集团的实体之间转移利润或利息扣除限额，因此国家可能需要考虑是否它会引起任何政策问题（如现有的亏损冲抵、利得贡献或类似的规定）。其他规定的情况，比如结转与转回规定，也需要进行考虑。例如，实体是否能够从它加入财务报表集团之前的期间结转的税费属性中受益。

应用集团纳税体系的国家

198. 若国家在集团合并基础上对实体进行征税，则该国可以随意选择以下方式中的一种来应用固定比率规则和集团比率规则：

- 出于应用固定比率规则和集团比率规则的目的，国家可以将合并税基集团的实体作为单一实体处理。例如，可以将基于固定比率应用于合并税基集团的税基 - EBITDA 总额，并应用利息扣除限额来计算作为一个整体的合并税基集团所允许的利息扣除限额。根据这一选择，在同一财务报表集团内，但不属于同一合并税基集团的实体，将继续作为单独的实体处理，并独立应用固定比率规则和集团比率规则。
- 出于应用固定比率规则和集团比率规则的目的，国家可以将该国属于同一财务报表集团的实体作为单一实体处理。财务报表集团内部无法相互抵消的债务将从“实体 EBITDA” 中消除，以防止被滥用。这一选择对采用集团比率规则的国家来说尤为重要，这也适用于财务报表集团内的实体。然而，由于这实际上可能允许在合并税基集团与集团外实体之间转移利润或利息扣除限额，因此国家可能需要考虑是否它会引发任何政策问题。其他规定的情况，比如结转与转回规定，也需要进行考虑。例如，实体是否能够从它加入财务报表集团之前的期间结转的税费属性中受益。
effect allow the transfer of interest capacity between a consolidated tax group and an entity outside of that group, the country may need to consider whether this raises any policy concerns. The operation of other provisions such as carry forwards and carry backs would need to be considered, for example whether an entity should be able to benefit from attributes carried forward from a period before it joined the financial reporting group.

Interaction of the best practice approach with hybrid mismatch rules under Action 2

199. Where a country has introduced a fixed ratio rule, the potential base erosion and profit shifting risk posed by hybrid mismatch arrangements is reduced, as the overall level of net interest deductions an entity may claim is restricted. However, this risk is not eliminated. Within the limits imposed by a fixed ratio rule, there may still be significant scope for an entity to claim interest deductions in circumstances where a hybrid financial instrument or hybrid entity is used to give rise to a double deduction or deduction/tax inclusion outcome. Where a group ratio rule applies, there is also a risk that hybrid mismatch arrangements could be used to increase a group’s net third party interest expense, supporting a higher level of net interest deductions across the group. In order to address these risks, a country should implement all of the recommendations under Action 2, alongside the best practice approach in this report.

200. Rules to address hybrid mismatch arrangements should be applied by an entity before the fixed ratio rule and group ratio rule to determine an entity’s total net interest expense. Once this total net interest expense figure has been determined, the fixed ratio rule and group ratio rule should be applied to establish whether the full amount may be deducted, or to what extent net interest expense should be disallowed.

201. The OECD Report, Neutralising the Effects of Hybrid Mismatch Arrangements (OECD, 2014) stated that rules which grant deemed interest deductions for equity capital, or have similar effect, would not be considered under Action 2, but should be considered further either separately or in the context of Action 4. As set out in Chapter 2, deemed deductions which are calculated by applying a specified percentage to the equity capital of an entity are not treated as being interest or a payment economically equivalent to interest for the purposes of this report. However, these rules should be considered further by the OECD in separate work.

Interaction of the best practice approach with controlled foreign company rules under Action 3

202. The fixed ratio rule and group ratio rule should be effective in addressing base erosion and profit shifting involving excessive interest deductions and interest used to finance the production of tax exempt income. A country may also introduce controlled foreign company (CFC) rules in accordance with the recommendations under Action 3 (Designing Effective Controlled Foreign Companies Rules (OECD, 2015)), to address situations where an entity makes an interest payment which is deductible under the fixed ratio rule and group ratio rule, but the payment is made to a CFC which is subject to a low rate of tax.

203. Where a country applies CFC rules alongside interest limitation rules, CFC income which is subject to tax on the parent company may be included in the calculation of the parent’s EBITDA when applying the fixed ratio rule and group ratio rule. Where this CFC income includes interest income or expense, the country should consider including the interest in the calculation of the parent’s net interest expense and excluding that interest from the calculation of the parent’s EBITDA.

204. The best practice approach in this report should also reduce the pressure on a country’s CFC rules, by encouraging groups to spread net interest expense between group entities so that there is a greater link to taxable economic activity. This should reduce the level of net interest income arising in CFCs, as groups are likely to reduce the level of intragroup interest payments, and increase the alignment of net interest expense and EBITDA within the group.
最佳实践方法与《第2项行动计划》下混合错配规则之间的相互影响

199. 如果国家已经引入了固定比率规则，则混合错配安排所造成的潜在 BEPS 风险就会降低，因为实体所能扣除的净利息费用的总额水平受到了限制。但是，该风险并未消除。在固定比率规则所设定的限度内，在使用混合金融工具或混合实体来产生多重扣除或扣除/不计税收入结果的情况下，实体仍有很大机会来对利息费用进行额外扣除的。在采用集团比率规则的情况下，存在使用混合错配安排来提高集团净第三方利息费用，以将整个集团的净利息扣除限额维持在较高水平的风险。为了解决这些风险，国家应在实施《第2项行动计划》下所有建议时，同时实施本报告中提出的最佳实践方法。

200. 实体应采用固定比率规则和集团比率规则之前，运用规则处理混合错配安排，以确定实体的净利息费用总额。一旦确定了这个净利息费用总额，就应采用固定比率规则和集团比率规则来确定，是否应全额扣除净利息费用，或者仅在多大程度上不允许扣除净利息费用。

201. 经合组织发布的报告“中和混合错配安排的影响 (OECD, 2014 年)” 指出，如果规则被认为对股权资本提供了利大扣除，或有类似的效果，则在《第2项行动计划》下不作考虑，但应单独作进一步考虑，或者在《第4项行动计划》下做进一步考虑。正如第2章中所述，根据实体权益资本的一个既定比例计算的扣除出于本报告的目的被视作利息或经济上等同利息的支付处理。然而，这些规则应由经合组织另行作进一步考虑。

最佳实践方法与《第3项行动计划》下受控制外国公司规则之间的相互影响

202. 固定比率规则和集团比率规则应能有效解决过度利息扣除以及为产生免税收入的活动提供融资而带来的利息所引发的 BEPS 问题。国家还可以根据《第3项行动计划》(“设计有效的受控制外国公司规则” (OECD, 2015)) 的建议引入受控制外国公司 (CFC) 规则，以解决实体的利息费用在固定比率规则和集团比率规则下可以扣除，但是该利息却支付给了需按低税率缴纳的 CFC 的情况。

203. 当国家同时采用 CFC 规则和利息扣除限制规则时，被纳入母公司征税范围的 CFC 收入将在母公司采用固定比率规则和集团比率规则时被纳入 EBITDA 的计算。如果 CFC 收入包含利息收入或费用，国家应考虑将利息包括在母公司净利息费用的计算中，而排除在母公司 EBITDA 的计算外。

204. 本报告中的最佳实践方法也应能够减少对一个国家 CFC 规则的压力，因为这可以鼓励集团将净利息费用散布在集团各个实体，从而与应税经济活动之间产生更密切的关系。这将降低来自 CFC 的净利息收入水平，因为集团可能减少集团内部利息费用的支付，而提高集团内部净利息费用和 EBITDA 之间的统一性。
Interaction of the best practice approach with other rules to limit interest deductions

205. As described in this report, a country may apply the fixed ratio rule and group ratio rule together with targeted rules to tackle specific base erosion and profit shifting risks, including the risks discussed in Chapter 9 as well as other risks identified by the country. A country may also apply other general interest limitation rules, such as arm’s length rules, rules to disallow a percentage of all interest expense and thin capitalisation rules.

206. It is suggested that in most cases, these targeted and general interest limitation rules should be applied before the fixed ratio rule and group ratio rule. However, the ultimate decision as to the order in which to apply interest limitation rules is left to countries, taking into account the design of its rules and the risks they are intended to address.

Interaction of the best practice approach with withholding taxes

207. Withholding tax on interest is typically imposed in order to allocate taxing rights over income to a source country, although it is recognised that an effect of withholding taxes may be to reduce the benefits to groups of base erosion and profit shifting involving interest. Where a country applies withholding tax to payments of interest, this should in no way be impacted by the application of the fixed ratio rule, group ratio rule or targeted rules described in this report. Where the best practice approach limits an entity’s net interest deductions, leading to an interest disallowance, there is no intention that the interest expense disallowed should be re-characterised for any other purpose. Therefore, to the extent a payment would be subject to withholding tax under a country’s tax law, this would continue to apply. Where a country currently re-characterises disallowed interest, for example as a dividend payment, it may continue to apply this treatment but this is not part of the best practice approach in this report.

208. Where an entity receives interest net of withholding tax, and the country of the recipient allows a credit for this tax, the entity will typically be subject to tax on a gross amount of interest income including an amount representing the tax withheld. This treatment is not changed as a result of any aspect of the best practice approach. Therefore, where an entity would currently be able to claim credit for withholding tax on its interest income, this should not change following the introduction of the fixed ratio rule and group ratio rule.

BIBLIOGRAPHY


最佳实践方法与其他限制利息费用扣除规则之间的相互影响

205. 如本报告所述，一个国家可以将固定比率规则和结构比率规则与针对性规则相结合，以解决具体
的 BEPS 风险，包括在第 9 章所讨论的风险以及该国识别的其他风险。一个国家也可能使用其他的一般
一般利息费用限制规则，如公平交易规则，不允许扣除一定比例的利息费用的规则，以及资本弱化规
则。

206. 建议在大多数情况下，在应用固定比率规则和结构比率规则之前，先应用这些针对性和一般利息
费用限制规则。然而，关于应用利息费用限制规则的顺序的最终决定应由各国将这些规则的设计以及它
们所要解决的风险纳入考量后自行作出。

最佳实践方法与预提税之间的相互影响

207. 对利息征收预提税通常是为将收入征税权分配至来源国。尽管我们也承认，预提税的一个影响
可能是降低债务融资市场中债券的发行。当利率水平高于来自非居民的利息收入的预提税时，会使国
家间的利率存在差异。

208. 当一个实体收到扣除预提税后的利息，而该实体所在国允许赋予该税项时，该实体包括预提税之
内的利息收入会被征税。这种处理方式不因最佳实践方法的任何一方面而改变。因此，当一个实
体当前有权抵免利息预提税时，在引入固定比率规则和结构比率规则后，这点也不会改变。

参考文献

OECD (2014), Neutralising the Effects of Hybrid Mismatch Arrangements, OECD/G20 Base Erosion and Profit

OECD (2015), Designing Effective Controlled Foreign Companies Rules, OECD/G20 Base Erosion and
Profit Shifting Project, OECD Publishing.
ANNEX A

EUROPEAN UNION LAW ISSUES

209. This annex includes a brief outline of EU law issues that EU Member States should take into account in implementing the best practice approach in this report.

EU treaty freedoms

210. The treaty freedoms that need to be considered in the context of interest limitation rules are the freedom of establishment, and the free movement of capital. The freedom of establishment applies to cases where the shareholder would be able to exercise a significant influence over the entity, while the free movement of capital applies to cases where the shareholder acquired the shares for the sole purpose of making a financial investment without participating in the decision making process of the entity. In addition, the freedom to provide services, which also has to be analysed from the perspective of both the service provider and recipient, may also need to be considered.

211. The scope of an interest limitation rule determines which freedom applies and there are a number of approaches that the countries involved in this work have discussed in order to avoid any restriction of EU treaty freedoms. In this respect, consideration should also be given to the circumstances in which EU Member States could justify a restriction of EU treaty freedoms, for example:

- the need to preserve the balanced allocation between EU Member States of the power to impose taxes
- the need to prevent tax avoidance and to combat artificial arrangements.

EU directives

212. There are two EU directives with relevance to interest deduction limitation rules within the European Union: the Parent Subsidiary Directive\textsuperscript{24} and the Interest and Royalty Directive.\textsuperscript{25} The Parent Subsidiary Directive eliminates cross-border withholding taxes on dividend payments made by a subsidiary to a parent company and also eliminates double taxation of such income at the level of the parent company. The directive may be relevant in cases where excessive interest is re-qualified as a dividend. In such cases, the re-qualified interest should be granted the benefits of the Parent Subsidiary Directive.

