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	✗	**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	KBC	✗	✓	• **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	Danske Bank	✓	✓	• **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	CA	✗	✓	• **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	✗	✓	• **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 (*expected to be ruled on a case-by-case basis*) • **No**—in the event of conversion into shares
Italy	UniCredit	✓	✓	• **Yes**—legal form debt interests deductible	• **No**—statutory exemption from taxable gain on loss absorption
Netherlands	• na	✗	**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	✗	✗	• **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	✗	✗	• **Yes**—as a general rule, tax law follows accounting treatment	• **Uncertain**—Discussions on-going
Spain	BBVA Santander	✗	✓	• **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	✗	✗	• 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	Credit Suisse	✗	✓	• **Yes**—legal form debt interests deductible	• **Yes**—although full capital recognition upfront is permitted under the Swiss Finnish
UK	Barclays Nationwide Lloyds Banking Group	✓	✓	• **Yes**—legal form debt interests deductible	• **No**—statutory exemption from taxable gain on loss absorption

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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