**Study on Aggressive Tax Planning**

*Specific contract No13 under FWC TAXUD/2012/CC116*

**Appendix 1 - Questionnaire to national tax experts**

**Filled in for Bulgaria**





**QUESTIONNAIRE**

**Bulgaria**

## Abbreviations

**ITNPA -** Income Taxes on Natural Persons Act (*Закон за данъците върху доходите на физическите лица*)

**CITA -** Corporate Income Tax Act (*Закон за корпоративното подоходно облагане*)

**VATA** - Value Added Tax Act (*Закон за данък върху добавената стойност*)

**LTFA -** Local Taxes and Fees Act (*Закон за местните данъци и такси*)

**TSIPC -** Tax and Social Insurance Procedure Code (*Данъчно-Осигурителен Процесуален Кодекс*)

**EDTWA -** Excise Duties and Tax Warehouses Act (*Закон за акцизите и данъчните складове*)

|  |  |
| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 10 %. |
| 1. Some states offer special offshore tax regimes, providing for corporate tax-exemption of certain mobile income types (e.g. royalty) from abroad. Does your MS offer such a tax regime? If yes, please briefly explain, including the conditions to be met. | No. |
| *Dividends received* | |
| 1. Is it possible for a company in your MS to receive dividends from a foreign company free of tax (or at a greatly reduced rate of tax, e.g. 95% tax-exemption)? | Yes, dividends distributed from a subsidiary resident in an EU/EEA country are tax exempt. |
| 1. If yes to question 3: |  |
| 1. Does this apply regardless of the tax residence of the distributing company, e.g. Member State, treaty state, tax haven? | No, the distributing company must be resident in an EU/EEA country. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | Yes, as no additional conditions apply in order to qualify for the exemption. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | Yes. There is no statutory requirement that that the dividends have not been deducted by the distributing company. |
| 1. If yes to b, how will the recent amendment of Article 4 of the EU Parent/Subsidiary Directive, which requires Member States to tax dividends if they have been deducted by the subsidiary, affect your answer? | The amendment to Article 4 of the EU Parent /Subsidiary Directive has not been implemented into CITA. |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes, no withholding tax is levied on dividends distributed to a parent company resident in an EU/EEA country.  No withholding tax is levied on dividends and liquidation shares paid out to mutual funds. |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | Yes, as no other conditions apply in order to qualify for the exemption. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | No, the foreign shareholder company must be resident in an EU/EEA country. |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | No, beneficial ownership is not checked. |
| 1. Is the withholding tax exemption subject to any other anti-avoidance requirements, e.g. based on substance of the recipient? If yes, please briefly explain. | The exemption does not apply in cases of “hidden distribution of profits”, e.g. generally disguising payments to shareholders as deductible expenses. |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | No. |
| 1. Are dividend equivalents (typically a buy-back of shares, a capital reduction-payment or a payment of liquidation proceeds) treated in a similar way as dividends and subject to withholding tax when paid to a foreign company? Please refer to question 4 and 5 above. | * Yes, liquidation proceeds are subject to withholding tax to the same extent as distributed dividends. * Liquidation proceeds are subject to withholding tax unless paid out to parent companies resident of EU/EEA countries. |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes. |
| 1. If such a loan is granted free of interest (i.e. on non-arm’s length-conditions), would the creditor company resident in your MS have to include any deemed interest income in its taxable income? When responding, please consider Model ATP-Structure no. 4 and assume that FinanceCo B is tax resident in your MS. | Interest-free loans are considered by statutory definition a circumvention of taxation. Taxpayers should include deemed interest income in its taxable income, determined following arm’s length principle in order to avoid eventual reassessment by the tax authorities or other liabilities. |
| 1. Is it possible that an interest bearing financial instrument (hybrid loan) granted by a company resident in your MS to a foreign group member company could be qualified as an equity investment in your MS with the result that the return on the investment (treated as deductible interest in the state of the debtor company) is considered a tax exempt dividend or similar? When responding, please consider Model ATP-Structure no. 2 and assume that B Holdco is tax resident in your MS (regardless of the non-MS assumption in the description of the Model). | No. Interest bearing loan could be considered a dividend only if the concept of “hidden distribution of profits” applied. In the latter case, exemptions do not apply. |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. | N/A |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? | The amendment to Article 4 of the EU Parent /Subsidiary Directive has not been implemented into CITA yet. |
| *Interest costs* | |
| 1. Are inter-group interest payments on a loan granted by a foreign group member company tax deductible to a resident in your MS? | Yes. |
| 1. If yes to 13, |  |