213. The Interest and Royalty Directive provides that interest and royalty payments arising in an EU Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment. Disallowing a deduction for excessive interest could be considered as taxation of interest and, thus, fall within the scope of the directive. However, the Court of Justice of the European Union clarified that the directive only concerns the tax position of the interest creditor.\textsuperscript{26} It seems to follow that the deductibility of interest expenses at the level of the debtor entity may therefore be restricted.
附录 A
欧盟法律相关事务

209. 本附录简介了欧盟成员国在落实本报告所收录的最佳实践方法时必须考虑的欧盟法律相关事项。

欧盟集团自由

210. 利息扣除限额规定下需要考虑的集团自由包括企业设立的自由和资金流动的自由。企业设立的自由适用于股东能够对实体行使重大影响的情况，而资金流动的自由则适用于股东仅为进行财务投资而收购股份，而不参与实体决策过程的情况。此外，提供服务的自由（须由服务供应商和服务接受者的角度进行分析）亦可能需要纳入考虑的范围。

211. 利息扣除限额规定的范围决定了适用的集团自由，参与这项工作的国家曾讨论了多个做法以避免在欧盟集团自由方面遭受任何限制。就之而言，同时亦必须考虑欧盟成员国可能有充分原因在欧盟集团自由方面遭受限制的情况，例如：

- 需要确保欧洲成员国之间平衡分配征收税款的权方
- 需要防止避税和打击人为安排。

欧盟指令

212. 两项欧盟指令适用于欧盟区内的利息扣除限额规定：《母、子公司指令》和《利息和特许权使用费指令》。《母、子公司指令》消除了子公司向母公司作出的股息支付的跨境预提税，亦在母公司层级消除了有关收入的双重征税。此指令在股息利息重新被评定为股息时才适用。在这种情况下，被重新定义的利息应获赋予《母、子公司指令》的优惠待遇。

213. 根据《利息和特许权使用费指令》，于欧盟成员国产生的利息和特许权使用费支付在该国获扣除或在转售扣除任何税款，无论是应来源国扣缴或被评税征税。若不扣除跨国利息，可被视为对利息征税，所以在该指令的适用范围内。然而，欧盟法院曾经澄清此指令仅涉及利息债权人的税务状况。因此，利息费用在债务人实体层级的扣除可能会受到限制。
EU State aid

214. EU State aid issues may arise if interest deductibility rules include specific exceptions for particular entities or sectors. The relevant treaty provision considers ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States’ as being in conflict with the treaty.27

215. The European Commission has provided guidance on how it will apply the State aid provisions in relation to direct business taxation.28 According to this guidance an exception to a specific tax rule without any justification is considered State aid. However, the EU treaty provides EU Member States with options to introduce exceptions to the State aid provisions, for instance categories of State aid may be specified as being deemed compliant with the treaty.29

NOTES

23 So far the Court of Justice of the European Union has not provided clarity on what significant influence means. In Baker (Case C-168/11) the court highlighted that shareholding below 10% does not give a significant influence, and in Irelcar (Case C-282/12) and Kronos (Case C-47/12) the court pointed out that shareholding above 10% does not necessarily imply that the holder exerts significant influence. In this respect, attention should also be given to other case law referred to in these decisions.


26 Schenuten Solar Technology (Case C-397/09).

27 Art 107 Treaty on the Functioning of the European Union (TFEU).


29 Art 107(3)(e) TFEU.
欧盟国家援助

214. 如果利息扣除限额规则为特定实体或行业提供具体的例外时，欧盟国家援助情况便可能会出现。根据相关协定的条款，由某一成员国提供的或通过任何某种形式的国家资源给予的任何援助，凡通过给予特定企业或特定产品的生产以优惠，从而扭曲或威胁扭曲竞争，只要影响到成员国之间的贸易”，均与有关协定不符。 23

215. 欧盟委员会已经就如何在有关直接商业征税方面应用国家援助条文提供了指引。 24 根据本指引，凡没有任何合理理据下对特定税务规则采用例外规定，便会被视为国家援助。然而，欧盟条约让欧盟成员国可选择对国家援助条文采用例外情况规则，例如某些类别的国家援助可被认定为当属符合条约规定。 25

注释

23 欧盟法院至今仍未清楚界定重大影响的定义。在 Belon (Case C-168/11) 案例，法院指出 10% 以下的股权不属于重大影响，而在 Belon (Case C-232/12) 和 Krontos (Case C-47/12) 案例，法院指出 10% 以上的股权不一定意味着股权持有人行使重大影响。于此而言，必须注意作出有关裁决的其他案例。


26 Schaeffler Solar Technology (Case C-397/09).

27 《欧洲联盟运作条约》(TFEU) 第 107 条。

28 委员会就有关直接业务征税有关的措施采用国家援助规则的通知 [1998] OJ C384/3。

29 TFEU 第 107(3)(c) 条。
## ANNEX B

### DATA ON COMPANIES AFFECTED BY A BENCHMARK FIXED RATIO AT DIFFERENT LEVELS

Table B.1 Tabulations for multinational and non-multinational companies, excluding companies with negative EBITDA, 2000-2013

<table>
<thead>
<tr>
<th>Percent of EBITDA limit on net interest deductibility</th>
<th>2009</th>
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Observations: 6,472, 10,911, 5,075, 11,372, 6,631, 11,665, 5,547, 11,015, 6,523, 10,908

Source: PwC calculations based on consolidated financial statement information from Standard & Poor's GlobalVantage database.
附录 B
企业不同层次差级固定比率影响的数据

表 B.1 跨国企业和非跨国企业计算表，不包括录得负 EBITDA 的企业，2009-2013 年
受利息费用扣除限制影响的企业百分比

<table>
<thead>
<tr>
<th>利息费用允许扣除的 EBITDA 最高比例</th>
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<td>6,631</td>
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</table>

资料来源：普华永道根据录自标准普尔 Global Vantage 数据库的合并财务报表信息进行的计算。
Table B.2 Tabulations for multinational and non-multinational companies, excluding companies with negative EBITDA, average for 2009-2013
Percentage of companies affected by interest deduction limitation

<table>
<thead>
<tr>
<th>Percent of EBITDA limit on net interest deductibility</th>
<th>Average 2009-2013</th>
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</table>

Source: OECD Secretariat calculations based on data in Table B.1.

Table B.3 Tabulations for multinational and non-multinational companies, excluding companies with negative EBITDA, average for 2009-2013
Percentage of companies that would in principle be able to deduct an amount equivalent to their net third party interest expense

<table>
<thead>
<tr>
<th>Percent of EBITDA limit on net interest deductibility</th>
<th>Average 2009-2013</th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Non-MNC</td>
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</table>

Source: OECD Secretariat calculations based on data in Table B.1.

Table B.2 includes the companies affected by a particular fixed ratio. Table B.3 includes the companies that in principle are not affected. Taken together, numbers from these tables for a particular ratio should add to 100%.

Table B.3 assumes that net interest expense is spread around a group in accordance with EBITDA. In practice there may be barriers which prevent a group achieving this.
表 B. 2 跨国企业和非跨国企业计算表，不包括录得负 EBITDA 的企业，2009-2013 年平均数

| 净利益费用允许进行税前扣除的 EBITDA 预期比例 | 2009-2013 年平均数 | | 净利息费用允许进行税前扣除的 EBITDA 预期比例 | 2009-2013 年平均数 |
|---------------------------------------------|------------------|---------------------------------------------|------------------|
| 5%                                          | 57%              | 53%                                        | 5%               |
| 10%                                         | 45%              | 38%                                        | 10%              |
| 15%                                         | 35%              | 28%                                        | 15%              |
| 20%                                         | 28%              | 22%                                        | 20%              |
| 25%                                         | 23%              | 17%                                        | 25%              |
| 30%                                         | 19%              | 13%                                        | 30%              |
| 35%                                         | 13%              | 9%                                         | 35%              |
| 40%                                         | 11%              | 8%                                         | 40%              |
| 45%                                         | 9%               | 7%                                         | 45%              |
| 50%                                         | 8%               | 6%                                         | 50%              |
| 55%                                         | 7%               | 5%                                         | 55%              |
| 60%                                         | 6%               | 4%                                         | 60%              |
| 65%                                         | 5%               | 4%                                         | 65%              |
| 70%                                         | 4%               | 4%                                         | 70%              |
| 75%                                         | 4%               | 3%                                         | 75%              |
| 80%                                         | 3%               | 3%                                         | 80%              |
| 85%                                         | 3%               | 3%                                         | 85%              |
| 90%                                         | 3%               | 3%                                         | 90%              |
| 95%                                         | 3%               | 3%                                         | 95%              |
| 100%                                        | 3%               | 3%                                         | 100%             |

资料来源：经合组织秘书处根据表 B.1 的数据进行的计算。

表 B. 2 包括受特定固定比率影响的企业。表 B.3 包括原则上不受影响的企业。若合计计算，这些数据表中某个比例的企业总数加起来应为 100%。

表 B.3 假设净利息费用按照 EBITDA 在集团内分布。但在实际上，可能会存在若干障碍令集团不能实现这个目标。
Table B.4 Tabulations for large cap and small cap multinational companies, excluding companies with negative EBITDA, 2009-2013

Percentage of multinational companies affected by interest deduction limitation

<table>
<thead>
<tr>
<th>Percent of EBITDA limit on net interest deductibility</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
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<th>2013</th>
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</thead>
<tbody>
<tr>
<td>Small Cap</td>
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<td>Small Cap</td>
<td>Large Cap</td>
<td>Small Cap</td>
<td>Large Cap</td>
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Observations: 8,745, 872, 9,453, 1,018, 9,765, 949, 9,794, 1,060, 9,635, 1,157

Source: PwC calculations based on consolidated financial statement information from Standard & Poor's GlobalVantage database.
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数据来源：普华永道根据标准普尔 GlobalVantage 数据库的合并财务报表信息进行的计算。
ANNEX C

THE EQUITY ESCAPE RULE

216. The equity escape rule is currently applied by a number of countries, including Germany and Finland. The description below is based on the rule applied by Germany.

217. Under this approach, the fixed ratio rule does not apply to entities that are part of a group, if the entity can demonstrate that its equity/total assets ratio is equal to (within a tolerance of two percentage points) or higher than the equivalent group ratio. Where an entity’s ratio is lower than that of the group, the entity remains subject to the fixed ratio rule. Under this approach, an entity which is leveraged more highly than its group cannot deduct interest expense up to its group’s ratio.

218. For these purposes, a group exists if an entity may be consolidated with other entities under IFRS, or the financial or business decisions of the entity may be controlled together with those of other entities. A group also exists where entities are held or controlled by an individual or unincorporated entity.

219. The equity escape test should be based on audited consolidated financial statements of a group prepared in accordance with IFRS. However, audited financial statements drawn up in accordance with the commercial law of an EU Member State or US GAAP may be used if no IFRS financial statements are prepared. The requirement to prepare audited consolidated financial statements applies even where the group comprises entities under the control of an individual or unincorporated entity.

220. Entity financial statements should be prepared under the same accounting rules as the consolidated financial statements. Otherwise, a reconciliation must be prepared of the entity financial statements to the accounting standards used by the group, and this must be reviewed by an accountant. For purposes of determining the entity’s equity ratio, all assets and liabilities must be valued using the same method as in the consolidated financial statements.

221. Therefore, an entity’s equity figure must also be adjusted for the following items:

- to add goodwill included in the consolidated financial statements to the extent attributable to the business enterprise
- to adjust the valuation of assets and debts (valued at the amounts reported in the consolidated financial statements)
- to deduct equity not carrying voting rights (with the exception of preference shares)
- to deduct equity investments in other group entities.

222. An entity’s total assets figure is adjusted for the following items:

- to add goodwill included in the consolidated financial statements to the extent attributable to the business enterprise
附录 C
权益免除规则

216. 权益免除规则目前为多国所采用，包括德国和芬兰。下文的描述是以德国采用的规则为基础。

217. 根据这个方法，若实体可以证明其权益/总资产比例相等（容忍点为 2 个百分点）或高于集团的相应比率，固定比率规则并不适用于属于集团一部分的实体。若实体的比率低于集团的比率，实体仍须采用固定比率规则。根据这个方法，若实体的杠杆比率高于集团的杠杆比率，便不能将利息费用扣除至集团比率的上限。

218. 为这些目的，如果一家实体可能根据《国际财务报告准则》与其他实体进行合并，或该实体的财务或业务决策可能与其他实体的财务或业务决策共同受控，集团便可能存在。如果多家实体由个人或非法人实体持有或控制，集团亦会存在。

219. 权益免除测试应根据集团按照《国际财务报告准则》编制的经审计合并财务报表进行。然而，若没有按照《国际财务报告准则》编制的财务报表，亦可参照根据欧盟成员国商业法或美国公认会计准则编制的经审计财务报表。即使该集团包括由个人或非法人实体控制的实体，编制经审计合并财务报表的要求同样适用。

220. 实体的财务报表须以编制合并财务报表相同的会计准则进行编制，否则，必须根据集团采用的会计准则对实体的财务报表编制年度调整表，并必须经由会计师进行审计。为确定实体的权益比率，所有资产和负债必须采用合并财务报表相同的方法进行估值。

221. 因此，实体的权益数据亦必须根据下列项目作调整：

- 加入合并财务报表内可归属于企业的商誉
- 调整资产和债务的估值（按合并财务报表内列报的金额计算价值）
- 扣除没有表决权的股权（优先股除外）
- 扣除于其他集团实体的权益投资。

222. 实体的总资产数额按下列项目作调整：

- 加入合并财务报表内可归属于企业的商誉
- 调整资产和债务的估值（按合并财务报表内列报的金额计算价值）
- 扣除于其他集团实体的权益投资
- 扣除没有记入合并财务报表，但可以与最少相同金额的负债进行匹配的财务资产。
• to adjust the valuation of assets and debts (valued at the amounts reported in the consolidated financial statements).

• to deduct equity investments in other group entities

• to deduct financial claims which are not included in the consolidated financial statements but which are matched by liabilities of at least the same amount.

223. Anti-avoidance rules in Germany also require that, in applying the rule, an entity’s equity and total assets figures are adjusted to deduct contributions made over the last six months prior to the relevant balance sheet date to the extent these are matched by withdrawals or distributions during the first six months after the relevant balance sheet date.

224. Even where the requirements of the equity escape rule are met, an entity which is part of a group remains subject to the fixed ratio rule unless the entity can demonstrate that interest payments on related-party loans from shareholders outside the group do not exceed 10% of the group’s total net interest expense. A loan is a related party loan if it is from (i) a 25% shareholder (including direct and indirect shareholdings), (ii) an entity related to a shareholder, or (iii) any entity where there is recourse to a 25% shareholder.
223. 德国的反避税法规亦要求在应用有关规则时，需对实体的权益和总资产数据进行调整，以扣除在相关结算日前最近 6 个月期间存入，而可以与相关结算日结束后 6 个月期间提取或作出分派的款项作出匹配的款项。

224. 即使符合权益免除规则的要求，属于集团一部分的实体仍需符合固定比率规则。除非该实体可以证明来自集团以外的股东的关联方贷款的利息费用不超过该集团总利息费用的 10%。关联方贷款是指来自下列人士的贷款：(i) 持股比率达 25% 的股东 (包括直接和间接持股)，(ii) 与股东有关联的实体，或 (iii) 任何可追溯至持股比率达 25% 的股东的实体。
ANNEX D
EXAMPLES

Example 1 – Thin capitalisation rule based on a fixed debt/equity ratio

225. A simple group structure includes two companies, Parent and Subsidiary. Subsidiary is resident in a country which applies a thin capitalisation rule based on a fixed debt/equity ratio of 1.5/1. In Year 1, Subsidiary has total debt from Parent of USD 750 million and total equity of USD 375 million. On the intragroup debt, Subsidiary pays interest at a rate of 2%, or USD 15 million. As Subsidiary’s debt/equity ratio of 2/1 exceeds the benchmark fixed ratio of 1.5/1, Subsidiary will incur an interest disallowance of USD 3.75 million. Subsidiary therefore has total interest deductions of USD 11.25 million.

