

## Þingmál 366 – frumvarp til breytinga á tsl.

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Vegna ofangreinds þingmáls þar sem m.a. er kveðið á um skattlagningu vaxtagreiðslna úr landi vill Viðskiptaráð Íslands koma eftirfarandi á framfæri við efnahags- og skattanefnd:

1. Í umsögn VÍ kom fram að í hefðbundnum lánasamningum milli ríkja væru ákvæði þess efnis að ef afdráttarskattur yrði lagður á vaxtagreiðslur þá myndu vaxtakjör hækka. Hér að neðan fer málgrein sem tekur til þessa og er (eins eða hliðstæð) að finna í flestum lánasamningum:

### Taxes

All payments to be made by the Borrower under this Agreement shall be made in EUR to the Lender as directed by the Lender and shall be made without set-off or counterclaim or any deductions for, and free and clear of any Taxes. In the event that the Borrower is required by law or regulation to deduct or withhold any such Taxes the sums to be paid shall be increased by such amounts as shall be necessary to ensure that the amount received by the Lender after such deduction or withholding, is equal to the amount which would have been received under this Agreement had no such deduction or withholding been required.

2. Þetta samningsákvæði er fyllilega í samræmi við það sem fjallað er um í tvísköttunarmódeli OECD og nefnt var í umsögn VÍ, en þar segir á bls. 165:

*“In certain cases, the approach adopted in paragraph 2, which is to allow source taxation of payments of interest, can constitute an obstacle to international trade or may be considered inappropriate for other reasons. For instance, when the beneficiary of the interest has borrowed in order to finance the operation which earns the interest, the profit realised by way of interest will be much smaller than the nominal amount of interest received; if the interest paid is equal to or exceeds the interest received, there will be either no profit at all or even a loss. The problem, in that case, cannot be solved by the State of residence, since little or no tax will be levied in that State where the beneficiary is taxed on the net profit derived from the transaction. That problem arises because the tax in the State of source is typically levied on the gross amount of the interest regardless of expenses incurred in order to earn such interest. In order to avoid that problem, creditors will, in practice, tend to shift to the debtor the burden of the tax levied by the State of source on the interest and therefore increase the rate of interest charged to the debtor, whose financial burden is then increased by an amount corresponding to the tax payable to the State of source.”*

3. Í umsögn VÍ var lögð áhersla á að innan ESB væri lögð áhersla á afnám skattlagningar á vaxtagreiðslur milli ríkja, en um það segir m.a. í aðfararorðum tilskipunar ESB (2003/49/EC):

*“(1) In a Single Market having the characteristics of a domestic market, transactions between companies of different Member States should not be subject to less favourable tax conditions than those applicable to the same transactions carried out between companies of the same Member State.*

*(2) This requirement is not currently met as regards interest and royalty payments; national tax laws coupled, where applicable, with bilateral or multilateral agreements may not always ensure that double taxation is eliminated, and their application often entails burdensome administrative formalities and cash-flow problems for the companies concerned.*

*(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and crossborder transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies.”*

4. Ef frumvarp þetta verður að lögum eru næsta víst að:
- innlendir aðilar munu í reynd bera þann skatt sem frumvarpið hyggst leggja á móttakanda vaxtagreiðslunar
  - skattlagningin mun að öllum líkindum hindra viðskipti milli Íslands og helstu viðskiptalanda (sbr. OECD) þar sem erlendir fjárfestar munu veigra sér við að fjárfesta hér á landi og þar sem það litla fjármagn sem í boði er verður dýrara og
  - hér verður við líði skattlagning sem þekkist ekki innan innri markaðar Evrópu (sbr. framangreind tilskipun)