**Study on Aggressive Tax Planning**

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

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

**Filled in for Cyprus**





**QUESTIONNAIRE**

**Cyprus**

## Abbreviations

**Income Tax 2002 (IT)**

**Special Defence Contribution 2002 (SDC)**

|  |  |
| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 12.5%. |
| 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 special regimes exist for such corporate mobile income. |
| *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 from foreign companies are generally tax exempt from corporate income tax. It is generally possible to be exempt from SDC. |
| 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? | Generally yes. However, special rules apply for dividends received from foreign companies. The exemption is subject to a tax burden not substantially lower than the tax burden of a company resident in Cyprus (not lower than 6.25%) or more than 50% active income. |
| 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? | Currently yet but expected to change after the Parent-Subsidiary Directive enters into force on 1 January 2016. |
| 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? | Any amendments will not be introducing percentage or voting rights. |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes. |
| 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 additional 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? | Yes, as no additional conditions apply in order to qualify for the exemption. |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | No. |
| 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. | No. |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | Please see 4(a). |
| 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 but not withholding tax is imposed as this is the general rule. |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes, either under income tax (12.5%) or SDC (30%) depending on the activities of the company. |
| 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. | Yes, if the companies are related and on the basis of the arm’s length principle. |
| 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). | Yes, but expected to change when the changes to the Parent-Subsidiary Directive are brought into force. |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. | None, if equity it is treated as dividends. |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? | It will no longer be possible. |
| *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. In general, interest is deductible in insofar as it is incurred wholly and exclusively for the purposes of the trade (production of taxable income). |
| 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. | No, but subject to change because of Parent-Subsidiary Directive. |
| 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. | No |
| 1. Is the tax deduction of interest cost on inter-group debt subject to any thin capitalisation-rules or other interest deduction limitations-rules? | No. |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | N/A |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | N/A |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | N/A |
| 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. | N/A |
| 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 C is tax resident in your MS. Moreover, please explain whether any deemed deduction would be contingent on a corresponding adjustment in the foreign state. | No, unless under the Arbitration Convention. |
| 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? | No. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | N/A |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | N/A |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | N/A |
| 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? | N/A |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | N/A |
| *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? | Yes, effectively in force from 1/1/2015.  There are a number of anti-avoidance provisions which aims at preventing cascading or double dips.  The overall amount of the deduction shall not exceed 80% of the taxable income.  The deduction will not be provided in the case of losses. In cases where new equity directly or indirectly comes from loans, for which a deduction is provided to the other company, the amount of the interest deduction on the new equity will be reduced by the amount of interest (deductions) provided to the other company. |
| 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? | Summarily, the IP regime provides a deduction of expenses incurred for the acquisition or for the development of intangible assets, as these are defined in the Patents Law 16(I)/98 as amended, in the Right of Intellectual Property Law 59/76 as amended, and in the Trademarks Law Cap 268 as amended, which were incurred by persons carrying out a business.  It is further provided that eighty percent (80%) of the aforementioned profits will be deemed as an expense from the profit generated on the above intangible assets (including compensation for infringement of use of such assets) as well as from the profit on the IP assets’ disposal.  The profit is calculated by deducting from the income generated from the use or from the sale of the intangible property the expenses directly incurred for the generation of such income including a given tax deduction (amortization) of 20% granted on the capital expenditure. |
| 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? | There are no enhanced R&D credits, just a deduction for normal expenses incurred in research and development |
| 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. | N/A |
| 1. Can such credits also be obtained for costs that are ultimately reimbursed by a group member company to the company in your MS? | N/A |
| 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. | No, but 80% exemption on IP profits. |
| 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? | The rate is not lower but the tax base is lower due to 80% exemption. |
| 1. Does taxation arise as a result of an anti-abuse provision or similar? | No, but GAAR is available. |
| 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, if made on arm’s length and if expenses are incurred in the production of taxable income. |
| 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? | No. |
| 1. Are there types of royalty payments which cannot be deducted? | No. |
| 1. Does your MS levy any withholding tax on royalty payments? | Yes if IP is used territorially (in Cyprus and not abroad) |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 5% on film royalties and 10% on any other royalties (on IPs that are used in Cyprus) |
| 1. Are there types of royalty payments which are not subject to withholding tax? | Outbound royalties are exempt from withholding tax, under the Interest and Royalties Directive (i.e. provided that the beneficial owner of the royalties is an associated company of the paying company and is resident in another Member State or such a company’s permanent establishment is situated in another Member State) and also if IP is not used in Cyprus). |
| 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? | No. |
| 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. | No. |
| *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). | Yes. Companies of the same group may use the group relief provisions for the offsetting of losses.  Two companies are considered to be a group for group relief purposes if one is a 75% subsidiary of the other or they both are 75% subsidiaries of a third company for the whole year.  A company is considered to be 75% controlled by another if at least 75% of the ordinary share capital with voting rights is held directly or indirectly and the holding company is entitled to not less than 75% of the subsidiary’s (1) distributable profits and (2) assets of the subsidiary that would have been available for distribution to the shareholders on liquidation.  The offsetting of the losses is only available to resident companies of the group and to permanent establishments of non-resident companies that elect to be treated as resident companies.  If a payment for group relief takes place (i.e. a payment is made by the claimant company to the surrendering company for the amount of tax losses surrendered by way of group relief), such a payment (1) is not regarded as a distribution and (2) is ignored in computing the taxable profits or losses of the two companies. |
| 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. | No. |
| *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. | There is no official guidance but in practice, Cyprus tax authorities use the other state’s classification. Also, as defined in the first Annex of the Cyprus IT, which also incorporated the Parent-Subsidiary Directive. |
| 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. | No. |
| 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. | No. |
| *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. | Yes, if management and control not in Cyprus, if there are no Cypriot directors, no board meetings in Cyprus etc. |
| 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? | Yes. |
| *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? | No. Rulings concern the interpretation of the laws and the Tax Department opinion on a given transaction. They do not confirm spreads and they are not binding. |
| 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? | N/A – No Transfer Pricing rules. |
| 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. | The Ministry of Finance has put in place a Tax Authority Unit which exclusively deals with the monitoring and investigation of large local tax evaders.  Any artificial and/or fictitious transactions may be disregarded, cf. section 33 of the Assessment and Collection of Taxes Law. Section 33 of the arm’s length principle introduces the arm’s length principle in the Cyprus Income Tax Law and assesses business/commercial transactions made between related enterprises with terms that differ from the terms that would have been imposed between independent businesses. In such a case, the Commissioner of Taxation may disregard any such transaction and assess tax on the person concerned, accordingly, as if the transaction took place between independent parties. The above provision applies to any transaction, whether local or international, and to residents and non-residents.  No further comments on this mainly because the GAAR of the Parent-Subsidiary Directive not yet adopted. |
| *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. | No. |