226. To avoid this disallowance recurring, in Year 2 Subsidiary issues additional equity of USD 125 million to Parent. Subsidiary uses the funds received to make a loan to Parent of USD 125 million. The loan is on a short term basis at an interest rate of 1% and Subsidiary receives interest income of USD 1.25 million. Subsidiary’s debt/equity ratio is now in line with the benchmark fixed ratio of 1.5/1 and so Subsidiary does not incur any interest disallowance. Subsidiary now has total net interest deductions of USD 13.75 million.

227. In Year 3, Subsidiary issues a further USD 100 million of equity and USD 150 million of debt to Parent. The new debt is on a medium term and bears interest at 2%. Subsidiary makes a new loan of USD 250 million to Parent on a short term basis at a rate of 1%. Subsidiary’s debt/equity ratio is in line with the benchmark fixed ratio and Subsidiary incurs no interest disallowance. Subsidiary now has total net interest deductions of USD 14.25 million.

228. Finally, in Year 4, Subsidiary restructures USD 450 million of its existing debt into a long term subordinated loan with an arm’s length interest rate of 5%. Subsidiary’s debt/equity ratio is in line with the benchmark fixed ratio and Subsidiary incurs no interest disallowance. Subsidiary now has total net interest deductions of USD 27.75 million.

229. Between Year 1 and Year 4, Subsidiary’s net interest deductions have increased from USD 11.25 million to USD 27.75 million, with no increase in underlying economic activity. Between Year 2 and Year 4, Subsidiary was fully compliant with the thin capitalisation rule based on a fixed debt/equity ratio.

230. However, this type of arrangement may contravene the general anti-avoidance rule of a country.
附录 D

示例

示例 1 - 以固定债务/权益比率为基础的资本弱化规则

225. 一个简单的集团结构包含两家公司：母公司和子公司。子公司为一个国家的居民企业，该国所采用的资本弱化规则的固定债务/权益比率为 1.5/1。在第 1 年，子公司向母公司的总债务为 7.5 亿美元，权益总额为 3.75 亿美元。在集团内部债务方面，子公司向母公司支付利息，由于子公司的债务/权益比率为 2/1，超过了 1.5/1 的基准固定比率，子公司将会产生不可扣除利息费用 375 万美元。因此，子公司的可扣除利息费用总额为 1,125 万美元。

226. 为了避免这种不可扣除利息费用反复出现，子公司在第 2 年向母公司发行额外股权 1.25 亿美元。子公司利用收到的款项向母公司提供 1.25 亿美元的贷款。贷款属于短期性质，利率为 1%，子公司取得利息收入 125 万美元。子公司的债务/权益比率目前为 1.5/1 的基准固定比率相符，因此子公司没有产生任何不可扣除的利息费用。子公司目前可扣除的净利息费用总额为 1,375 万美元。

227. 在第 3 年，子公司进一步向母公司发行 1 亿美元股权和 1.5 亿美元债务。其债务为中期性质，利率为 2%，子公司向母公司提供一笔新的短期贷款，金额为 2.5 亿美元，利率为 1%。子公司的债务/权益比率与基准固定比率相符，子公司没有产生任何不可扣除的利息费用。子公司目前可扣除的净利息费用总额为 1,425 万美元。

228. 最后，在第 4 年，子公司将其当年债务中的 4.5 亿美元重组为长期有担保贷款（subordinated loan），并以独立交易原则采用 5% 的利率。子公司的债务/权益比率与基准固定比率相符，子公司没有产生任何不可扣除的利息费用。子公司目前的可扣除利息费用总额为 2,775 万美元。

229. 在第 1 年至第 4 年之间，子公司的可扣除利息费用由 1,125 万美元增加至 2,775 万美元，但相关经济活动没有增加。在第 2 年至第 4 年之间，子公司完全符合以固定债务/权益比率为基础的资本弱化规则。

230. 然而，这种安排可能违反个别国家的一般反避税法。

示例 2：将最佳实践方法与其他利息费用限制规则结合

231. 诚如在第 1 章提到，除本报告建议的利息费用限制规则，一个国家也可同时采用其他利息费用限制规则，以解决特定的 BEPS 风险，或实现其他税收政策的目标。这仅是一个国家可同时采用最佳实践方法以及其他规则的其中一个例子，但不是唯一可以采用的方法。
Example 2: Combining the best practice approach with other interest limitation rules

231. As set out in Chapter 1, a country may apply other interest limitation rules alongside those recommended in this report, either to tackle specific base erosion and profit shifting risks, or to achieve other tax policy goals. This is just one example of the way in which a country may apply the best practice approach alongside other rules but this is not the only approach available to countries.

232. In this example, Country X decides that a comprehensive approach to limiting an entity’s interest deductions should comprise four parts. The first three of these are aimed at addressing base erosion and profit shifting involving interest. The fourth is included to achieve broader tax policy goals:

1) A fixed ratio rule which limits an entity’s net interest deductions to 20% of EBITDA. This rule applies to all entities which are part of a multinational group or a domestic group. In this particular case, Country X does not apply the fixed ratio rule to standalone entities (although as stated in Chapter 3, a country may also choose to apply the fixed ratio rule to all entities, including standalone entities).

2) A group ratio rule, which allows an entity which is subject to the fixed ratio rule to deduct net interest expense up to the net third party interest/EBITDA ratio of its group, where this is higher than 20%.

3) Targeted rules to address specific base erosion and profit shifting risks involving interest. These rules are used to tackle base erosion and profit shifting risks involving interest posed by standalone entities. Some targeted rules are also used to prevent abuse of the general interest limitation rules by entities which are part of a multinational group or a domestic group.

4) An upper limit on the net interest expense of all entities (including all group entities and standalone entities) of 30% of EBITDA. This additional rule is not aimed at tackling base erosion and profit shifting involving interest but is used to reduce the existing tax bias in favour of debt funding over equity.

233. This approach is summarised in the diagram below.

<table>
<thead>
<tr>
<th>Table D.1. Example of how the best practice approach may be combined with other interest limitation rules</th>
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<td>Entities in multinational groups</td>
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<td>Targeted rules to address specific risks</td>
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<td>Upper limit on net interest deductions (30% of EBITDA)</td>
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234. The application of these rules by Country X to five example companies is set out below.
232. 在这个例子中，X 国认为限制实体扣除利息费用所采用的全面方法必须由 4 个部分组成。首 3 个部分主要集中处理涉及利息的 BEPS 问题。第 4 个部分则集中实现广泛的税务政策目标：

1) 固定比率规则，将实体的净利息费用扣除限额设于 EBITDA 的 20%。这项规则适用于所有跨国企业集团或本地集团一部分的所有实体。在这个特定个案中，X 国没有将固定比率规则应用于单独实体（虽然在第 3 章里提到，一个国家可选择将固定比率规则应用于所有实体，包括单独实体）。

2) 集团比率规则，让需要遵守固定比率规则的实体可将净利息费用扣除额提高至其集团第三方净利息费用/EBITDA 比率的水平，若有关比率高于 20%。

3) 处理涉及利息的 BEPS 风险的特定规则，这些规则用来处理单独实体带来的与利息有关的 BEPS 风险。部分特定规则也用来避免跨国企业集团或本地集团一部分的实体滥用一般利息费用限制规则。

4) 所有实体的净利息费用上限（包括所有集团实体和单独实体）为 EBITDA 的 30%。这项额外的规则并不旨在打击与利息有关的 BEPS 问题，而是用来减低目前倾向采用债务融资而不是股权融资所造成的税收偏移。

233. 本方法的详情概列于下表。

| 表 D.1 | 如何将最佳实践方法与其他利息限制规则结合的示例 |
|---|---|---|---|
| 跨国集团内的实体 | 本地集团内的实体 | 单独实体 |
| 固定比率规则（EBITDA 的 20%） | ✓ | ✓ | – |
| 集团比率规则 | ✓ | ✓ | – |
| 用来处理特定风险的针对性规则 | ✓ | ✓ | ✓ |
| 净利息费用扣除额的上限（EBITDA 的 30%） | ✓ | ✓ | ✓ |

234. 以下是 X 国在 5 家示例公司应用这些规则的情况。

| 表 D.2 | 应用最佳实践方法和其他利息费用限制规则的示例 |
|---|---|---|---|---|---|
| | A 公司 | B 公司 | C 公司 | D 公司 | E 公司 |
| EBITDA | 1 亿 | 1 亿 | 1 亿 | 1 亿 | 1 亿 |
| 净利息费用 | (1,500 万) | (2,800 万) | (3,300 万) | (3,000 万) | (3,500 万) |
| 集团的净第三方利息费用/EBITDA 比率 | 10% | 25% | 35% | 不适用 | 不适用 |
Table D.2 Example of the application of the best practice approach and other interest limitation rules

<table>
<thead>
<tr>
<th></th>
<th>A Co USD</th>
<th>B Co USD</th>
<th>C Co USD</th>
<th>D Co USD</th>
<th>E Co USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>100 million</td>
<td>100 million</td>
<td>100 million</td>
<td>100 million</td>
<td>100 million</td>
</tr>
<tr>
<td>Net interest</td>
<td>(15 million)</td>
<td>(28 million)</td>
<td>(33 million)</td>
<td>(30 million)</td>
<td>(35 million)</td>
</tr>
<tr>
<td>Group net third party interest/EBITDA ratio</td>
<td>10%</td>
<td>25%</td>
<td>35%</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

235. A Co is a company in a multinational group. A Co has net interest expense of USD 15 million and EBITDA of USD 100 million. Because A Co has a net interest/EBITDA ratio of below 20%, it is able to deduct all of its net interest expense. No targeted rules apply.

236. B Co is a company in a multinational group. B Co has net interest expense of USD 28 million and EBITDA of USD 100 million. Because B Co has a net interest/EBITDA ratio in excess of 20%, the fixed ratio rule would apply to restrict B Co's net interest deductions to USD 20 million. However, because B Co is part of a group which has a net third party interest/EBITDA ratio of 25%, B Co is able to apply the group ratio rule and deduct net interest expense of USD 25 million. USD 3 million of interest expense is disallowed. No targeted rules apply.

237. C Co is a company in a domestic group. C Co has net interest expense of USD 33 million and EBITDA of USD 100 million. Because C Co has a net interest/EBITDA ratio in excess of 20%, the fixed ratio rule would apply to restrict C Co's net interest deductions to USD 20 million. However, C Co is part of a group which has a net third party interest/EBITDA ratio of 35%, and so is able to apply the group ratio rule and deduct more net interest expense. Because the group ratio exceeds the upper limit on net interest deductions, C Co's net interest deductions are limited to 30% of EBITDA. Therefore, C Co can deduct net interest expense of USD 30 million. USD 3 million of interest expense is disallowed. No targeted rules apply.

238. D Co is a standalone entity and is not part of any group. D Co is controlled by an individual who owns 100% of the ordinary shares in the company. D Co has net interest expense of USD 30 million and EBITDA of USD 100 million. This net interest expense includes USD 5 million paid on an arrangement giving rise to base erosion and profit shifting (such as an 'artificial loan' where no new funding is raised by D Co). Because D Co is a standalone entity, it is not subject to the fixed ratio rule. Instead, D Co is subject to targeted rules which deal with the specific base erosion and profit shifting risks posed by standalone entities and to the upper limit on net interest deductions of 30% of EBITDA. Therefore, D Co is able to deduct USD 25 million of its net interest expense. USD 5 million is disallowed.

239. E Co is a standalone entity and is not part of any group. E Co has net third party interest expense of USD 35 million and EBITDA of USD 100 million. Because E Co is a standalone entity, it is not subject to the fixed ratio rule. However, it is subject to targeted rules to address specific base erosion and profit shifting risks (although none of those apply in this situation) and is also subject to the upper limit on net interest deductions of 30% of EBITDA. Therefore, E Co is able to deduct USD 30 million of its net interest expense. USD 5 million of interest expense is disallowed.
235. A 公司是一家跨国集团内的公司。A 公司的净利息费用为 1,500 万美元，EBITDA 为 1 亿美元。由于 A 公司的净利息费用/EBITDA 比率为 10%，它能扣除所有净利息费用。针对性规则并不适用。

236. B 公司是一家跨国集团内的公司。B 公司的净利息费用为 2,800 万美元，EBITDA 为 1 亿美元。由于 B 公司的净利息费用/EBITDA 比率高于 20%，固定比率规则将会适用，以将 B 公司的净利息费用扣除额限制于 2,000 万美元。然而，由于 B 公司是集团的一部分，而集团的净利息费用/EBITDA 比率低于 25%，B 公司能采用集团比率规则，并扣除净利息费用 2,500 万美元。300 万美元利息费用不允许扣除。针对性规则并不适用。

237. C 公司是一家本地集团内的公司。C 公司的净利息费用为 3,300 万美元，EBITDA 为 1 亿美元。由于 C 公司的净利息费用/EBITDA 比率高于 20%，固定比率规则将会适用，以将 C 公司的净利息费用扣除额限制于 2,000 万美元。然而，由于 C 公司是集团的一部分，而集团的净利息费用/EBITDA 比率为 35%，C 公司能采用集团比率规则，并扣除更多净利息费用。由于集团比率超过净利息费用扣除额的上限，C 公司的净利息费用扣除额低于 EBITDA 的 30%。因此，C 公司可扣除净利息费用 3,000 万美元，300 万美元利息费用不允许扣除。针对性规则并不适用。

238. D 公司是一家单独实体，并不属于任何集团的一部分。D 公司由一名自然人控制，该名自然人拥有公司内 100% 普通股。D 公司的净利息费用为 3,000 万美元，EBITDA 为 1 亿美元。这些净利息费用包括就一项产生 BEPS 的安排（例如 D 公司没有筹集新融资的“人为贷款”）所支付的 500 万美元利息费用。由于 D 公司是一家单独实体，所以无须遵守固定比率规则。事实上，D 公司无需遵守用来处理单独实体带来的 BEPS 风险的针对性规则，以及净利息费用扣除额的上限为 EBITDA 的 30%。因此，D 公司可扣除净利息费用中的 2,500 万美元，500 万美元利息费用不允许扣除。

239. E 公司是一家单独实体，并不属于任何集团的一部分。E 公司的净第三方利息费用为 3,500 万美元，EBITDA 为 1 亿美元。由于 E 公司是一家单独实体，所以无须遵守固定比率规则。然而，它需要遵守用来处理特定 BEPS 风险的针对性规则（虽然在这个情况下没有规则适用），以及净利息费用扣除额的上限为 EBITDA 的 30%。因此，E 公司可扣除净利息费用中的 3,000 万美元。500 万美元利息费用不允许扣除。
240. In introducing any interest limitation rules, or combination of rules, a country may need to take into account other legal or constitutional obligations. For example, countries which are EU Member States should consider the requirements of EU law.
240. 在引入任何利息费用限制规则或结合使用有关规则时，一个国家可能需要考虑其他法律或宪法义务。例如，属于欧盟成员国的国家应考虑欧盟法律要求。
Example 3: Interest and payments economically equivalent to interest

241. In 2015, A Co and its subsidiary B Co enter into the following arrangements:

1) A Co issues USD 50 million of bonds carrying a fixed interest rate of 5%.

