

## PRESS RELEASE

### Intra-group Financing – Tax Pitfalls and Current Developments

***Full House at the bpv Breakfast Briefing with representatives from the corporate, finance and banking world.***

**29 November 2019.** National and international intra-group financing is a challenge that is becoming increasingly complex. At yesterday's Breakfast Briefing event, bpv Huegel's tax team explained tax pitfalls and developments in medium- and long-term financing within the group.

Gerald Schachner, Partner and Head of the Tax Practice Group at bpv Huegel, as well as his two colleagues Kornelia Wittmann and Nicolas Wolski, all three qualified as attorneys at law as well as tax advisors, reported the current developments in Germany and Austria and provided insights into key aspects of tax audits and the practice of the Austrian tax authorities.

The risk of recharacterisation of debt into constructive equity is a recurring issue in tax audits. The three tax and legal experts presented what has to be taken into account to ensure that up-/downstream loans are recognised for tax purposes and what is to be taken into account for intra-group loans and cash pooling with respect to the strict Austrian capital maintenance regime. Afterwards, the participants learnt about the tough positions that the Austrian tax authorities are now taking in tax audits in trying to disregard debt financing by following an abuse of law argumentation.

Because of the Europe-wide harmonised interest barrier, financing becomes even more complex from a tax point of view. Up-to-the-minute, the EU Commission published a decision against Austria on 27 November. According to the decision, Austria is obligated to enact national law implementing an EU-law conform interest barrier. The speakers' advice that companies should adapt to this in good time was therefore of particular importance.

#### About the bpv Huegel Tax Team

As one of the first Austrian law firms, bpv Huegel has been relying on integrated tax advice for over 40 years. The holistic approach encompasses national and international accounting. Particular attention is paid to the dual qualification of the practice group members as attorneys at law and tax advisors.

The team covers the broad spectrum of tax law advice, which includes: support in tax audits, second level reviews/opinions, tax proceedings (Austrian Federal Fiscal Court, Austrian Administrative Supreme Court, Austrian Constitutional Court and European Court of Justice), tax-related internal investigations, tax compliance, evaluation of tax and/or fiscal criminal law risks, obtaining rulings, risk analyses for tax insurances, mutual agreement and arbitration proceedings, accounting law issues, structuring and reorganisation, M&A transactions, advice and representation in fiscal criminal law matters including voluntary disclosures with the penal waiver effect, advice and establishment of Austrian and cross-border group structures.

**About Gerald Schachner**

Gerald Schachner is head of the tax practice at bpv Huegel and specialises in national and international corporate tax law and tax planning, (cross-border) reorganisations, transaction structuring as well as tax audits, tax disputes including fiscal criminal law proceedings and rulings. He is attorney at law and tax advisor and advises national and international corporate groups, banks and private equity funds. Further, he advises high net worth individuals and trusts. A particular focus of his is forensic investigations/internal investigations, representation in tax audits, voluntary disclosures with penal waiver effect and tax disputes, including fiscal criminal law.

**About Kornelia Wittmann**

The attorney at law and tax advisor Dr. Kornelia Wittmann LL.M. (int Tax Law, Vienna) focuses on national and international corporate tax law and tax planning, advising on tax audits and tax proceedings, including fiscal criminal law proceedings. She also advises on banking and capital markets regulatory law. She is admitted as attorney at law (RAK Munich) and tax advisor. Kornelia Wittmann advises national and international corporate groups, credit and financial institutions on transactions and tax structuring, including obtaining rulings (information notices), and advises high net worth individuals. A particular focus of hers is tax disputes before the Federal Fiscal Court and the Austrian Supreme Administrative Court, the settlement of international tax disputes (mutual agreement and arbitration proceedings), representation in voluntary disclosures with penal waiver effect, tax audits and fiscal criminal law proceedings. In addition, she regularly is involved in internal investigations in the processing of facts as well as from a tax and fiscal criminal law perspective.

**About Nicolas Wolski**

Nicolas Wolski, LL.M. (Tax Sciences, Münster / Tax Law and Accounting, Vienna) is attorney at law (Frankfurt/M bar) and tax advisor (Austria and Germany). His practice focuses on tax aspects of M&A transactions and cross-border structuring. Before joining bpv Huegel, Nicolas worked for several years for major international law firms such as Magic Circle law firm Freshfields Bruckhaus Deringer LLP and US law firm Willkie Farr & Gallagher LLP (most recently as Special European Counsel).

**About bpv Huegel**

As one of Austria's leading law firms, bpv Huegel advises national and international clients in all sectors. It is regarded as the first address for highly complex mandates, the handling of which requires specialised tax and legal knowledge, many years of experience and economic understanding. With its Brussels office, bpv Huegel has a competence centre for general EU law, European merger and antitrust law as well as regulatory and public procurement law located directly at the European institutions. bpv Huegel is a member of the "bpv LEGAL" alliance with offices in Bratislava, Bucharest, Budapest and Prague and thus offers tailor-made solutions throughout CEE. In addition, the firm has long-standing cooperation agreements with leading international law firms worldwide. The full-service law firm was founded in 1979 and is represented in Austria by offices in Vienna, Moedling and Baden, where it employs around 100 staff, including around 50 lawyers.

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