

Tax considerations—European overview

Some issuers have come to market without a formal ruling

	CRD IV AT1 announced	Ruling	Clarity	Tax deductibility of AT1	Is there currently a taxable gain upon loss absorption?
 Austria	• na	X	Expected shortly	• As a general rule, Austrian tax law does not follow the accounting treatment; Austrian may be expected shortly to follow the German precedent	• Amendments under consideration by regulator, discussions ongoing
 Belgium		X	✓	• Yes —Qualified as debt for tax purposes	• Yes —expected upon write-down, although full capital recognition from a regulatory perspective • No —in the event of conversion into shares
 Denmark		✓	✓	• Yes —It is expected that the existing tax law will apply for CRDIV AT1 instruments—however this is not yet binding into law	• Yes —under the current tax regime any profit would create a taxable gain upon (i) a writedown and (ii) a conversion into shares, if the value of the shares received is less than the principal, although full capital recognition from a regulatory perspective
 France		X	✓	• Yes —legal form debt interests deductible	• Yes —upon write-down or a conversion into shares, although full capital recognition from a regulatory perspective
 Germany	• na	X	✓	• Yes —the Ministry of Finance and Lander have approved the recognition of AT1 interest as an allowable expense for tax purposes, for two proposed term sheets only	• Yes —expected upon write-down, however could receive full capital recognition from a regulatory perspective (<i>expected to be ruled on a case-by-case basis</i>) • No —in the event of conversion into shares
 Italy		✓	✓	• Yes —legal form debt interests deductible	• No —statutory exemption from taxable gain on loss absorption
 Netherlands	• na	X	Expected	• Yes —tax law changes announced	• Not expected —consistent tax treatment would lead to no taxable gain; instrument currently treated as “equity” from a tax perspective. However, this could change if the instrument is considered debt for fiscal purposes.
 Norway	• na	X	X	• Yes —as a general rule, AT1 instruments are regarded as debt instruments	• Not expected —NFSA does not intend to make any taxable gain deductions to AT1 upfront. However the treatment by tax authorities remains unclear
 Portugal	• na	X	X	• Yes —as a general rule, tax law follows accounting treatment	• Uncertain —Discussions on-going
 Spain		X	✓	• Yes —preference shares are deductible by law	• No —instrument accounted for as “equity” from an accounting perspective therefore assumed no taxable gain upon writedown—although not officially confirmed. Conversion will not be taxable
 Sweden	• na	X	X	• Provided that the instrument qualifies as debt, the issuer can normally deduct any coupon against its corporate income for tax purposes • However, the possibility of a temporary write-down may cause the debt to be classified as a profit participating debenture (kapitalandelslån) for tax purposes	• Uncertain given lack of specific tax rules defining what constitutes a debt and with very little guidance to be found in Swedish doctrine or case law
 Switzerland		X	✓	• Yes —legal form debt interests deductible	• Yes —although full capital recognition upfront is permitted under the Swiss Finnish
 UK		✓	✓	• Yes —legal form debt interests deductible	• No —statutory exemption from taxable gain on loss absorption



Note:

1 PRA have proposed transitioning of all other deductions (excluding holdings in financial entities) are taken on a fully phased basis from 1 January 2014