2) A Co enters into an interest rate swap with a third party bank (Bank), under which A Co receives fixed rate payments and pays floating rate payments on a notional principal of USD 50 million.

3) B Co borrows USD 10 million from Bank at a floating interest rate.

4) B Co’s borrowing from Bank is covered by a guarantee from A Co. In return, B Co pays a guarantee fee to A Co.

5) B Co also obtains a short-term credit facility with Bank whereby it can borrow up to USD 500,000 for small periods at short notice. B Co pays an arrangement fee for this facility.

6) B Co enters into a finance lease for new plant and machinery for use in its business.

7) A Co enters into an operating lease for new office equipment.

8) B Co enters into a contract to provide 10 million widgets per year to Customer for the next three years. This contract is covered by a performance guarantee from A Co, in return for which B Co pays a guarantee fee to A Co.

9) B Co buys a series of aluminium futures contracts to protect itself against movements in the price of aluminium, a key ingredient in the manufacture of widgets.

10) A Co declares and pays a dividend of USD 1 million to holders of its ordinary shares.

242. The amounts payable by A Co and B Co under 1), 2), 3), 4), 5) and 6) are all interest on a debt, payments economically equivalent to interest, or expenses incurred in connection with the raising of finance. These payments are therefore subject to the fixed ratio rule and the group ratio rule. The amounts payable under 7), 8), 9) and 10) do not fall within these categories (based on this specific fact pattern) and are not subject to these rules.
示例 3：利息和经济上等同利息的支付

241. 2015 年，A 公司和其子公司——B 公司进行了下列安排：

1) A 公司发行了 5,000 万美元债券，这些债券的固定利率为 5%。
2) A 公司与一家第三方银行（银行）签订了一项利率掉期，其中 A 公司取得固定利率支付，并需
   就名义本金 5,000 万美元支付浮动利率支付。
3) B 公司以浮动利率向银行借入 1,000 万美元。
4) B 公司从银行取得的借款由 A 公司提供担保。因此，B 公司向 A 公司支付担保费作为回报。
5) B 公司向银行取得短期信贷融资，可在短时间内短期融资最高 500,000 美元。B 公司就这笔
   融资支付担保费。
6) B 公司就业务营运使用的新厂房和机械签订融资租赁。
7) A 公司就新的办公室设备签订经营租赁。
8) B 公司签订了一份协议，在未来 3 年每年为客户提供 1,000 万个小型部件。这份协议由 A 公
   司提供履约担保，B 公司则向 A 公司支付担保费作为回报。
9) B 公司购买了一系列铝金属期货合约以保障铝金属价格出现波动的风险。铝金属是生产小型
   部件的主要材料。
10) A 公司向其普通股股东分派股息 100 万美元。

242. A 公司和 B 公司根据上述 1) 、2) 、3) 、4) 、5) 和 6) 项应付的款项全部为债务的利息，经济上等
    同利息的支付，或因筹集资金所产生的有关费用。因此，这些支付需要遵守固定比率规则和集团比率规
    则。根据上述 7) 、8) 、9) 和 10) 项应付的款项并不属于这些类别（根据这里的具体事实模式），因此无须
    遵守这些规则。
Example 4: Fixed ratio rule (benchmark net interest/EBITDA ratio of 15%)

Table D.3 Operation of the fixed ratio rule

<table>
<thead>
<tr>
<th></th>
<th>Single entity taxation</th>
<th>Group taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A1 USD</td>
<td>A2 USD</td>
</tr>
<tr>
<td>Taxable income before applying the fixed ratio rule</td>
<td>70m</td>
<td>10m</td>
</tr>
<tr>
<td>+ net interest expense</td>
<td>+10m</td>
<td>+50m</td>
</tr>
<tr>
<td>+ depreciation and amortisation</td>
<td>+20m</td>
<td>+40m</td>
</tr>
<tr>
<td>= tax-EBITDA</td>
<td>= 100m</td>
<td>= 100m</td>
</tr>
<tr>
<td>x benchmark fixed ratio</td>
<td>x 15%</td>
<td>x 15%</td>
</tr>
<tr>
<td>= maximum allowable deduction</td>
<td>= 15m</td>
<td>= 15m</td>
</tr>
<tr>
<td>Disallowed interest expense</td>
<td>0</td>
<td>35m</td>
</tr>
</tbody>
</table>

243. In the above example, A1 Co and A2 Co incur a total disallowance of USD 30 million where the fixed ratio rule is applied at the level of the local group (e.g. under a group taxation regime). However, where they are taxed separately under a separate entity taxation regime, they incur a total disallowance of USD 35 million (which arises in A2 Co). This is because A1 Co is not fully utilising its capacity to absorb interest deductions and it is assumed that there are no rules in place to permit the surrender of interest capacity from A1Co to A2Co. The example illustrates the potential advantage of applying the rule at the level of the local group (although this may also be achieved if rules did allow the surrender of interest capacity within the group). However, depending on the individual situation of each group member the application of the rule at the group level may also be disadvantageous as shown in the example below.
示例 4：固定比率规则（基准净利润/EBITDA 比率为 15%）

表 B.3 固定比率规则的运用

<table>
<thead>
<tr>
<th></th>
<th>单独实体纳税</th>
<th>集团纳税</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A1公司美元</td>
<td>A2公司美元</td>
</tr>
<tr>
<td>采用固定比率规则前应纳税所得额</td>
<td>7,000万</td>
<td>1,000万</td>
</tr>
<tr>
<td>+借款利息费用</td>
<td>+1,000万</td>
<td>+5,000万</td>
</tr>
<tr>
<td>+折旧和摊销</td>
<td>+2,000万</td>
<td>+4,000万</td>
</tr>
<tr>
<td>税务–EBITDA</td>
<td>=1亿</td>
<td>=1亿</td>
</tr>
<tr>
<td>x基准固定比率</td>
<td>x15%</td>
<td>x15%</td>
</tr>
<tr>
<td>=最高可扣除金额</td>
<td>=1,500万</td>
<td>=1,500万</td>
</tr>
<tr>
<td>不允许扣除的利息费用</td>
<td>0</td>
<td>3,500万</td>
</tr>
</tbody>
</table>

243. 在上述例子中，A1公司和A2公司产生了不允许扣除的利息费用总额3,000万美元，其中已在本地集团层级（如根据集团纳税）采用固定比率规则。然而，若它们根据独立的实体纳税分开征税，则会产生不允许扣除的利息费用总额3,500万美元（于A2公司产生）。这是由于A1公司没有充分利用其能力将利息费用的扣除部分转移至A1公司。本例子说明了在本地集团层级采用有关规则的潜在优势（虽然若有关规则允许在集团内部转移扣除利息费用的机会，亦可能达到这个效果）。然而，根据每个集团成员的个别情况，在集团层级使用有关规则亦可能产生不利影响，详见以下示例说明。
Table D.4. Impact of losses on the operation of the fixed ratio rule

<table>
<thead>
<tr>
<th></th>
<th>Single entity taxation</th>
<th></th>
<th>Group taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A3 Co USD</td>
<td>A4 Co USD</td>
<td>Total USD</td>
</tr>
<tr>
<td>Taxable income/(losses) before applying the fixed ratio rule</td>
<td>100m</td>
<td>(150m)</td>
<td>(50m)</td>
</tr>
<tr>
<td>+ net interest expense</td>
<td>+ 20m</td>
<td>+ 20m</td>
<td>+ 40m</td>
</tr>
<tr>
<td>+ depreciation and amortisation</td>
<td>+ 30m</td>
<td>+ 30m</td>
<td>+ 60m</td>
</tr>
<tr>
<td>= tax-EBITDA</td>
<td>= 150m</td>
<td>= (100m)</td>
<td>= 50m</td>
</tr>
<tr>
<td>x benchmark fixed ratio</td>
<td>x 15%</td>
<td>x 15%</td>
<td>-</td>
</tr>
<tr>
<td>= maximum allowable deduction</td>
<td>= 22.5m</td>
<td>= 0</td>
<td>-</td>
</tr>
<tr>
<td>Disallowed interest expense</td>
<td>0</td>
<td>20m</td>
<td>20m</td>
</tr>
</tbody>
</table>

244. Where one of the group entities is in a loss-making position and the fixed ratio rule is applied at the level of the local group, the total disallowance incurred is greater than if the rule would be applied at the level of each single entity. In the above example, A3 Co and A4 Co incur a total disallowance of USD 32.5 million where they are taxed under a group taxation regime. However, where they are taxed separately under a separate entity taxation regime, they incur a total disallowance of USD 20 million (which arises in A4 Co). This is because the loss in A4 Co partially reduces A3 Co’s capacity to absorb interest deductions.
### 表 D. 4. 亏损对固定比率规则运用的影响

<table>
<thead>
<tr>
<th>项 目</th>
<th>就单独实体税</th>
<th>就集团纳税</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A3 公司</td>
<td>A4 公司</td>
<td>合计</td>
<td>A3 公司+ A4 公司</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>美元</td>
<td>美元</td>
<td>美元</td>
<td>美元</td>
<td>美元</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>采用固定比率规则前应纳税所得额/ (亏损)</td>
<td>1 亿</td>
<td>(1.5 亿)</td>
<td>(5,000 万)</td>
<td>(5,000 万)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 净利息费用</td>
<td>+2,000 万</td>
<td>+2,000 万</td>
<td>+4,000 万</td>
<td>+4,000 万</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 折旧和摊销</td>
<td>+3,000 万</td>
<td>+3,000 万</td>
<td>+6,000 万</td>
<td>+6,000 万</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>= 税务 - EBITDA</td>
<td>=1.5 亿</td>
<td>= (1 亿)</td>
<td>=5,000 万</td>
<td>=5,000 万</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>x 基准固定比率</td>
<td>x15%</td>
<td>x15%</td>
<td>-</td>
<td>x15%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>= 最高可扣除金额</td>
<td>=2,250 万</td>
<td>=0</td>
<td>-</td>
<td>=750 万</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>不允许扣除的利息费用</td>
<td>0</td>
<td>2,000 万</td>
<td>2,000 万</td>
<td>3,250 万</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

244. 若其中一家集团实体出现亏损状况，并在本地集团层级采用固定比率规则，所产生的不允许扣除的利息费用总额便会高于有关规则在每个个别实体层级应用的总额。在上述例子中，A3 公司和 A4 公司在集团纳税的情况下产生不允许扣除的利息费用总额 3,250 万美元。然而，若它们根据独立的实体税制分开征税，只会产生不允许扣除的利息费用总额 2,000 万美元（于 A4 公司产生）。这是由于 A4 公司出现的亏损部分地降低了 A3 公司吸收可扣除利息费用的能力。
Example 5: Applying factors to set a benchmark fixed ratio within the corridor

245. As set out in Chapter 6, it is recommended that a country uses the factors in that chapter, along with other relevant factors, to set its benchmark fixed ratio within the recommended corridor of 10% to 30%. This example illustrates some possible ways in which this might be done, based on three countries which intend to introduce a fixed ratio rule: Country A, Country B and Country C. This is not meant to be an exhaustive list of possible approaches.

246. Country A considers each of the factors in Chapter 6:

1) It intends to introduce the fixed ratio rule alongside a group ratio rule.

2) It intends to allow entities to carry back disallowed interest expense for a period of three years.

3) It has no other tax rules which address the risks to be addressed by Action 4.

4) It does not have a high interest rate compared with other countries.

5) There is no legal or constitutional requirement for the same treatment to be applied to different types of entity.

6) It does not intend to apply different fixed ratios depending on the size of an entity’s group.

247. In addition, Country A conducts its own analysis and concludes that groups operating in the country typically have low net third party interest/EBITDA ratios. Country A also wishes to apply a strict approach to tackle base erosion and profit shifting involving interest.

248. Country A determines that factors 1 to 5, as well as the additional factors, suggest a lower benchmark fixed ratio, while no factors suggest a higher ratio. Therefore, it concludes that it should set its benchmark fixed ratio towards the lower end of the corridor, within the illustrative range included in the diagram below.

249. Country B considers each of the factors in Chapter 6:

1) It intends to introduce the fixed ratio alongside a group ratio rule.

2) It intends to allow entities to carry forward unused interest capacity without limitation.

3) It has other tax rules which specifically tackle a number of the risks to be addressed by Action 4 but not all of these risks.

4) It has a slightly high interest rate compared with other countries.

5) There is a legal requirement to apply the same fixed ratio to entities in multinational groups, entities in domestic groups and standalone entities.

6) It intends to apply one benchmark fixed ratio to entities in large groups, and a different benchmark fixed ratio to other entities.