| 1. Does the tax deductibility depend on how the interest income is qualified for tax purposes in the creditor’s state? If yes, please briefly explain. | Currently, no. tax deductibility depends solely on internal statutory rules. |
| 1. In particular, would your MS still allow a tax deduction if the creditor state treats the corresponding interest income as a non-taxable dividend or similar, i.e. if the loan is a hybrid loan? When responding, please consider Model ATP-Structure no. 2 and assume that C Holdco is tax resident in your MS. | As a practical matter, in case of a tax audit the tax treatment of the interest expense in the state of the income recipient would not be considered. |
| 1. Is the tax deduction of interest cost on inter-group debt subject to any thin capitalisation-rules or other interest deduction limitations-rules? | Yes. |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | Thin capitalization rules are applicable to interest expenses on loans granted by shareholders and third parties other than banks. However the rules are not applicable to interest expenses that are capitalized to the value of the company’s asset in compliance with accounting legislation.  The thin capitalization rules apply if the debt/equity ratio exceeds 3:1. The amount of equity and debt are calculated as the average of the balances as of 1 January and 31 December of the relevant year.  The non-deductible interest expense is determined as the difference between the net interest expenses subject to regulation (regulated interest expenses – interest income) and 75% of the accounting profit/loss before interest (EBIT). In cases where EBIT is negative the total amount of net interest expense (interest expenses minus interest income) is non-deductible. |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | Generally to all interest costs. |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | The thin ca rules account for solely the debt ratio of the specific company and not the overall deb ration of the group of companies. |
| 1. In general, how effective do you consider these rules in countering ATP? When responding, please consider Model ATP-Structures 1 – 4 and assume that C Holdco, B Hybrid and OpCo are tax resident in your MS. | Bulgarian thin cap rules are not per se drafted and intended at countering ATP. However, they could be considered as general rules for protecting the tax base (tax income) of corporate entities not only in international but also in purely domestic situations. |
| 1. If a loan is granted free of interest (non-arm’s length-condition) by a foreign group member company, could a debtor company resident in your MS claim any tax deduction for a hypothetical (deemed) interest cost? When responding, please consider Model ATP-Structure no. 4 and assume that FinanceCo D is tax resident in your MS. Moreover, please explain whether any deemed deduction would be contingent on a corresponding adjustment in the foreign state. | As a matter of theory, the tax payer would have to be able to deduct deemed interest. However, as a practical matter the deduction of a deemed interest would be most likely challenged by the tax authorities. |
| 1. Would the benefit of such a loan compared to a normal interest-bearing loan on arm’s length conditions be taxable to the debtor company in your MS? If yes, how? | No. |
| 1. Does your MS levy any withholding tax on interest payments? | Yes. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 10%. |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | Yes. In case of payment of interest to a related company – EU tax resident or to a permanent establishment of an EU tax resident company established in an EU state and provided that certain conditions are met. |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | Applies only to EU tax residents or permanent establishments of EU tax resident companies, located in EU state. |
| 1. In connection with an exemption, reduction or refund of withholding tax under a tax treaty or the EU Interest/Royalty Directive, is it common tax practice to apply a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes. Beneficial ownership is required for the application of a tax treaty or the EU Interest/Royalty Directive. |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | The exemption does not apply in cases of:   * Income qualified as distribution of profits or repayment of equity; * Participation loans; * Loans without e repayment term or a repayment term after more than 50 years; * Income paid through the Bulgarian permanent establishment of a non-EU company. * Income which is not recognized as deductible expense of a permanent establishment in Bulgaria (thin cap rules excluded). |
| *Allowance for corporate equity* | |
| 1. Does your MS offer any tax deduction for a notional (fictitious) interest cost on the share capital of a company? If yes, please briefly explain and include any anti-avoidance provisions. In particular, can the deduction be claimed against financial income? | No. |
| 1. Does your MS offer any tax deduction for dividends declared or paid? If yes, please briefly explain. | No. |
| *Royalty and other income from intangible property* | |
