**Study on Aggressive Tax Planning**

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

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

**Filled in for Slovak Republic**





**QUESTIONNAIRE**

**Slovak Republic**

## Abbreviations

**SITA – Slovak Income Tax Act (zákon č. 595/2003 Z.z. o dani z príjmov)**

**ATA – Act on Tax Administration (zákon č. 563/2009 Z.z. Daňový poriadok)**

**Local GAAP – Local Generally accepted accounting procedures (Measure of the Ministry of Finance of the Slovak Republic No 23054/2002-92 of 16 December 2002 laying down the details of accounting procedures and a framework chart of accounts for entrepreneurs keeping double-entry accounting)**

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| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 22%. |
| 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 are not subject to tax.  § 12(7)c SITA (rules given in §3(2)c SITA).  Dividends are not subject to tax if paid from profit of *company* or co-operative which is to be distributed among persons with ownership interest in share capital or members of the statutory or supervisory bodies (*companies* under SK commercial law are meant, i.e. limited liability company, joint stock company, limited partnership (we see it as non-transparent) if it created share capital). A *company* is also deemed a similar company having its registered office abroad.)  The aim is to comply with the tax neutrality concept. It is a before EU membership rule, i.e. regardless Parent Subsidiary Directive. |
| 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? | Yes (see conditions mentioned under Question 3) |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | Yes (see conditions mentioned under Question 3) |
| 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? | There is a draft amendment to the SITA published based on which the dividends will be subject to tax “to the extent that such profits are deductible by the subsidiary”. The amendment (after it is approved) should be valid from 1 January 2016.  Implementation of Council Directive 2014//86/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states. |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes.  (see conditions mentioned under Question 3) |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | Yes  (see conditions mentioned under Question 3) |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | Yes  (see conditions mentioned under Question 3) |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | No  (see conditions mentioned under Question 3) |
| 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, There is a draft amendment to the SITA which should be valid from 1 January 2016 after its approval. Implementation of Council Directive 2014/86/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states. |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | YES. There is a health insurance contribution for individuals who receive dividends. From 2011 there is a health insurance fee on dividends (also on payments to limited partners) if the beneficiary is subject to Slovak social security system. |
| 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 such as a payment of liquidation proceeds are not subject to tax.  § 12(7)c and §12(7)d SITA |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes. (Interest and Royalty Directive) |
| 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. The tax base of a resident related party shall also include the difference between the prices agreed in business transactions of non-resident parties and the prices applied between unrelated parties in comparable business transactions, as long as such a difference results in a reduction of the tax base or increase of tax loss. See §17(5) SITA |
| 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). | We do not have any special rules for re-characterization of hybrid instruments and therefore income will be treated as interest[[1]](#footnote-2). |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. | There are no detailed rules except for the one explained in Question 3. |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? | See Question 4d) above. It depends on the final implementation into Slovak legislation. |
| *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. Interest on debts relating to the business is deductible for tax purposes, but there is a limit for inter-group interest (see Question 15). |
| 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. No special 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. | No special rules. |
| 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 from 2015. §21a SITA. |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | At the end of the taxable period the following test is done:  25% of the value of the indicator (EBITDA) calculated as: the sum of the pre-tax accounting profit/loss (reported under local law or under international accounting standards) and of the therein included accounting depreciation charges and interest expense.  If the interest paid on loans and other costs (expenses) relating to received loans exceeds the above indicator, tax deductible is only the part of it up to that indicator. See §21a(1) SITA |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | Rules apply only to inter-group debt (rule does not apply to financial institutions, banks, insurance companies, leasing companies and similar financing institutions)  If there is a non-group intermediary company between creditor and debtor, the loan is considered to be between group members. §21a(2) SITA |
| 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. | It is potentially effective with the exception of financial institutions. |
| 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. | In general no, but could be contingent for corresponding adjustment.  Under §17(6) SITA, the adjustment of the tax base of a non-resident related party in the territory of the Slovak Republic shall be authorized by the tax administration, provided that the tax administration of the country, with which the Slovakia has entered into a DTC, proceeds to an adjustment of the tax base of the related party abroad which is in compliance with the arm’s length principle. A written notice shall be given by the tax administration to the taxpayer to that effect. |
| 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? | It could be, if the taxation of non-monetary benefits rule is applied strictly, but there is no explicit rule and neither official guidance on this matter. |
| 1. Does your MS levy any withholding tax on interest payments? | Yes, except for income from bonds and bills of credit. § 16(1)(e) (3) SITA (Exemption – Interest and Royalty Directive) |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 19% (or 35% - see Question 20. c)) |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | Yes (considering (i) Interest & Royalties Directive – if the shareholding interest is over 25% for at least 2 years – no WHT (§13(2)(f) SITA); (ii) DTC – taxation only up to the tax rate applicable in DTC) |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | This exemption applies only to companies resident in EU. Moreover a rate of 35% applies if interest is paid out, remitted or credited to the recipient who is a resident of a non-contracting state (i.e. a state which is not included in the “white list” published by the Slovak Ministry of Finance). §43(1) SITA.  “White list” (i.e. the list of states with which Slovakia has concluded DTC or international agreement on the exchange of tax information or a state which is party to an international treaty providing for the exchange of information for tax purposes, by which this state and the Slovak Republic are bound) is attached (valid version only available in Slovak language). It is published on the website of the Ministry of Finance of the Slovak Republic (acc. to §2x SITA) |
| 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. However, a very special exception mentioned under Question 19 applies to interest payments even if paid to a recipient in jurisdiction outside of the white list. |