250. Country B does not take into account any other factors in addition to the above.
示例 5: 利用各项因素在区间内设定基准固定比率

245. 诚如在第 6 章提到，我们建议各国采用该章所提供的因素，以及其他相关因素，在 10% 至 30%
的建议区间内设定其基准固定比率。本例子根据 3 个假想采用固定比率规则的国家: A 国、B 国和 C 国。
说明了进行这项工作部分可采用的方法。本部分的内容并不旨在详尽无遗地提供有关的可行方法。

246. A 国考虑了第 6 章所列的每个因素:

1) 它假设同时引用固定比率规则和集团比率规则。
2) 它假设实体回租不允许扣除的利息费用，为期 3 年。
3) 它没有采用其他税务规则以处理行动 4 所针对的风险。
4) 相对于其他国家，它没有更高的利率。
5) 并无任何法律或宪法要求，规定对不同类别实体采用相同处理方法。
6) 它没有计划根据实体集团的规模，采用不同的固定比率。

247. 此外，A 国进行分析，结论是于该国境内营运的集团净盈余利息费用/EBITDA 比率一般较低。
A 国同时希望采用严厉手法打击涉及利息的 BEPS 问题。

248. A 国认为因素 1 至 5 以及其他因素均显示应采用较低的基准固定比率，而且没有因素显示应采用
较高的比率。因此，它的结论是应将基准固定比率设定在区间的较低端，在下图所示的参考范围内。

249. B 国考虑了第 6 章所列的每个因素:

1) 它假设同时引用固定比率规则和集团比率规则。
2) 它假设实体转租未使用的利息扣除限额，且没有任何限制。
3) 它有采用其他税务规则以针对行动 4 所针对的部分风险，但不是所有风险。
4) 相对于其他国家，它有较高的利率。
5) 根据法律要求，需对跨国集团内的实体，本地集团内的实体和单独实体采用相同的固定比率。
6) 它计划对大型集团内的实体采用某基准固定比率，并对其他实体采用不同的基准固定比率。

250. 除上述因素外，B 国没有考虑任何其他因素。
251. Country B determines that two factors (1 and 2) suggest a lower benchmark fixed ratio, while three factors (3 to 5) suggest a higher benchmark fixed ratio. Country B also decides to apply a lower weighting to factors 3 and 4 because (i) although some of the base erosion and profit shifting risks to be addressed by Action 4 are dealt with by other tax rules, some of these risks remain, and (ii) although it has a slightly higher interest rate compared with other countries, this is not significantly higher.

252. Therefore, Country B concludes that it should not set its benchmark fixed ratio for most entities towards the top of the corridor, but rather within the illustrative range indicated in the diagram below. In addition, recognising that large groups tend to have a lower net third party interest/EBITDA ratio than other groups, Country B decides to apply a lower ratio to entities in large groups.

253. Country C considers each of the factors in Chapter 6:

1) It intends to introduce the fixed ratio in isolation, without a group ratio rule.

2) It does not intend to allow entities to carry forward unused interest capacity or carry back disallowed interest expense.

3) It has other tax rules that tackle all of the issues to be addressed under Action 4.

4) It has a high interest rate compared with those of other countries.

5) There is a constitutional requirement to apply the same fixed ratio to entities in multinational groups, entities in domestic groups and standalone entities.

6) It does not intend to apply different fixed ratios depending on the size of an entity’s group.

254. In addition, Country C applies a macro-economic policy to encourage third party lending not related to base erosion and profit shifting, to increase investment.

255. Country C determines that factors 1 to 5, as well as the additional factor, suggest a higher benchmark fixed ratio while no factors suggest a lower ratio. Therefore, it concludes that it may set its benchmark fixed ratio at any place in the corridor, from 10% to 30%.
251. B 国认为 2 个因素 (1 和 2) 显示应采用较低的基准固定比率，而 3 个因素 (3 至 5) 则显示应采用较高的基准固定比率。B 国决定对因素 3 和 4 采用较低的权重，因为 (i) 虽然其他税务规则已经处理行动 4 针对的部分 BEPS 风险，但部分风险仍然存在；及 (ii) 虽然与其他国家相比其利率较高，但不是极高。

252. 因此，B 国的结论是不应将大部分实体的基准固定比率设定于区间的顶端，而是应该在下图所示的参考范围内。此外，鉴于大型集团的净第三方利息费用/EBITDA 比率一般低于其他集团，B 国决定对大型集团内的实体采用较低比率。

253. C 国考虑了第 6 章所列的各个因素：

1) 它单独引用固定比率规则，而不采用集团比率规则。
2) 它不计划允许实体结转未使用的利息扣除限额或转回不允许扣除的利息费用。
3) 它有采用其他税务规则以处理行动 4 所针对的所有风险事宜。
4) 相对于其他国家，它有着高利率。
5) 根据具体规则，需对跨国集团内的实体、本地集团内的实体和单独实体采用相同的固定比率。
6) 它没有计划根据实体集团的规模、采用不同的固定比率。

254. 此外，C 国采用宏观经济政策以鼓励第三方进行不涉及 BEPS 的借贷，以增加投资。

255. C 国认为因素 1 至 5 以及其他因素均显示应采用较高的基准固定比率，而且没有因素显示应采用较低的比率。因此，它的结论是应该将基准固定比率设定在区间中 10% 至 30% 的任何地方。
Figure D.1 Applying factors to set a benchmark fixed ratio within the corridor
图 D.1 利用各项因素在区间内设定基准固定比率

- A 国
  - 所有实体

- B 国
  - 大型集团内的实体

- C 国
  - 其他实体
  - 所有实体
Example 6: Operation of a group ratio rule based on a net third party interest/EBITDA ratio

256. Examples 6a to 6e below illustrate how, in a simple case, a group ratio rule based on a net third party interest/EBITDA ratio could enable an entity which exceeds the benchmark fixed ratio to deduct more interest up to its group's net third party interest/EBITDA ratio.

257. In these examples, A Co is an entity resident in Country A. Country A applies a fixed ratio rule as described in Chapter 6, with a benchmark fixed ratio of 20%. A Co is part of a multinational group (Group). The net interest expense and EBITDA of A Co and Group are set out in the table below.

<table>
<thead>
<tr>
<th></th>
<th>Net interest expense</th>
<th>EBITDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Co</td>
<td>(10 million)</td>
<td>30 million</td>
</tr>
<tr>
<td>Group</td>
<td>(100 million)</td>
<td>400 million</td>
</tr>
</tbody>
</table>

Example 6a – Country A applies a fixed ratio rule in isolation

258. In this example, Country A applies a fixed ratio rule with a benchmark fixed ratio of 20%. Country A does not apply a group ratio rule.

259. A Co’s interest capacity is calculated by applying the benchmark fixed ratio of 20% to its EBITDA of USD 30 million. A Co therefore has interest capacity of USD 6 million. Out of its total net interest expense of USD 10 million, USD 6 million may be deducted and USD 4 million is disallowed.

Example 6b – Country A applies a fixed ratio rule alongside a group ratio rule

260. In this example, Country A applies a fixed ratio rule with a benchmark ratio of 20%, and also a group ratio rule based on a net third party interest/EBITDA ratio. Under the group ratio rule, Country A does not apply any uplift to a group’s net third party interest expense.

261. Under the fixed ratio rule, A Co’s interest capacity is calculated by applying the benchmark fixed ratio of 20% to its EBITDA of USD 30 million. A Co therefore has interest capacity under the fixed ratio rule of USD 6 million.

262. Under the group ratio rule, A Co first calculates its group’s net third party interest/EBITDA ratio, based on the group’s net third party interest expense of USD 100 million and group EBITDA of USD 400 million. The group’s ratio is therefore 25%. A Co applies the group ratio to its EBITDA of USD 30 million. A Co therefore has interest capacity under the fixed ratio rule of USD 7.5 million.

263. A Co’s interest capacity is greater under the group ratio rule and so this rule applies. Out of A Co’s total net interest expense of USD 10 million, USD 7.5 million may be deducted and USD 2.5 million is disallowed.
示例 6：以净第三方利息费用/EBITDA 比率为基础的集团比率规则的运用

256. 下文示例 6a 至 6c 以一个简单例子说明了以净第三方利息费用/EBITDA 比率为基础的集团比率规则，如何让一家超出了基准固定比率的实体扣除其集团的净第三方利息费用/ EBITDA 比率的更多利息费用。

257. 在这些例子中，A 公司是 A 国的居民企业实体。A 国采用了第 6 章所述的固定比率规则，基准固定比率为 20%。A 公司是跨国集团（集团）的一部分。A 公司和集团的净利息费用和 EBITDA 列举于下表。

<table>
<thead>
<tr>
<th></th>
<th>净利息费用 (美元)</th>
<th>EBITDA (美元)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 公司</td>
<td>(1,000 万元)</td>
<td>3,000 万元</td>
</tr>
<tr>
<td>集团</td>
<td>(1 亿元)</td>
<td>4 亿元</td>
</tr>
</tbody>
</table>

示例 6a - A 国单独地采用固定比率规则

258. 在这个例子中，A 国采用了基准固定比率为 20% 的固定比率规则。A 国没有采用集团比率规则。

259. A 公司利息扣除限额是根据 3,000 万美元的 EBITDA 采用 20% 的基准固定比率计算。因此，A 公司利息扣除限额为 600 万美元。在其净利息费用总额 1,000 万美元中，美元 600 万可作扣除，400 万美元则不可扣除。

示例 6b - A 国同时采用固定比率规则和集团比率规则

260. 在这个例子中，A 国采用了基准比率为 20% 的固定比率规则，以及以净第三方利息费用/EBITDA 比率为基础的集团比率规则。根据集团比率规则，A 国没有对集团的净第三方利息费用作任何调整。

261. 根据固定比率规则，A 公司利息扣除限额是根据 3,000 万美元的 EBITDA 采用 20% 的基准固定比率计算。因此，根据固定比率规则，A 公司利息扣除限额为 600 万美元。

262. 根据集团比率规则，A 公司首先应根据集团的净第三方利润费用 1 亿美元和集团的 EBITDA 4 亿美元，计算其集团的净第三方利润费用/EBITDA 比率。因此，集团的比率应为 25%。A 公司对其 EBITDA 3,000 万美元采用集团比率。因此，A 公司根据固定比率规则的利息扣除限额为 750 万美元。

263. 由于 A 公司根据集团比率规则拥有较大的利息扣除限额，因此适用该规则。在 A 公司的净利息费用总额 1,000 万美元中，其中 750 万美元可作扣除，250 万美元则不可扣除。
Example 6c – Country A applies a fixed ratio rule alongside a group ratio rule, with a 10% uplift to net third party interest expense

264. In this example, Country A applies a fixed ratio rule with a benchmark ratio of 20%, and also a group ratio rule based on a net third party interest/EBITDA ratio. Under the group ratio rule, Country A applies a 10% uplift to a group’s net third party interest expense.

265. Under the fixed ratio rule, A Co’s interest capacity is calculated by applying the benchmark fixed ratio of 20% to its EBITDA of USD 30 million. A Co therefore has interest capacity under the fixed ratio rule of USD 6 million.

266. Under the group ratio rule, A Co first calculates its group’s net third party interest/EBITDA ratio. This is based on the group’s adjusted net third party interest expense of USD 110 million (after applying an uplift of 10% to the group’s actual net third party interest expense of USD 100 million) and group EBITDA of USD 400 million. The group’s ratio is therefore 27.5%. A Co applies the group ratio to its EBITDA of USD 30 million. A Co therefore has interest capacity under the fixed ratio rule of USD 8.25 million.

267. A Co’s interest capacity is greater under the group ratio rule and so this rule applies. Out of A Co’s total net interest expense of USD 10 million, USD 8.25 million may be deducted and USD 1.75 million is disallowed.
示例 6a - A 国同时采用固定比率规则和集团比率规则，并对净第三方利息费用调高 10%

264. 在这个例子中，A 国采用了基准比例为 20% 的固定比率规则，以及以净第三方利息费用/EBITDA 比率为基础的集团比率规则。根据集团比率规则，A 国对集团的净第三方利息费用调高 10%。

265. 根据固定比率规则，A 公司利息扣除限额是根据 3,000 万美元的 EBITDA 采用 20% 的基准固定比率计算。因此，根据固定比率规则，A 公司利息扣除限额为 600 万美元。

266. 根据集团比率规则，A 公司首先应计算其集团的净第三方利息费用/EBITDA 比率。这是根据集团的经调整净第三方利息费用 1.1 亿美元（在对集团的净第三方利息费用 1 亿美元调高 10% 后）和集团的 EBITDA 4 亿美元计算。因此，集团的比率应为 27.5%。A 公司对其 EBITDA 3,000 万美元采用集团比率。因此，A 公司根据固定比率规则的利息扣除限额为 825 万美元。

267. 由于 A 公司根据集团比率规则拥有较大的利息扣除限额，因此适用该规则。在 A 公司的净利息费用总额 1,000 万美元中，其中 825 万美元可作扣除，175 万美元则不可扣除。
Example 7: Definition of a group under a group ratio rule

268. The Examples 7a to 7c below show how a group is determined for the purposes of applying a group ratio rule, based on different fact patterns.

Example 7a – Companies held by an individual

Figure D.2 Companies held by an individual

269. In this simple example, an individual owns the majority of the share capital in two companies, A Co and B Co, each of which has a number of subsidiaries. A Co and B Co are the top level company in their respective holding structures (i.e., no company exercises control over them). An individual cannot be the parent of a group. Therefore, for the purposes of applying the group ratio rule, two groups exist. Group A includes A Co and all entities included in A Co’s consolidated financial statements, while Group B includes B Co and all entities included in B Co’s consolidated financial statements.

