**Study on Aggressive Tax Planning**

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

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

**Filled in for Czech Republic**





**QUESTIONNAIRE**

**Czech Republic**

## Abbreviations

**ITA – Czech Income Tax Act**

|  |  |
| --- | --- |
| **Questions** | **Answers** |
| ***Corporate tax rate*** | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 19%. |
| 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. Czech ITA in Art. 19(1)(zj) and (zk) comprises just the exemption based on the rules set in Royalty Directive 2003/49/EC. The exemption is based on the decision of the tax authority; taxpayer has to prove that he fulfils the conditions set by ITA for the exemption. |
| ***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 so-called subsidiary shares are tax exempt based on Art. 19 of ITA. |
| 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 have one of the forms listed in the Parent-Subsidiary Directive and must be subject to a corporate income tax listed in the Parent-Subsidiary Directive with no possibility of opting for taxation or of being exempt.  In situations where the subsidiary is resident outside EU/EEA the subsidiary must:   * have a legal form comparable to a Czech joint-stock, a limited liability company or a cooperative. * be resident in a country with which the Czech Republic has concluded a tax treaty. * be subject to a corporate income tax rate of at least 12 % in. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | No. The parent company must own at least 10 % of the capital in the subsidiary for an uninterrupted period of at least 12 month. The holding period can be met later if there is an expectation of maintaining the ownership required for at least the stipulated period. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | Yes. |
| 1. If yes to c, 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? | After implementation into domestic legislation the exemption will not be allowed. |
| ***Dividends paid*** | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes, the parent-subsidiary directive is applicable. Another possibility of non-taxation may follows from DTA. |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | No. In general, the foreign shareholder company must own at least 10 % of the capital in the subsidiary for an uninterrupted period of at least 12 months. The holding period can be met later if there is an expectation of maintaining the ownership required for at least the stipulated period. DTA may provide differently. |
| 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 member state or in Switzerland or a resident of a State with which DTA stipulates zero. |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes, according to Art. 19 (6) and (9) of ITA. |
| 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]](#footnote-2). |
| 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. | The exemption is not applied in case of payment of liquidation proceeds. Capital-reduction payment is exempted up to the amount by which the share in the company was increased or notional value of share was increased in case of capital increase. |
| ***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. | Yes. Arm´s length conditions according to Art. 23 (7) would be applied. |
| 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. |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. |  |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? |  |
| ***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. As a general rule, interest paid is deductible as long as serves the purpose of generating, securing and maintaining taxable income and arm´s length and thin-cap criteria are met. |
| 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. |
| 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. | Yes. |
| 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. | Under the thin capitalization rule financing costs (including interest and other related expenses) in respect of credits and loans provided by related parties in excess of the ratio 4:1 between the aggregate value of debt and all equity of the company are not deductible. The ratio for banks and insurance companies is 6:1.  The thin capitalization rules also apply to financing costs with regard to credits and loans between related parties arranged through a third-party intermediary.  Interest paid on loans and credits provided by non-resident related parties from non-EEA countries in excess of the relevant debt-to-equity ratio is treated as a dividend for tax purposes. As a consequence, the interest is not tax deductible for the Czech borrowing company and in addition is, in principle, subject to withholding tax under domestic law. |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | Interest costs on inter-group debt. |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | No. |
| 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. | Given the fact that the rules are also applied on back-to-back financing, in that regard thin-cap rules must be considered as effective. |
| 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. | No. |
| 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? | Yes, as the taxable earnings are not lowered by the interest costs. |
| 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)? | 15% or 35%. |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | No. |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | Interest and other yields on credits and loans, deposits and securities are subject to a withholding tax at a rate of either 15% or 35%.  The 35% rate applies to interest derived by beneficial owners who are not resident in:   * another EU Member State or an EEA country; or * a country with which the Czech Republic has concluded (i) a tax treaty, (ii) a TIEA, or (iii) a multilateral agreement providing for exchange of information to which both the Czech Republic and that country are a party. |
| 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. |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | No. |
| ***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? | Czech taxation system does not offer any patent box regime or similar preferential tax regime. |
| 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. |
| 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 company may additionally deduct 100% or 110% of the costs on R&D from the taxable income. 110% can be deducted if the qualifying costs are higher than in the previous year. |
| 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. | Yes. |
| 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? | N/A |
| 1. Does taxation arise as a result of an anti-abuse provision or similar? | N/A |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? | N/A |
| 1. Can a ruling confirming the value of the IP be obtained? | N/A |
| ***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. Royalties are tax deductible to the extent that they are at arm’s length. |
| 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. |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 15 %. The rate is 35 % if royalties are derived by beneficial owners who are not resident in:   * Another EU Member State or an EEA country; or * A country with which the Czech Republic has concluded (i) a tax treaty, (ii) a TIEA, or (iii) a multilateral agreement providing for exchange of information to which both the Czech Republic and that country are a party.   5 % rate is applied in case of financial leasing |
| 1. Are there types of royalty payments which are not subject to withholding tax? | No. |
| 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. |
| 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). | 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. | Yes, follow that of 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. | No.[[2]](#footnote-3) |
| 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. | No. |
| 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? | The Czech Republic offers only binding consideration over the transfer pricing policy used in related party transaction (so-called APAs) based on the D – 333: Communication by the Ministry of Finance in respect of §38nc of ITA. There are no other tax rulings effective in the Czech Republic |
| 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? | Yes, provided that the company generates small amounts of profit based on the assumed low risk, few assets held and few functions performed. Otherwise, no. |
| 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, company cannot obtain any tax ruling or APA which could provide it. |
| ***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. | * Substance over form rule (GAAR) - allowing the tax authorities to take into account the economic substance of a transaction and to disregard the formal structure * Abuse of law doctrine (GAAR) – developed by Supreme Administrative Court; defined as the behaviour, which is seemingly allowed, but leads to the results which are not allowed |
| ***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. |

1. The answer by fiscal attaché of Czech Republic was approved by NTE. The NTE additionally noted that the exemption is not applied on dividends distributed by subsidiary in liquidation to parent company in the Czech Republic – Art 19 (2). [↑](#footnote-ref-2)
2. The answer by fiscal attaché of Czech Republic was approved by NTE. However, the NTE also noted that according to the Government Decree (which is not part of the Czech Income Tax Act or legal system, for it is not approved by Parliament), the entity is considered as transparent (and therefore can receive the benefits from the treaty) if it reveals its ownership structure (and owners present the certificate of the tax domicile). If the entity does not reveal the ownership structure then it is taxed according to the domestic tax law as being from non-treaty country. The entity can also be considered as partially transparent (i.e. some partners have access to the treaty benefits, some not.). [↑](#footnote-ref-3)