| 1. Please consider Model ATP-Structure no. 5 and assume that Company B is tax resident in your MS. Does your MS offer any preferential tax regime (compared to the standard corporate income tax) for income from patents and other intellectual property rights? If yes, please briefly explain its main scope, characteristics and any anti-avoidance provisions. In particular, can the preferential tax treatment be applied to income from patents or other IP which has not been developed by the taxpayer (company) itself? Must the company have its own substantial R&D activities? Can the preferential tax treatment be applied also to income from other taxpayers in your MS? | Tax credits for companies exclusively operating in regions with high unemployment. EU State aid rules and requirements have to be observed. There are numerous requirements as to the industry sector or type of enterprises in order for the incentives to be used. There are also tax incentives for companies recruiting new employees or disabled employees. |
| 1. Can a company in your MS obtain R&D tax credits (typically enhanced tax deduction or tax refund) for costs incurred, e.g. in developing IP rights? | Yes, Art. 69 CITA Tax Act provides for accelerated tax depreciation for a long-term intangible asset created as a result of R&D activities. |
| 1. If yes to 24, |  |
| 1. Please briefly explain the requirements which have to be met, e.g. requirements for certain activity or successful development, etc. | The following conditions shall be met simultaneously:   * The asset was a result of R&D; and * R&D was related to the occupation of the taxable person; and * the R&D activities were assigned by way of an order to a scientific research institute or a higher-education institution under free-market conditions. |
| 1. Can such credits also be obtained for costs that are ultimately reimbursed by a group member company to the company in your MS? | Yes. |
| 1. Can a company in your MS transfer ownership of a patent, trademark or other IP right to a foreign group member company without incurring capital gains tax? When responding, please consider Model ATP-Structure no. 5 and assume that MNE Group is tax resident in your MS. Please also assume that the IP has no significant fair market value at the time it is transferred but it becomes highly valuable shortly (1-2 years) after. | That there is no specific capital gain tax on sales of tangible or intangible assets by a company. The proceeds are subject to regular corporate income tax. |
| 1. If no to 26, i.e. your MS would impose tax on the disposal, |  |
| 1. Is the relevant capital gains tax rate lower than the standard rate? | No. |
| 1. Does taxation arise as a result of an anti-abuse provision or similar? | If the sale price has been reassessed due to application of anti-abuse provisions. |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? | No. |
| 1. Can a ruling confirming the value of the IP be obtained? | No. |
| *Royalty and other IP costs* | |
| 1. Is royalty paid by a company in your MS to a group member company in another MS or for utilization of IP tax deductible? | Yes. |
| 1. If yes to 28, |  |
| 1. Is the tax deduction dependent on whether the royalty income is taxed in the hands of the IP-licensor/IP-owner? | There are no restrictions for deduction of royalties insofar as they relate to a company’s business activities and comply with the arm’s length principle. |
| 1. Are there types of royalty payments which cannot be deducted? | Yes, royalties expenses not related to the business activities of the company, or if the royalties expenses are treated as “hidden distribution of profits”. |
| 1. Does your MS levy any withholding tax on royalty payments? | Yes. |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 10%. |
| 1. Are there types of royalty payments which are not subject to withholding tax? | No withholding tax is due on royalties payable by resident entities to associated EU companies and permanent establishments of associated EU companies situated in another EU Member State. |
| 1. In connection with an exemption, reduction or refund of withholding tax under a tax treaty or the EU Interest/Royalty Directive, is it common tax practice to apply a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes. Beneficial ownership is required for the application of a tax treaty or the EU Interest/Royalty Directive. |
| 1. Is the tax exemption/reduction/refund subject to any other anti-avoidance requirements, e.g. based on a test of the substance of the recipient? If yes, please explain briefly. | The exemption does not apply in cases of:   * Royalty oncome qualified as distribution of profits or repayment of equity; * Royalty income paid through the Bulgarian permanent establishment of non-EU company; * Royalty income not recognized ad deductible expense of a permanent establishment in Bulgaria (thin cap rules excluded). |
| *Group taxation* | |
| 1. Does your MS allow for group taxation of local group member companies with the effect that profits and losses of different companies are set-off against each other? If yes, please briefly explain. (Please note that group taxation also includes other standard arrangements offered to replicate the benefits of group taxation, e.g. group contributions from a profitable company to a loss-making group member company). | No. |
| 1. If yes to 32, is group taxation restricted in situations where a (holding) company has solely been inserted in connection with a leveraged acquisition of the operating company (so-called debt push-down)? When responding, please consider Model ATP-Structures no. 1 – 3 and assume that C Holdco and B Hybrid are tax resident in your MS. | N/A |
| *CFC rules* | |
| 1. Does your MS apply CFC rules to foreign subsidiaries of a parent company in your MS? | No. |
| 1. If yes to 34, please briefly explain the rules and their scope. | N/A |