270. In applying a group ratio rule, it is also necessary to identify which individuals and entities are related to a group, as this may be relevant in the calculation of the group’s net third party interest expense. In this example, Group A is related to the individual, as well as to the entities in Group B. Similarly, Group B is related to the individual and to the entities in Group A.
示例 7：集团比率规则下集团的定义

268. 下文示例 7a 至 7e 根据不同的事实模式，展示出就采用集团比率规则而言，如何界定集团的定义。

示例 7a - 由个人持有的公司

图 D.2 由个人持有的公司

269. 在这个简单例子中，一名自然人拥有两家公司 —— A 公司和 B 公司的大多数股份，而 A 公司和 B 公司旗下拥有数家子公司。A 公司和 B 公司是其相关持股架构中的最高层级公司（即没有公司对它们行使控制权）。该名自然人不能成为集团的母公司。因此，就采用集团比率规则而言，存在两个集团。A 集团包括 A 公司和 A 公司的合并财务报表内的所有实体，而 B 集团则包括 B 公司和 B 公司的合并财务报表内的所有实体。

270. 在采用集团比率规则时，也需要识别那些自然人和实体与集团有关。因为这可能关于集团的净债务或第三方利息费用的计算。在这个例子中，A 集团与该名自然人有关，也与 B 集团的实体有关。同样地，B 集团与该名自然人有关，也与 A 集团的实体有关。
Example 7b – Companies held by a limited partnership

271. Non-corporate vehicles such as limited partnerships cannot be the parent of a group for the purposes of a group ratio rule. A corporate group held under such a structure may be treated as a group, but this group will not include the limited partnership, any funds set up by the limited partnership to hold investments, or other corporate groups held under the structure. This is illustrated in the diagram below, where Group A, Group B and Group C are treated as separate groups when applying a group ratio rule. However, the limited partnership, the sub-funds and Treasury Company would not form part of any group for these purposes.

Figure D.3 Companies held by a limited partnership

![Diagram](image)

272. Although the limited partnership, the sub-funds and Treasury Company are not part of a group for group ratio rule purposes, they would be treated as related to each of Group A, Group B and Group C. Similarly, entities in each of the three groups would be treated as related to each other (so entities in Group A are related to entities in Group B and Group C, and so on).
示例 7b - 由有限合伙企业持有的公司

271. 就集团比率规则而言，非企业机构如有限合伙企业等不能成为集团的母公司。一个以这种架构持有的企业集团可能被视为集团，但该集团不包括有限合伙企业。有限合合伙企业所成立以持有投资的基金，或以这种架构持有的其他企业集团。有关详情请参阅下图的说明。其中 A 集团、B 集团和 C 集团在采用集团比率规则时被视为独立的集团。然而，该有限合伙企业、辖下基金和资金管理公司从此而言不会属于任何集团的一部分。

图 D.3 由有限合伙企业持有的公司

272. 虽然该有限合伙制企业，辖下基金和资金管理公司就采用集团比率规则而言不会属于集团的一部分，它们被视为与 A 集团、B 集团和 C 集团相关。同样地，该三个集团内各自的实体也会被视为彼此相关 (因此，A 集团的实体与 B 集团和 C 集团的实体相关，以此类推)。
Example 7c – A joint venture entity controlled by an investing group

Figure D.4 A joint venture entity controlled by an investing group

<table>
<thead>
<tr>
<th>Group A</th>
<th>Group B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent A</td>
<td>Parent B</td>
</tr>
<tr>
<td>JV Partner A</td>
<td>JV Partner B</td>
</tr>
</tbody>
</table>

273. Where a joint venture entity is controlled by one of the joint venture partners, the joint venture entity will typically be included in the consolidated financial statements of the controlling group. It will therefore form part of this group for the purposes of applying a group ratio rule. This is shown in the diagram above, where JV Partner A holds a 55% stake in JV Co. In this case, JV Co and its subsidiaries will be part of Group A for the purposes of applying a group ratio rule.

274. JV Partner B and JV Co are not part of the same group. However, JV Partner B holds an investment of greater than 25% in JV Co and so the two entities are related parties (as per the definition of related party in Chapter 9).
示例 7c - 由投资集团控制的合资企业实体

图 D.4 由投资集团控制的合资企业实体

273. 若合资企业实体由其中一个合资伙伴控制，合资企业实体一般也包括在控股集团的合并财务报表内。因此，就采用集团比率规则而言，它将组成该集团的一部分。有关详情请参阅上图的说明，其中合资伙伴 A 持有合资企业 55% 的股权。在这个情况下，合资企业和其子公司就采用集团比率规则而言，将会成为 A 集团的一部分。

274. 合资伙伴 B 和合资企业并不属于同一集团。然而，合资伙伴 B 于合资企业持有的股权高于 25%，因此该两家实体为关联方 (按第 9 章关联方的定义)。
Example 7d - Joint venture entity which is not controlled by any investing group

Figure D.5  A joint venture entity which is not controlled by any investing group

Group A
   Parent A
      
   JV Partner A.

Group B
   Parent B
      
   JV Partner B

50%  50%

JV Co

C Co

Group C

275. Where no investor has overall control of a joint venture entity, each investing group will generally include the joint venture in its consolidated financial statements using equity accounting. The joint venture entity is not consolidated into either investing group and will not form part of these groups for the purposes of a group ratio rule. This is shown in the diagram above, where JV Partner A and JV Partner B each hold 50% stakes in JV Co, and no other arrangements exist which give control to one of the investors. JV Co and its subsidiary will not be part of either Group A or Group B. Instead, JV Co and its subsidiary will form a separate group (Group C). However, JV Co will be related to both JV Partner A and JV Partner B.
示例 7d - 不由任何投资集团控制的合资企业实体

图 D.5 不由任何投资集团控制的合资企业实体

275. 若无投资者对合资企业实体拥有整体控制权，每家投资集团一般会根据权益会计法将该合资企业计入其合并财务报表内。就采用集团比率规则而言，该合资企业实体不会在任何投资集团合并计算，也不会组成这些集团的一部分。有关详情请参阅上图的说明。其中合资伙伴 A 和合资伙伴 B 各持有合资企业的 50% 权益，而且没有订立任何其他安排让任何一名投资者取得控制权。合资企业和其子公司不会成为 A 集团或 B 集团的一部分。而是，合资企业和其子公司将会组成一个独立的集团（C 集团）。然而，合资企业将会同时是合资伙伴 A 和合资伙伴 B 的关联方。
Example 7e – A holding structure headed by an investment entity

Figure D.6  A holding structure headed by an investment entity

276. In this example, Parent A is a company which is an investment entity, and which directly controls three companies. Parent A is the top level company in the structure.

277. Subsidiary A provides services connected with Parent A’s investment activities, and is consolidated into Parent A’s consolidated financial statements.

278. Parent B and Parent C are held by Parent A for the purposes of capital appreciation and investment income. As such, they are recognised in Parent A’s consolidated financial statements as investments and carried at fair value.

279. Parent A and Subsidiary A form a group (Group A) for the purposes of applying the group ratio rule. Parent B and Parent C are not members of Group A. Instead, each of these companies forms a separate group with their respective subsidiaries (Group B and Group C).
示例 7e - 由投资实体领导的持股架构

图 D.6 由投资实体领导的持股架构

276. 在这个例子中，母公司 A 是一家投资实体，其直接控制三家公司。母公司 A 是架构中的最高层级企业。

277. 子公司 A 负责提供与母公司 A 的投资活动有关的服务，并合并入母公司 A 的合并财务报表内。

278. 母公司 B 和母公司 C 由母公司 A 持有，以取得资本增益和投资收入。因此，它们在母公司 A 的合并财务报表内确认为投资，并按照公允价值入账。

279. 就采用集团比率规则而言，母公司 A 和子公司 A 组成了一个集团 (A 集团)。母公司 B 和母公司 C 并不属于 A 集团的一部分。而是，这些公司各自与其相关子公司组成了独立的集团 (B 集团 和 C 集团)。
Example 8: Applying a group ratio to an entity’s tax-EBITDA or accounting-EBITDA

280. As set out in Chapter 7, when applying a group ratio rule an entity’s EBITDA may be calculated using tax or accounting principles. Each of these approaches has advantages and disadvantages, which are considered in Examples 8a-8c below, based on the following scenario.

| Table D.6 Applying a group ratio to an entity’s tax-EBITDA or accounting-EBITDA |
|-------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| Financial reporting                              | Net interest expense | EBITDA USD | Net interest expense | EBITDA USD |
| Group                                            | USD              |         | n/a              | n/a          |
| (100 million)                                    | 1 billion        |         | n/a              | n/a          |
| A Co                                             | (20 million)     | 100 million | (18 million) | 80 million |
| Group net third party interest/EBITDA ratio = (USD 100 million / USD 1 billion) x 100 = 10% |

Example 8a - Determining EBITDA using tax principles

281. In this example, A Co’s interest capacity is calculated by applying the group’s net third party interest/EBITDA ratio of 10%, to A Co’s tax-EBITDA of USD 80 million. This limit can be applied directly to A Co’s net interest expense for tax purposes. Out of A Co’s total net interest expense of USD 18 million, USD 8 million is tax deductible and USD 10 million is disallowed.

282. The calculation of EBITDA using tax principles is consistent with that recommended under the fixed ratio rule. It is also straightforward for groups to apply and tax authorities to audit, and as an approach to tackle base erosion and profit shifting it has the benefit that an entity’s interest deductions are linked to its level of taxable income. This means that where an entity’s taxable income is higher than its accounting income, its ability to deduct interest expense will be correspondingly greater. Similarly, if an entity undertakes planning to reduce its taxable income, it will be able to deduct less net interest expense.

Example 8b - Determining EBITDA using accounting principles

283. In this example, A Co’s interest capacity is calculated by applying the group’s net third party interest/EBITDA ratio of 10%, to A Co’s accounting-EBITDA of USD 100 million. This limit can be applied directly to A Co’s net interest expense for tax purposes. Out of A Co’s total net interest expense of USD 18 million, USD 10 million is tax deductible and USD 8 million is disallowed.

284. Under this approach interest capacity is calculated using only accounting information. This is straightforward for groups to apply and tax authorities to audit. However, a possible concern remains if there is a significant difference between the calculation of net interest expense under tax and accounting rules. For example, an entity could incur a significant interest disallowance if the definition of interest it applies for tax purposes is wider than that for accounting purposes (because interest capacity has been calculated using the narrower accounting definition).
示例 8：对实体的税务-EBITDA 或会计-EBITDA 采用集团比率

280. 诚如第 7 章提到，在采用集团比率规则时，实体的 EBITDA 可按税务或会计原则计算。这两种方法各有不同的优点和缺点，详情请根据文示例 8a–8c 按照以下情景的说明。

<table>
<thead>
<tr>
<th>财务报表</th>
<th>EBITDA 美元</th>
<th>税务</th>
<th>EBITDA 美元</th>
</tr>
</thead>
<tbody>
<tr>
<td>集团</td>
<td>(1 亿)</td>
<td>不适用</td>
<td>不适用</td>
</tr>
<tr>
<td>A 公司</td>
<td>(2,000 万)</td>
<td>1 亿</td>
<td>(1,800 万)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8,000 万</td>
</tr>
</tbody>
</table>

集团的净第三方利息费用/EBITDA 比率 = (1 亿美元 / 10 亿美元) x 100 = 10%

示例 8a - 采用税务原则厘定 EBITDA

281. 在这个例子中，A 公司利息扣除限额按 A 公司的税务-EBITDA 8,000 万美元以 10% 的集团净第三方利息费用/EBITDA 比率计算，这个限额可直接应用于 A 公司的税务方面的净利息费用中。在 A 公司的净利息费用总额 1,800 万美元中，其中 800 万美元可作扣除，1,000 万美元则不可扣除。

282. 利用税务原则计算 EBITDA 与固定比率规则建议的方法相符。此外，集团在具体应用和操作关键在进行审计时也非常简单直接。而且作为打击 BEPS 的方法之一，它的优点是实体的利息扣除限额与其应纳税所得额挂钩，这意味着若实体的应纳税所得额高于其会计收入，其利息扣除限额将会相应提高。同样地，如果实体进行筹划减少应纳税所得额，它亦只能够扣除较少的净利息费用。

示例 8b - 采用会计原则厘定 EBITDA

283. 在这个例子中，A 公司利息扣除限额按 A 公司的会计-EBITDA 1 亿美元以 10% 的集团净第三方利息费用/EBITDA 比率计算，这个限额可直接应用于 A 公司的税务方面的净利息费用中。在 A 公司的净利息费用总额 1,800 万美元中，其中 1,000 万美元可作扣除，800 万美元则不可扣除。

284. 根据这个方法，利息扣除限额仅通过会计信息进行计算。集团在具体应用和操作关键在进行审计时也非常简单直接。然而，需要关注的是，按照税务和会计准则计算净利息费用方面可能会出现重大差异。例如，如果企业实体在税务方面对利息采用的定义较在会计方面更为广泛，便可能会产生庞大的不可扣除的利息费用（因为利息扣除限额是按照较狭窄的会计定义计算）。

171
Example 8c – Adjusting an accounts-based limit on deductions for differences in tax and accounting definitions of interest

285. This example illustrates an approach to reduce the impact of differences between an entity’s net interest expense for tax purposes and for accounting purposes. Under this approach, the accounts-based limit on interest deductions calculated in Example 8b is compared with the entity’s net interest expense for accounting purposes, to determine what percentage falls within the limit. Where this figure is 100% (i.e. all of the entity’s accounting net interest expense is within the limit), then all of the entity’s net interest expense for tax purposes is deductible, with no disallowance. Where the percentage is less than 100%, the corresponding percentage of the entity’s net interest expense for tax purposes is deductible, with the remainder disallowed (i.e. if 90% of the entity’s accounting net interest expense falls within the limit, 90% of the entity’s tax net interest expense would be deductible).

286. Applying this approach to A Co, the group’s net third party interest/EBITDA ratio of 10% is applied to A Co’s accounting-EBITDA of USD 100 million to produce an accounts-based limit on net interest expense of USD 10 million. This limit is compared with A Co’s net interest expense for accounting purpose of USD 20 million, 50% of which falls within the limit. This percentage is then applied to A Co’s net interest expense for tax purposes. Therefore, out of A Co’s total net interest expense for tax purposes of USD 18 million, USD 9 million is deductible and USD 9 million is disallowed.