| 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? | Yes.   1. tax relief for incentive beneficiaries (as a state aid incentive subject to approval). § 30b SITA   In practice this possibility was not used by taxable persons.   1. “super-deduction” was implemented to support R&D as of 1.1.2015. §30c SITA.   Starting 2015 to support R&D (research and development), the Slovak parliament approved a related incentive in form of a tax base “super-deduction” up to:  - 125% of the qualifying R&D expense;  - 125% of year-on-year increase of R&D costs;  - 125% of personal costs related to R&D projects (only for employees under 26 years old)  Several conditions must be fulfilled.  Super-deduction is not possible relating to the costs: (i) that were subsidised (even partially) by any public funds; (ii) services, licences and R&D costs purchased from other persons, except if purchased from persons listed in SITA (research institutes, public universities, companies having special certificate to perform R&D).  Besides this, if company applies “super-deduction”, it must not use a benefit of tax credit according to § 30b SITA. |
| 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 qualifiing R&D expenses should be determined based on the accounting legislation, which specifies what R&D costs are and which are accounted separately. See §37 of the local GAAP – Accounting for Long-Term Intangible Assets |
| 1. Can such credits also be obtained for costs that are ultimately reimbursed by a group member company to the company in your MS? | No, as in general the intangible may not be sold. This incentive is not available and is recaptured if the intangible asset is sold. The reimbursement of costs however does not lead to loss of incentive. |
| 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 in general but no special exit 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? | It could be based on GAAR. |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? | Yes (certified companies may not use super-deduction if the results of R&D are for sale. Accordingly, if sold after super-deduction was applied, amending tax returns must be submitted. §30c(9) SITA. |
| 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? | No. |
| 1. Are there types of royalty payments which cannot be deducted? | There are no special rules. |
| 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)? | 19 %/(35%).  A rate of 35% applies if royalties are paid out to the recipient who is a resident of a non-contracting state (i.e. a state which is not included in the “white list” published by the Slovak Ministry of Finance).  “White list” (i.e. the list of states with which Slovakia has concluded DTC or international agreement on the exchange of tax information or a state which is party to an international treaty providing for the exchange of information for tax purposes, by which this state and the Slovak Republic are bound) is attached (valid version only available in Slovak language). It is published on the website of the Ministry of Finance of the Slovak Republic (acc. to §2x SITA) |
| 1. Are there types of royalty payments which are not subject to withholding tax? | All types of royalty are liable to withholding tax. However, royalty payments by resident companies 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. §13(2)h SITA.  Interest & Royalties Directive. |
| 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, but there is no formal procedure to verify this with the exception of potential tax audit. §13(2)h SITA. |
| 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. | It could be based on GAAR. |
| *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. |  |
| *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. |  |
| 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? |  |
| *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 are no special rules. However, the practice of tax authorities including rulings suggests that criteria of the foreign state are applied. |
| 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, only the general approach applies. |
| 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, only the general approach applies. |
| *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. | In principle no, but yes, if the company does not have registered office in Slovakia, in practice this however may not be possible with the exception of SE based on Civil law. §2d SITA.  If the company has its registered office or place of effective management in the territory of the Slovak Republic, under local law such company is considered a tax resident of Slovakia. |
| 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? | No. Only regular APAs confirming arm´s length price are positive, to support bilateral ones are possible. |
| 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? | There are no explicit rules in this regard. General principle of transfer pricing rules do not prevent functions, assets and risk stripping. |
| 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, generally not. |
| *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. | Slovak tax legislation applies mainly general rules - the substance-over-form rule. Legal act or other circumstances decisive for enquiry, assessment or collection of tax which do not have economic reason and which result in intentional circumvention of tax obligation or which aim to gain such tax benefit for which taxable entity would not be entitled or which result in intentional decrease of tax obligation shall not be taken into consideration during the tax administration. §3(6) ATA  It also specifies that costs are only tax deductible if incurred to generate, maintain and ensure the taxable income of the taxpayer. |
| *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. | **1) Interest payments** from Slovak entities are subject to 19% resp. 35% WHT. However, there is one harmful exception for payments with source in Slovakia not subject to any taxation at all. This **tax exemption** (§16 (1)(e)(3) SITA) applies to income from **bonds and bills of credit** including interest payments, even if paid out by Slovak residents to recipients residing in a country outside the White List (i.e. on the Black List). This exception has been introduced to Slovak legislation through an amendment to the Customs Act, i.e. out of the scope of the regular legislation process and has been effective since 01/07/2013.  **2) Companies with no substance in Favourable Tax Regimes are often accepted for tax purposes:** Tax residency is tested in practice rather formally, even if a DTT is applied and place of effective management should be decisive. The tax administration does challenges cases, where the abuse is obvious. The most visible example can be documented by the latest decision of the Supreme Court of Slovakia on a Dutch Holding Case. This case is still not closed and may not have any precedence for other cases as it may not be published.  **3) Tax residency of natural persons:** SITA defines tax residency in respect of formal criteria only (registered address for civic purposes and time test). Centre of vital interests is not tested at all. In other words, in order to avoid income taxation, a person pending more than 183 days is not required to be subject to personal income tax in Slovakia, even if he owns a house here and/or lives together with his family here if he is not registered here for civic law purposes.  **4) Penalties:** *Criminal law:* As of 1 January 2013 Active Regress is possible as late as end of investigation by the prosecutor in income tax evasion cases. *Procedural law:* Financial penalties are also very low, in case of a cross-border income tax evasion only 10% lump sum charge regardless the years passed is levied (e.g. as low as 1% per annum in a 10 year case). In other words the taxpayers are rather motivated to take the risk by avoiding income tax.  **Note:** Financial sanctions are expected to be increased by 1 January 2016, no changes are expected in terms of Criminal law as of this date. We will be pleased to provide you with a more detailed written summary in case of your interest. |

1. In the country validation process, the answer was modified by the representative of the MS. [↑](#footnote-ref-2)