| 1. Please consider the attached Model ATP-Structures no. 1, 2 and 4 - 6. Assuming that MNE Group is tax resident in your MS, would your MS’s CFC-rules be applied to the structures? If yes, what would be the likely effects? | N/A |
| *Mismatch in qualification of legal entities* | |
| 1. Does your MS’s tax qualification of a foreign legal entity (e.g. a partnership) follow that of the foreign state, or does it apply its own criteria? Please briefly explain. When responding, please consider Model ATP-Structure no. 3 and assume that MNE Group is tax resident in your MS. | Bulgarian tax authorities generally follow the tax qualification of the foreign entity in the foreign state. |
| 1. Does your MS apply rules to counter another state’s mismatch in tax qualification of a legal entity (company) resident in your MS? If yes, please briefly explain the rules and their scope. When responding, please consider Model ATP-Structure no. 3 and assume that B Hybrid is established and tax resident in your MS. | Bulgaria does not really apply such specific rules. |
| 1. Does your MS apply rules to counter another state’s mismatch in tax qualification of a transparent entity (partnership or similar) in your MS? If yes, please briefly explain the rules and their scope. | Not really. |
| *Tax residence of company* | |
| 1. Based on domestic tax rules, without the application of any tax treaty, can a company incorporated in your MS be considered non-tax resident if its management and control is situated in another state? If yes, please explain under which circumstances. | No. The test for tax residency is the incorporation of the company under and in compliance with Bulgarian law. |
| 1. If yes to 40, please consider Model ATP-Structure no. 6. Would the Structure work if Company B1 is incorporated in your MS but managed and controlled abroad in an offshore-state? | N/A |
| *Tax ruling practices* | |
| 1. Some states offer tax rulings (incl. so-called APAs) that confirm non-arm’s length-transactions or the amount of spread between interest or royalty income and cost in various international flow through-structures. As an example, please refer to Model ATP-Structure no. 1. Does your MS offer this form of tax ruling practices or APAs? | Bulgaria does not offer such forms of tax ruling practices and APAs. |
| 1. Do your local transfer pricing-rules allow for the stripping of income from a domestic company by taking away legal ownership of functions, assets and risks? In other word, is it accepted that relatively small amounts of the group’s income is taxed in your MS on the basis of low risk, few assets held and only few functions performed in your MS? | In theory yes, if the transactions are made at arm’s length. |
| 1. Can a company in your MS obtain a ruling or APA that a) provides for tax exemption of profits considered to exceed an arm’s length-income or considered to have been left to the company by its shareholders (capital contribution), or b) provides for the deduction of deemed expenses that would have been due under arm-‘s length conditions? | No. |
| *GAAR/SAAR* | |
| 1. Please consider Model ATP-Structures no. 1-7. Are you aware of any general or specific anti-avoidance rules or practice in your MS which could impede or counter the ATP objective of any of the structures? If yes, please describe briefly the scope of the rules/practice and how they could be applied to each of the structures. | * GAAR – in cases of “hidden distribution of profits”, the benefits of tax exemption (withholding and income)) or income deduction are denied. Fines are also levied. * As “hidden distribution of profits” are viewed: expenses not related to the business of the company; interest expenses where the loan exceeds the own equity of the borrower; there is no repayment term for the principal or the interest; the repayment of the interest or the principal depends on the profits of the borrower; the repayment is subordinated to the claims of other creditors. * As tax avoidance are defined, *inter alia*: contracts for the free use of tangible or non-tangible assets; granting or receiving loans interest-free or under interest rates different than the market ones; remittance (write off) of loan; repayment of a loan not related to the business activities (e.g. repayment of a third party loan). * The definition of “related parties” is broadened so the range of persons to which the respective provisions regulating transactions between related persons is broadened. As related parties would be also considered a foreign tax resident and a Bulgarian tax resident who have entered into contract and: the foreign person is registered in a non-EU state which levies a corporate tax on the proceeds from the contracts 60 % lower than the Bulgarian corporate income tax (the rule does not apply if the foreign taxable persons evidence that his income is not subject to preferential tax regime or that the goods or services have been realized on the local market); and the state of registration of the foreign taxable person does not exchange information about the transactions. |
| *Other ATP indicators* | |
| 1. Are you aware of any tax rules, tax practice or lack of tax rules (loopholes) – other than those discussed in the preceding answers - which could facilitate your MS’s role in ATP? If yes, please briefly explain. | General anti-avoidance provisions are drafted and worded in a manner allowing their use inn wide range of ATP situations. Exchange of information between authorities in Bulgaria and between EU-states and EU and other member states, as well as access to common data bases shall be enhanced. |