287. Compared with the accounts-based approach in Example 8b, this would mean, for example, where an entity’s net interest expense for tax purposes exceeds that for accounting purposes, it would receive a correspondingly higher interest capacity. Alternatively, where an entity’s net interest expense for tax purposes is lower than that for accounting purposes, its interest capacity would be reduced. In effect, the accounts-based limit on deductions is flexed to take into account differences between net interest expense for tax and accounting purposes.
示例 8c — 就利息定义在税务和会计方面的差异，对以会计为基础的利息扣除限额作出调整

285. 这个例子说明了为减少企业实体在税务和会计方面的净利息费用之间的差额所产生影响而采用的方法。根据这个方法，示例 8b 所计算的以会计为基础的利息扣除限额将会与实体在会计方面的净利息费用进行对比，以确定有多少百分比的利息费用是在限额内的。若此数值为 100%（即实体的所有会计为基础的净利息费用均在限额内），实体的所有税务净利息费用均可以扣除，没有金额不可扣除。若此比率小于 100%，实体在这个相应百分比内的税务净利息费用可以扣除，其余金额则不可扣除（即：如实体的 90% 以会计为基础的净利息费用在限额内，实体 90% 的税务净利息费用可以扣除）。

286. 若对 A 公司采用这个方法，将对 A 公司的会计—EBITDA 1 亿美元采用 10% 的集团净第三方利息费用/EBITDA 比率，从而产生以会计为基础的净利息费用限额 1,000 万美元。这个限额与 A 公司就会计而言的净利息费用 2,000 万美元进行对比，其中 50% 在限额内。然后，将这个百分比应用于 A 公司在税务方面的净利息费用中。因此，在 A 公司在税务方面的净利息费用总额 1,800 万美元中，900 万美元可以扣除，900 万美元不可扣除。

287. 若与示例 8b 中以会计为基础的方法进行对比，这意味着例如一家实体在税务方面的净利息费用高于会计方面的净利息费用，它将会获得相应的较少的利息扣除限额。或者，若一家实体在税务方面的净利息费用低于会计方面的净利息费用，其利息扣除限额将会下降。事实上，以会计为基础的利息扣除限额将会相应调整，以考虑净利息费用在税务和会计方面的差异。
Example 9: Dealing with loss-making entities within a group

Example 9a – The impact of losses on the operation of a group ratio rule

Table D.7 The impact of losses on the operation of a group ratio rule

<table>
<thead>
<tr>
<th></th>
<th>A Co USD</th>
<th>B Co USD</th>
<th>C Co USD</th>
<th>Group USD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EBITDA</strong></td>
<td>100</td>
<td>10</td>
<td>(100)</td>
<td>10</td>
</tr>
<tr>
<td><strong>Net interest</strong></td>
<td>(20)</td>
<td>(2)</td>
<td>10</td>
<td>(12)</td>
</tr>
<tr>
<td><strong>Group interest/EBITDA ratio</strong></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>120%</td>
</tr>
<tr>
<td><strong>Interest capacity</strong></td>
<td>120</td>
<td>12</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td><strong>Deductible interest expense</strong></td>
<td>(20)</td>
<td>(2)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td><strong>Disallowed interest</strong></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Unused interest capacity</strong></td>
<td>100</td>
<td>10</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

288. In this example, A Co has EBITDA of USD 100 million and net interest expense of USD 20 million. B Co has EBITDA of USD 10 million and net interest expense of USD 2 million. However, C Co has a negative EBITDA (i.e. losses) of USD 100 million and receives net interest income of USD 10 million. Therefore, looking at the group as a whole, the group has total EBITDA of USD 10 million and a net interest expense of USD 12 million. The group’s net third party interest/EBITDA ratio is 120%.

289. This very high group ratio causes two problems. Firstly, in the current year A Co receives interest capacity of USD 120 million, which is higher than the group’s actual net third party interest expense. This means that in principle the company could deduct more net interest than the total net third party interest expense of the group. Secondly, even after deducting their current year net interest expense, A Co and B Co still have a high level of unused interest capacity. If a rule allows the carry forward of unused interest capacity, this could be carried into future periods and used to shelter further interest deductions.

290. In a sense, this issue arises because C Co (which has a negative EBITDA of USD 100 million) is not required to recognise negative interest capacity of USD 120 million. If this was the case, then the interest capacity of the group as a whole would equal the group’s net third party interest expense of USD 12 million. However, the recognition of negative interest capacity in loss-making entities is not recommended as part of the best practice approach.
示例 9：集团内亏损实体的处理

示例 9a - 亏损对集团比率规则运用的影响

<table>
<thead>
<tr>
<th></th>
<th>A 公司</th>
<th>B 公司</th>
<th>C 公司</th>
<th>集团</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>1 亿</td>
<td>1,000 万</td>
<td>(1 亿)</td>
<td>1,000 万</td>
</tr>
<tr>
<td>净利息</td>
<td>(2,000 万)</td>
<td>(200 万)</td>
<td>1,000 万</td>
<td>(1,200 万)</td>
</tr>
<tr>
<td>集团利息费用/EBITDA 比率</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>120%</td>
</tr>
<tr>
<td>利息扣除限额</td>
<td>1.2 亿</td>
<td>1,200 万</td>
<td>0</td>
<td>–</td>
</tr>
<tr>
<td>可扣除的利息费用</td>
<td>(2,000 万)</td>
<td>(200 万)</td>
<td>0</td>
<td>–</td>
</tr>
<tr>
<td>不可扣除的利息</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>未使用的利息扣除限额</td>
<td>1 亿</td>
<td>1,000 万</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

288. 在这个例子中，A 公司的 EBITDA 为 1 亿美元，净利息为 2,000 万美元，B 公司的 EBITDA 为 1,000 万美元，净利息费用为 200 万美元。然而，C 公司的 EBITDA 远远低于 1 亿美元，其净利润仅为 1,000 万美元。因此，若从集团整体层面上看，集团的 EBITDA 总额为 1,000 万美元，净利息费用为 1,200 万美元，集团的净第三方利息费用/EBITDA 比率为 120%。

289. 这个极高的集团比率导致两个问题的出现。首先，在本年度内，A 公司获得的利息扣除限额 1.2 亿美元，高于集团的实际净第三方利息费用。这意味着在理论上，A 公司可以扣除净利息费用总额的更多数额。其次，如果扣除本年度的利息费用后，A 公司和 B 公司仍然拥有很高的未使用的利息扣除限额。若有规则允许将未使用的利息扣除限额结转，便可结转至未来期间，以用来覆盖更多的利息扣除。

290. 在某种意义上，这个问题是因为 C 公司（净得负 EBITDA -1 亿美元）无须确认负数的利息扣除限额 1.2 亿美元。如果是这样，集团整体利息扣除限额将相当于集团的净第三方利息费用 1,200 万美元。然而，最佳实践方法并不建议确认亏损实体的负数利息扣除限额。
Example 9b—Applying an upper limit on interest capacity

Table D.8  Applying an upper limit on interest capacity

<table>
<thead>
<tr>
<th></th>
<th>A Co USD</th>
<th>B Co USD</th>
<th>C Co USD</th>
<th>Group USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>100 million</td>
<td>10 million</td>
<td>(100 million)</td>
<td>10 million</td>
</tr>
<tr>
<td>Net interest</td>
<td>(20 million)</td>
<td>(2 million)</td>
<td>10 million</td>
<td>(12 million)</td>
</tr>
<tr>
<td>Group interest/EBITDA ratio</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>120%</td>
</tr>
<tr>
<td>Interest capacity</td>
<td>12 million</td>
<td>12 million</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Deductible interest expense</td>
<td>(12 million)</td>
<td>(2 million)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Disallowed interest</td>
<td>(8 million)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unused interest capacity</td>
<td>-</td>
<td>10 million</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

291. In this example the group is in the same position as in Example 9a. However, the interest capacity of A Co is now subject to limitation equal to the group's actual net third party interest expense. Therefore, A Co's interest capacity is limited to USD 12 million (i.e. the group's total net third party interest expense). A Co is able to deduct net interest expense of USD 12 million, and may carry forward disallowed interest expense of USD 8 million into future periods, if this is permitted under a rule.

292. As before, B Co receives interest capacity of USD 12 million and is able to deduct its full net interest expense of USD 2 million. It is also able to carry forward unused interest capacity of USD 10 million, if this is permitted by a country's rule. As discussed in in Chapter 7, it is suggested that countries consider limiting the scope of any carry forward, and in particular those of unused interest capacity, by time and/or value.

293. Note that if the group's EBITDA had not been reduced by losses in C Co, the group's net third party interest/EBITDA ratio would have been approximately 10.9% (i.e. USD 12 million/USD 110 million). In this case, A Co would have been able to deduct approximately USD 10.9 million of net interest expense. Therefore, the upper limit on interest capacity has not restricted net interest deductions in A Co to below the level that would have been permitted had the losses in C Co not arisen.
示例 9b - 对利息扣除非限额设定上限

表 D.8 对利息扣除非限额设定上限

|              | A 公司 | B 公司 | C 公司 | 集团     |
|              | 美元   | 美元   | 美元   | 美元     |
| EBITDA       | 1 亿   | 1,000 万 | (1 亿) | 1,000 万 |
| 净利息       | (2,000 万) | (200 万) | 1,000 万 | (1,200 万) |
| 集团利息费用/EBITDA 比率 | -      | -      | -      | 120%     |
| 利息扣除限额 | 1,200 万 | 1,200 万 | 0      | -        |
| 可扣除的利息费用 | (1,200 万) | (200 万) | 0      | -        |
| 不可扣除的利息 | (800 万) | -      | -      | -        |
| 未使用的利息扣除限额 | -      | 1,000 万 | -      | -        |

291. 在这个例子中，集团的情况与示例 9a 相同。然而，A 公司利息扣除限额的上限约为集团实际的净第三方利息费用净值。因此，A 公司利息扣除限额上限为 1,200 万美元（即集团的净第三方利息费用总额）。A 公司可扣除的利息费用 1,200 万美元，若规则允许，亦可将不可扣除的利息费用 800 万美元结转至未来期间。

292. 与以前一样，B 公司获得利息扣除限额 1,200 万美元，并能扣除其全部净利息费用 200 万美元。若国家的规则许可，它同时亦能结转未使用的利息扣除限额 1,000 万美元。诚如在第 7 章所讨论，资料显示部分国家正考虑限制结转额的范围，特别是未使用的利息扣除限额，并就时限制 / 或价值设立限制。

293. 需注意的是，如果集团的 EBITDA 没有被 C 公司的亏损额降低，集团的净第三方利息费用 /EBITDA 比率约为 10.9%（即 1,200 万美元 / 1.1 亿美元）。在这种情况下，A 公司将能扣除净利息费用约 1,090 万美元。因此，利息扣除限额的上限并未将 A 公司可扣除的净利息费用限制至低于 C 公司没有录得亏损情况下所容许的水平。
Example 9c – Groups with negative consolidated EBITDA

Table D.9  Groups with negative consolidated EBITDA

<table>
<thead>
<tr>
<th></th>
<th>A Co USD</th>
<th>B Co USD</th>
<th>C Co USD</th>
<th>Group USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>100</td>
<td>10</td>
<td>120</td>
<td>10</td>
</tr>
<tr>
<td>Net interest</td>
<td>(20)</td>
<td>(2)</td>
<td>10</td>
<td>(12)</td>
</tr>
<tr>
<td>Group interest/EBITDA ratio</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>n/a</td>
</tr>
<tr>
<td>Interest capacity</td>
<td>12</td>
<td>2</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Deductible interest expense</td>
<td>(12)</td>
<td>(2)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Disallowed interest</td>
<td>(8)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unused interest capacity</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

294. In this example C Co has losses of USD 120 million. The group has an overall loss (negative EBITDA) of USD 10 million, which means it is not possible to calculate a meaningful group ratio. A Co and B Co therefore receive interest capacity equal to the lower of their net interest expense and the group’s net third party interest expense.

295. A Co has net interest expense of USD 20 million, which exceeds the group’s net third party interest expense of USD 12 million. A Co’s interest capacity is therefore USD 12 million. A Co is able to deduct net interest expense of USD 12 million, and may carry forward disallowed interest expense of USD 8 million into future periods, if this is permitted.

296. B Co has net interest expense of USD 2 million, which is lower than the group’s net third party interest expense of USD 12 million. B Co’s interest capacity is therefore USD 2 million. B Co may deduct its entire interest expense of USD 2 million. There is no unused interest capacity.
示例 9c - 合并 EBITDA 录得负数的集团

表 D.9 合并 EBITDA 录得负数的集团

<table>
<thead>
<tr>
<th></th>
<th>A 公司（美元）</th>
<th>B 公司（万美元）</th>
<th>C 公司（人民币）</th>
<th>集团（美元）</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>1 亿</td>
<td>1,000万</td>
<td>(1.2 亿)</td>
<td>(1,000万)</td>
</tr>
<tr>
<td>净利息</td>
<td>(2,000万)</td>
<td>(200万)</td>
<td>1,000万</td>
<td>(1,200万)</td>
</tr>
<tr>
<td>集团利息费用 / EBITDA 比率</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>不适用</td>
</tr>
<tr>
<td>利息扣除限额</td>
<td>1,200万</td>
<td>200万</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>可扣除的利息费用</td>
<td>(1,200万)</td>
<td>(200万)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>不可扣除的利息</td>
<td>(800万)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>未使用的利息扣除限额</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

294. 在这个例子中，C 公司录得亏损 1.2 亿美元。集团的整体亏损（负 EBITDA）为 1,000 万美元，意味着其不能计算有意义的集团比率。因此，A 公司和 B 公司获得的利益扣除限额，相当于其净利息费用和集团的净第三方利息费用两者中的较低者。

295. A 公司的净利息费用为 2,000 万美元，高于集团的净第三方利息费用 1,200 万美元。因此，A 公司利益扣除限额为 1,200 万美元。A 公司能扣除净利息费用 1,200 万美元，在允许情况下，可结转不可扣除的利息费用 800 万美元至未来期间。

296. B 公司的净利息费用为 200 万美元，低于集团的净第三方利息费用 1,200 万美元。因此，B 公司利益扣除限额为 200 万美元。B 公司可扣除其全部的利息费用 200 万美元。该公司并无未使用的利息扣除限额。
Example 9d – Excluding loss-making entities from the calculation of group EBITDA for a profitable group

Table D.10  Excluding loss-making entities from the calculation of group EBITDA for a profitable group

<table>
<thead>
<tr>
<th></th>
<th>A Co USD</th>
<th>B Co USD</th>
<th>C Co USD</th>
<th>Group USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>100 million</td>
<td>10 million</td>
<td>(100 million)</td>
<td>110 million</td>
</tr>
<tr>
<td>Net interest</td>
<td>(20 million)</td>
<td>(2 million)</td>
<td>10 million</td>
<td>(12 million)</td>
</tr>
<tr>
<td>Group interest/EBITDA ratio</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10.9%</td>
</tr>
<tr>
<td>Interest capacity</td>
<td>10.9 million</td>
<td>1.1 million</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Deductible interest expense</td>
<td>(10.9 million)</td>
<td>(1.1 million)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Disallowed interest</td>
<td>(9.1 million)</td>
<td>(0.9 million)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unused interest capacity</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

297. This example is based on the same fact pattern as Example 9a. In this case, the negative EBITDA in C Co has been disregarded in calculating the group's EBITDA. Therefore, the group now has EBITDA of USD 110 million, rather than USD 10 million. This means that the group's interest/EBITDA ratio is now reduced to 10.9%.

