**Study on Aggressive Tax Planning**

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

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

**Filled in for Estonia**





**QUESTIONNAIRE**

**Estonia**

## Abbreviations

**TuMS – Income Tax Act**

|  |  |
| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | Corporate income tax rate for the fiscal year 2015 is 20%. Estonia applies a distribution tax system meaning that income derived by a resident company is not taxed if retained. Upon distribution, the distribution tax is levied at a rate of 20% on the gross amount (distribution + distribution tax) of the distribution. This corresponds to 25% (20/80) of the net amount of the profit distribution. (paragraph 4 of the TuMS). |
| 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, it is possible for a company in Estonia to receive dividends from a foreign company free of tax. Dividend income is not taxed if retained and redistribution of dividends (received from subsidiaries) by the resident parent company may be exempt from distribution tax. |
| 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, as one of the following conditions must be met:   * the subsidiary is resident in Estonia or another EEA country or Switzerland and is a taxable person there; or * the subsidiary is resident outside the EEA and Switzerland and either the subsidiary’s underlying profit has been taxed or is subject to tax or the dividends received by the parent were subject to withholding tax. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | No, as a resident parent company is only exempt from distribution tax upon (re)distribution, if the parent holds at least 10% of the capital or voting power of the subsidiary. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | Yes. |
| 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? | N/A |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Dividends paid by resident companies to foreign corporate shareholders are only subject to distribution tax, there is no additional withholding tax. |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | Yes. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | Yes. |
| 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? | Dividends paid by resident companies to foreign corporate shareholders are only subject to distribution tax.  Distribution of dividends may be exempt from distribution tax, see under pts. 3 and 4 above. |
| 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. Dividend equivalents are treated in a similar way as dividends. These are only subject to distribution tax, there is no additional withholding tax. |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | As explained under pt. 1, income derived by a resident company is not taxed if retained. This also covers interest income. |
| 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. | If the loan is granted free of interest, then transfer pricing rules apply and income tax at the gross rate of 20% is imposed on the amount which the creditor company would have received as interest income if arm’s length interest would have applied.  Granting loans free of interest can be deemed to be a hidden profit distribution or a non-business related expense, both taxed at 20% on the gross amount. |
| 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. TuMS defines dividend as payment which is made from the net profit or the retained profits from previous years pursuant to a resolution of a competent body of a legal person, and the basis for which is the recipient’s holding in the legal person (ownership of shares, partnership in a general or limited partnership or membership in a commercial association, or other forms of holding pursuant to the legislation of the home country of the company).  If the investment is returned as interest payment, then there are no grounds to treat it as dividend from Estonian perspective. |
| 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? | N/A |
| *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. Technically the Estonian corporate income tax system does not foresee any deductions, but the practical effect is the same as for deductions – no income tax is charged in relation to the payment. |
| 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. | There are no official regulations in place in this issue and it is unlikely that the qualification of interest income in the creditor’s state could influence taxation in Estonia. |
| 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. | There are no official regulations in place in this issue and it is unlikely that the qualification of interest income in the creditor’s state could influence taxation in Estonia. |
| 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, there is no thin cap legislation. However there are provisions in the TuMS that provide for a possibility to tax the part of interest that is not at arm’s length. |
| 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, due to a unique CIT system, low or no interest obligation does not affect company’s taxable base. |
| 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. Withholding tax is only levied on interest received in connection with holding in an Estonian real-estate fund or other pool of assets of whose property:   * at the time of the payment of interest or during a period within two years prior to that, more than 50 per cent was directly or indirectly made up of immovables or structures of movables located in Estonia; * the non-resident had a holding of at least 10 per cent at the time of the receipt of interest. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 20% on the gross amount. |
| 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? | Yes. |
| 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? | In the context of double tax treaties, Estonia follows the OECD model tax convention. |
| 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? | No. |
| 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? | No. Although technically the Estonian corporate income tax system does not foresee any deductions, the practical effect is the same as for deductions – no income tax is charged in relation to the payment. |
| 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. | Transfer of ownership of a patent, trademark or other IP right to a foreign group member company can be considered as hidden profit distribution. |
| 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? | Yes. |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? | Not applicable, as there are no R&D tax credits in Estonia. |
| 1. Can a ruling confirming the value of the IP be obtained? | There is no provision in the law that would enable taxpayers to receive APAs in connection with transfer pricing from the tax authorities. |
| *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. Technically the Estonian corporate income tax system does not foresee any deductions, but the practical effect is the same as for deductions – no income tax is charged in relation to the payment. |
| 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. Royalties, including patent royalties and payments for the use of commercial, scientific or industrial equipment or know-how, paid by resident companies to non-residents are subject to withholding tax. If non-resident taxpayer has permanent establishment in Estonia to which the payments are made, no withholding tax is applied. |
| 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? | Outbound royalty payments are exempt from withholding tax, provided that the recipient is an associated company of the paying company and is resident in another EU Member State or Switzerland, or such a company’s permanent establishment situated in another Member State or Switzerland.  Companies are associated if one company holds a share of 25% in the other company or if one and the same resident company of another EU Member State or Switzerland holds a share of 25% in both companies. To qualify for the exemption, there is a 2 year minimum holding period.  Exemption is not applied to the part of royalty which exceeds the value of similar transactions conducted between non-associated persons. |
| 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? | In the context of double tax treaties, Estonia follows the OECD model tax convention. |
| 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? | Yes. |
| 1. If yes to 34, please briefly explain the rules and their scope. | According to the legislation, income of CFC-s can only be attributed to resident individuals.  However, a decision by the Supreme Court provides that under specific circumstances the income of the CFC can be attributed to an Estonian company.  The approach of the Supreme Court is applied when the foreign company does not have independent economic activities and the transactions by the foreign company are made to conceal the real transactions by the Estonian company.  The practical impact is that the Estonian company may be liable to pay distribution tax in relation to the future outgoing payments of the foreign company. |
| 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? | No. |
| *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. | Estonia does not apply its own criteria on the tax qualification of a foreign legal entity. |
| 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. | 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? | A binding preliminary ruling on a specific transaction can be obtained from the tax authorities. This possibility however, does not apply to transfer pricing and determination of arm’s length price. |
| 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 if legally and economically substantiated. |
| 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. | In the Taxation Act there is a general anti-avoidance rule in section 84 which states that if it is evident from the content of a transaction or act that the transaction or act is performed for the purposes of tax evasion, conditions that correspond to the actual economic content of the transaction or act apply upon taxation.  According to the Taxation Act section 83-4 ostensible transactions shall not be taken into account upon taxation. If an ostensible transaction is entered into in order to conceal another transaction, the provisions concerning the concealed transaction apply upon taxation.  However, it is not fully clear how such provision would apply specifically in each of the ATP-Structures. |
| *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. |