Husarski, Michalski, Doradcy Podatkowi

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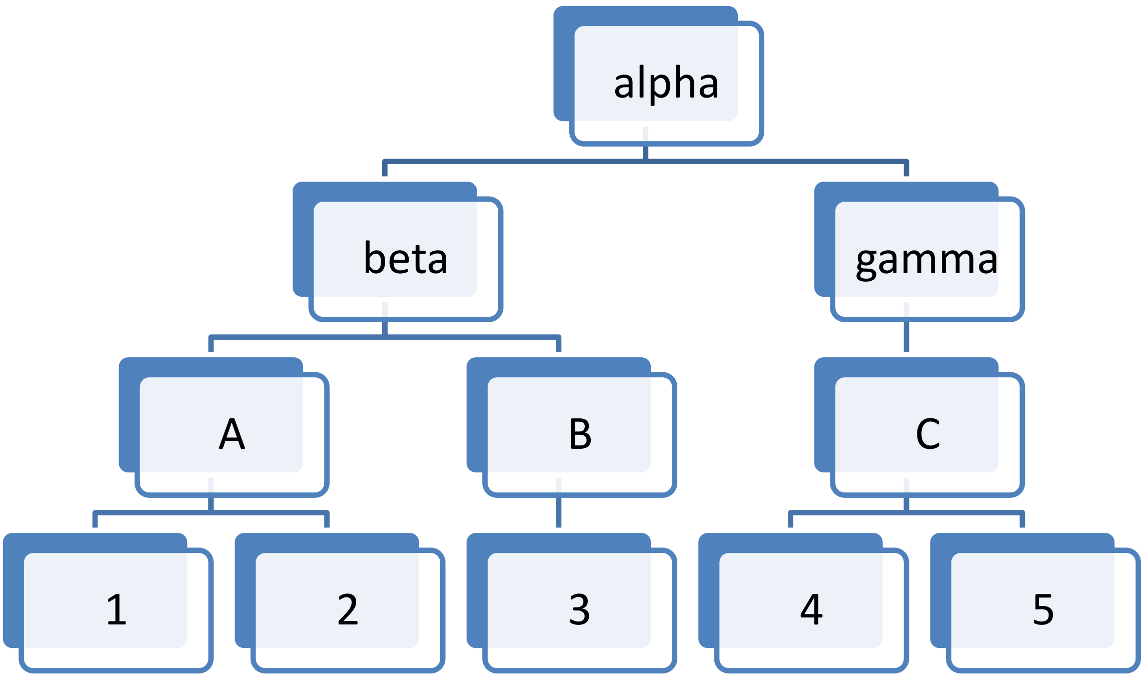
„Thin capitalization" – new restrictions

The draft of the Act amending the Act on Polish Corporate Income Tax law involves inter alia changes in provisions for so-called "thin capitalization" of the companies, that is regulations exempting from tax deductible costs interest on capital loans granted to companies by some of the related entities. According to the draft, **the group of entities covered by these provisions will be extended**. This will apply also to **the loans received from companies related to the borrower through a common indirect shareholder**, which means the loans obtained from the companies in which the same entity has even indirectly, not less than 25% of shares.

The following diagram will help you understand the meaning and scope of this change



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Currently (in 2012) the loans between the following entities are free from the thin capitalization restrictions:

A & C, B &i C,
and
1 & 3, 1 & 4, 1 & 5,
2 & 3, 2 & 4, 2 & 5,
3 & 4, 3 & 5.

This is due to the fact that it takes into account only the direct share of a common shareholder.

After the amendment - that is, from 2013

How the indirect shares will be calculated? The rule as in the article 11 of the CIT Act will be adopted, it will come to a situation in which **all** loans between presented parties will be the subject to restrictions of thin capitalization.

Moreover, the method of calculating the interest of the loan, which shall be excluded from the deductible costs, will be further clarified. According to the draft, such expenses as interests on loans will be not qualified as tax-deductible costs, if the value of the company's debt, taking into account the debt from loans to such entities, exceeds three times the value of share capital of the company – in proportion, in which the company's debt exceeding three times the value of share capital remains to the total value of the debt to the above-mentioned entities, determined as at the day of payment of interest.

The draft wording of those provisions also determines that the scope of the term "debt" is not limited to the taxpayer's debt of the loans, but also includes the debt of the titles other than loans.

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Kind regards,

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