298. The effect of this is that A Co has interest capacity of USD 10.9 million and B Co has interest capacity of USD 1.1 million. These total to USD 12 million, which is equal to the group's net third party interest expense. By disregarding C Co's losses, the group ratio rule now operates to ensure that the group is able to deduct an amount equal to its actual net third party interest expense. However, it may be very difficult for the tax authorities in the countries of A Co and B Co to accurately establish the existence and value of the negative EBITDA in C Co. Therefore, it may not be feasible for a country to apply this approach in practice.
示例 9d - 在计算盈利集团的集团 EBITDA 时，不包括亏损实体

表 D.10 在计算盈利集团的集团 EBITDA 时，不包括亏损实体

<table>
<thead>
<tr>
<th></th>
<th>A 公司美元</th>
<th>B 公司美元</th>
<th>C 公司美元</th>
<th>集团美元</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>1 亿</td>
<td>1,000 万</td>
<td>(1 亿)</td>
<td>1.1 亿</td>
</tr>
<tr>
<td>净利息</td>
<td>(2,000 万)</td>
<td>(200 万)</td>
<td>1,000 万</td>
<td>(1,200 万)</td>
</tr>
<tr>
<td>集团利息费用/EBITDA 比率</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10.9%</td>
</tr>
<tr>
<td>利息扣除限额</td>
<td>1,090 万</td>
<td>110 万</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>可扣除的利息费用</td>
<td>(1,090 万)</td>
<td>(110 万)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>不可扣除的利息</td>
<td>(910 万)</td>
<td>(30 万)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>未使用的利息扣除限额</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

297. 这个例子是根据示例 9a 中相同的事实模式。在这个案例中，在计算集团的 EBITDA 时没有包括 C 公司录得的负数 EBITDA。因此，集团现在的 EBITDA 为 1.1 亿美元，而不是 1,000 万美元。这意味着集团的利息费用/EBITDA 比率现在减低至 10.9%。

298. 这个处理方法的影响是，A 公司获得利息扣除限额 1,090 万美元，B 公司则获得利息扣除限额 110 万美元。金额合共 1,200 万美元，相当于集团的净第三方利息费用。由于没有计算 C 公司的亏损，集团比率规则现在可确保集团能扣除相当于实际净第三方利息费用的金额。然而，A 公司和 B 公司所在国家的税务机关可能会非常难以准确确定 C 公司负数 EBITDA 的存在和价值。因此，国家在实际上采用这个方法可能并不可行。
Example 9e - Excluding loss-making entities from the calculation of group EBITDA for a loss-making group

Table D.11  Excluding loss-making entities from the calculation of group EBITDA for a loss-making group

<table>
<thead>
<tr>
<th></th>
<th>A Co USD</th>
<th>B Co USD</th>
<th>C Co USD</th>
<th>Group USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>100 million</td>
<td>10 million</td>
<td>(120 million)</td>
<td>110 million</td>
</tr>
<tr>
<td>Net interest</td>
<td>(20 million)</td>
<td>(2 million)</td>
<td>10 million</td>
<td>(12 million)</td>
</tr>
<tr>
<td>Group interest/EBITDA ratio</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10.9%</td>
</tr>
<tr>
<td>Interest capacity</td>
<td>10.9 million</td>
<td>1.1 million</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Deductible interest expense</td>
<td>(10.9 million)</td>
<td>(1.1 million)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Disallowed interest</td>
<td>(9.1 million)</td>
<td>(0.9 million)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unused interest capacity</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

This example is based on the same fact pattern as in Example 9c. However, in this case the negative EBITDA in C Co is disregarded in calculating the group's EBITDA. Therefore, rather than being unable to calculate a meaningful group net third party interest/EBITDA ratio, the group now has a net third party interest/EBITDA ratio of 10.9%.

A Co now has interest capacity of USD 10.9 million and B Co has interest capacity of USD 1.1 million. In total, these come to USD 12 million, which is equal to the group's net third party interest expense. By disregarding C Co's losses, the group is able to deduct an amount equal to its actual net third party interest expense. However, in practice it may be very difficult for the tax authorities in the countries of A Co and B Co to accurately establish the existence and value of the negative EBITDA in C Co.
### 示例 9e - 在计算亏损集团的集团 EBITDA 时，不包括亏损实体

表 D. 11 在计算亏损集团的集团 EBITDA 时，不包括亏损实体

<table>
<thead>
<tr>
<th></th>
<th>A 公司美元</th>
<th>B 公司美元</th>
<th>C 公司美元</th>
<th>集团美元</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBITDA</td>
<td>1 亿</td>
<td>1,000 万</td>
<td>(1.2 亿)</td>
<td>1.1 亿</td>
</tr>
<tr>
<td>净利息</td>
<td>(2,000 万)</td>
<td>(200 万)</td>
<td>1,000 万</td>
<td>(1,200 万)</td>
</tr>
<tr>
<td>集团利息费用/EBITDA 比率</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10.9%</td>
</tr>
<tr>
<td>利息扣除限额</td>
<td>1,000 万</td>
<td>110 万</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>可扣除的利息费用</td>
<td>(1,090 万)</td>
<td>(110 万)</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>不可扣除的利息</td>
<td>(910 万)</td>
<td>(100 万)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>未使用的利息扣除限额</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

299. 这个例子是根据示例 9e 中相同的事实模式。然而，在这个案例中，在计算集团的 EBITDA 时没有包括 C 公司录得的负数 EBITDA。因此，集团现在的净第三方利息费用/EBITDA 比率为 10.9%，而不是不能计算一个有意义的集团净第三方利息费用/EBITDA 比率。

300. A 公司目前利息扣除限额为 1,090 万美元，B 公司利息扣除限额则为 110 万美元。金额合共 1,200 万美元，相当于集团的净第三方利息费用。由于没有计算 C 公司的亏损，集团能扣除相当于其实际净第三方利息费用的金额。然而，在实际操作上，A 公司和 B 公司所在国家的税务机关可能会非常难以准确确定 C 公司负数 EBITDA 的存在和价值。
Example 10: Fixed ratio rule using EBITDA based on a three year average

This example illustrates how the negative impact of a temporary fall in profits under a fixed ratio rule may be mitigated through the use of a three year moving average of the EBITDA of an entity.

<table>
<thead>
<tr>
<th>Year (current tax year = t)</th>
<th>t-2 USD</th>
<th>t-1 USD</th>
<th>t USD</th>
<th>t+1 USD</th>
<th>t+2 USD</th>
<th>t+3 USD</th>
</tr>
</thead>
</table>

### Using current year tax-EBITDA

<table>
<thead>
<tr>
<th></th>
<th>t-2</th>
<th>t-1</th>
<th>t</th>
<th>t+1</th>
<th>t+2</th>
<th>t+3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable income before applying the fixed ratio rule</td>
<td>380m</td>
<td>350m</td>
<td>100m</td>
<td>300m</td>
<td>320m</td>
<td>300m</td>
</tr>
<tr>
<td>+ net interest expense</td>
<td>+100m</td>
<td>+100m</td>
<td>+100m</td>
<td>+100m</td>
<td>+100m</td>
<td>+100m</td>
</tr>
<tr>
<td>+ depreciation and amortisation</td>
<td>+50m</td>
<td>+50m</td>
<td>+50m</td>
<td>+50m</td>
<td>+50m</td>
<td>+50m</td>
</tr>
<tr>
<td>= tax-EBITDA</td>
<td>=330m</td>
<td>=350m</td>
<td>=250m</td>
<td>=450m</td>
<td>=470m</td>
<td>=450m</td>
</tr>
<tr>
<td>x benchmark fixed ratio</td>
<td>x30%</td>
<td>x30%</td>
<td>x30%</td>
<td>x30%</td>
<td>x30%</td>
<td>x30%</td>
</tr>
<tr>
<td>= maximum allowable deduction</td>
<td>=159m</td>
<td>=150m</td>
<td>=75m</td>
<td>=135m</td>
<td>=141m</td>
<td>=135m</td>
</tr>
<tr>
<td>Disallowed interest expense</td>
<td>0</td>
<td>0</td>
<td>25m</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### Using three year average tax-EBITDA

<table>
<thead>
<tr>
<th></th>
<th>t-2</th>
<th>t-1</th>
<th>t</th>
<th>t+1</th>
<th>t+2</th>
<th>t+3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average tax-EBITDA of current year + 2 previous years</td>
<td>427m</td>
<td>400m</td>
<td>390m</td>
<td>457m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>x benchmark fixed ratio</td>
<td>x30%</td>
<td>x30%</td>
<td>x30%</td>
<td>x30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>= maximum allowable deduction</td>
<td>=128m</td>
<td>=120m</td>
<td>=117m</td>
<td>=137m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disallowed interest expense</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>
示例 10: 采用 3 年 EBITDA 平均值的固定比率规则

301. 本例子说明如何通过采用实体 EBITDA 的 3 年移动平均值，降低在固定比率规则下利润暂时下降的不利影响。

### 表 D.12 采用 3 年 EBITDA 平均值的固定比率规则

<table>
<thead>
<tr>
<th>年度 (本纳税年度=4)</th>
<th>t-2</th>
<th>t-1</th>
<th>t</th>
<th>t+1</th>
<th>t+2</th>
<th>t+3</th>
</tr>
</thead>
<tbody>
<tr>
<td>美元</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>利用本年税务-EBITDA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>采用固定比率规则前纳税所得额</td>
<td>3.8 亿</td>
<td>3.5 亿</td>
<td>1 亿</td>
<td>3 亿</td>
<td>3.2 亿</td>
<td>3 亿</td>
</tr>
<tr>
<td>净利息费用</td>
<td>+1 亿</td>
<td>+1 亿</td>
<td>+1 亿</td>
<td>+1 亿</td>
<td>+1 亿</td>
<td>+1 亿</td>
</tr>
<tr>
<td>折旧和摊销</td>
<td>+5,000 万</td>
<td>+5,000 万</td>
<td>+5,000 万</td>
<td>+5,000 万</td>
<td>+5,000 万</td>
<td>+5,000 万</td>
</tr>
<tr>
<td>= 税务-EBITDA</td>
<td>=5.3 亿</td>
<td>=5 亿</td>
<td>=2.5 亿</td>
<td>=4.5 亿</td>
<td>=4.7 亿</td>
<td>=4.5 亿</td>
</tr>
<tr>
<td>x 基准固定比率</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
</tr>
<tr>
<td>=最高可扣除金额</td>
<td>=1.59 亿</td>
<td>=1.5 亿</td>
<td>=7,500 万</td>
<td>=1.35 亿</td>
<td>=1.41 亿</td>
<td>=1.35 亿</td>
</tr>
<tr>
<td>不可扣除的利息费用</td>
<td>0</td>
<td>0</td>
<td>2,500 万</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### 利用 3 年平均税务-EBITDA

<table>
<thead>
<tr>
<th>年度 (本纳税年度=4)</th>
<th>t-2</th>
<th>t-1</th>
<th>t</th>
<th>t+1</th>
<th>t+2</th>
<th>t+3</th>
</tr>
</thead>
<tbody>
<tr>
<td>美元</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>本年+2 个以往年度的平均税务-EBITDA</td>
<td>4.27 亿</td>
<td>4 亿</td>
<td>3.9 亿</td>
<td>4.57 亿</td>
<td></td>
<td></td>
</tr>
<tr>
<td>x 基准固定比率</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
<td>x 30%</td>
<td></td>
</tr>
<tr>
<td>=最高可扣除金额</td>
<td>=1.28 亿</td>
<td>=1.2 亿</td>
<td>=1.17 亿</td>
<td>=1.37 亿</td>
<td></td>
<td></td>
</tr>
<tr>
<td>不可扣除的利息费用</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

302. 在上表的上部分，超额利息是根据本年税务-EBITDA 计算。在 t 年，实体的利润暂时下降，因此利息费用 2,500 万美元不可扣除。如有关规定允许，实体可将这笔不可扣除的利息费用结转以供未来期间使用。上表的下部分则说明了利用过去 3 个年度的平均移动税务-EBITDA，以计算最高可扣除的利息费用的影响。通过采用 3 个年度的平均值，利润暂时下降的影响在 3 年期间分摊。这个处理方法的影响是，实体能够在 t 年扣除其全部利息费用，若与基准个案相比，在 t+1 年和 t+2 年的最高可扣
impact of this is that the entity is able to deduct all of its interest expense in year t, and has a lower maximum allowable deduction in years t+1 and t+2 compared to the base case.

NOTES

26 All monetary amounts in this annex are denominated in United States dollars (USD). These are illustrative examples only, and are not intended to reflect real cases or the position in a particular country.
注释

本附录内所有货币金额均以美元为单位。有关示例仅供说明用途，并不拟反映实际个案或特定国家的情况。