**Study on Aggressive Tax Planning**

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

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

**Filled in for Slovenia**





**QUESTIONNAIRE**

**Slovenia**

## Abbreviations

**ZDDPO-2 = Zakon o davku od dohodkov pravnih oseb (Corporate Income Tax Act)**

|  |  |
| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 17% (Sec 60 ZDDPO-2) |
| 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 may be tax exempt (Sec 24 ZDDPO-2). Expenses of an amount equal to 5% of the dividends received are not tax deductible (deemed expenses incurred with respect to the exempt dividend income). |
| 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? | The exemption applies if the distributing company is subject to corporate income tax in one of the EU Member States listed in the EU Parent-Subsidiary Directive (90/435) with no possibility of opting for taxation or of being exempt.  The exemption also applies if the distributing company is resident in a non-EU state, unless they are distributed by a company, which is resident in a low-tax jurisdiction, listed by the Ministry of Finance and the tax authority. Currently, the list of such countries includes:   * Bahamas, Barbados, Belize, Brunei, Costa Rica, Dominican Republic, Liberia, Liechtenstein, Maldives, Marshall Islands, Mauritius, Oman, Panama, St. Kitts and Nevis, St. Vincent and the Grenadines, Samoa, Seychelles, Uruguay and Vanuatu. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | Yes. No minimum participation or holding period requirements apply. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | Currently yes. But on 10 June 2015 the Ministry of Finance just published draft amendments to the ZDDPO, which shall implement the COUNCIL DIRECTIVE 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU. The amendment shall be adopted in the second half of 2015. Accordingly the exemption shall apply provided that the dividends were not deducted by the distributing company (see below d). |
| 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? | So far the amended provision has not been implemented in Slovenia yet. But it is expected that it shall be implemented by 31 December 2015. The draft amendments have just been published by the Ministry of Finance on 10 June 2015. According to the draft amendments, dividends shall not be exempt from taxation to the extent that such profits are deductible by the subsidiary. |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes (Sec 71 ZDDPO-2), under the so-called participation exemption implementing the EU Parent/Subsidiary Directive.  Further, there is no withholding tax on dividends and other profit distributions paid by a resident company to non-resident companies, investment funds, pension funds, and insurance companies that run pension funds, resident in one of the EU Member States, Iceland or Norway, if the recipient cannot credit the withholding tax in his residence state.  Finally, also a dividend distribution to a Slovenian permanent establishment of a non-resident company is exempt from withholding tax, if the recipient (PE of a non-resident company) provides a Slovenian tax number to the payer of dividends (Sec 70(2) ZDDPO-2) |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | The exemption under rules implementing EU Parent/Subsidiary Directive only applies if the foreign shareholder company holds at least 10% of the capital of the subsidiary continuously for at least 24 months. In accordance with the agreement between the European Union and Switzerland dated 26 October 2004 (Savings Agreement) the qualifying participation for companies resident in Switzerland is 25%. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | No.  The exemption from withholding tax applies, if the shareholder company is eligible for reduction or elimination of the withholding tax under the EU Parent/Subsidiary Directive or article 15 of the agreement between the European Union and Switzerland dated 26 October 2004 (Savings Agreement), i.e. a resident of EU or Switzerland (Sec 71 ZDDPO-2). |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | In Slovenia the “beneficial ownership” principle is not applied in practice. |
| 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. | Currently no.  But according to the draft amendments to the ZDDPO-2 (24 June 2015), which shall implement the COUNCIL DIRECTIVE (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU, the exemption from withholding tax shall not apply to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage. |
| 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. |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes, Sec 19 ZDDPO-2. |
| 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. Under Sec 19 ZDDPO-2 the creditor company must include an arm’s length interest income in its taxable income. In general the arm’s length interest rate is determined and published by the Ministry of Finance on a monthly basis (safe harbor). A creditor may, however, demonstrate that an arm’s length interest rate is lower than the interest officially published by the Ministry of Finance. |
| 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, it is possible, since ZDDPO-2 defines which income shall be deemed dividend income for corporate income tax purposes. Under Sec 74 ZDDPO-2 dividend income shall be deemed to be *inter alia* profit distributed with regard to debt securities and loans ensuring participation in the payer’s profit (e.g. profit participating loans).  But according to the draft amendments to the ZDDPO-2 (published on 24 July 2015), which shall implement the COUNCIL DIRECTIVE (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU, the dividend exemption shall not apply to returns received on hybrid-loans, when the payment on such hybrid-loans is considered as deductible interest payment in the state of the debtor company. |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. | If the return on loan grants the right to participate in the profit of debtor, then the payments under this loan shall be deemed dividend income for corporate income tax purposes at the level of the creditor. |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? | Dividends in such case shall not be tax exempt (see above under 11). |
| *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, if at arm`s length. |
| 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. A low tax limitation rule and a thin capitalization rule apply. |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | Interest on loans granted by companies or individuals, whose registered office or the place of actual management or residence is in a country, other than a EU Member State, where the average nominal rate of income tax is lower than 12.5% (low-tax jurisdiction; see above), is non-deductible (Sec 30(1)(8) ZDDPO-2).  Further a thin capitalization rule (Sec 32 ZDDPO-2) applies to interest on loans from qualified shareholders. A qualified shareholder is a shareholder or partner who at any time during the tax period directly or indirectly owns at least 25% of the shares in the equity capital or voting rights of the taxpayer. In addition loans provided by sister companies owned by a qualifying shareholder is also subject to thin capitalization rules.  According to the thin capitalization rules, interest on excess loans is not tax deductible if at any time during the tax period the loans exceed four times the amount of the shareholder’s equity capital. However, thin capitalization rules do not apply if the taxpayer demonstrates that he could raise the surplus of loans from the lender who  is a non-related person. |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | The thin capitalization rule only applies to inter-group debt, while the low taxed interest limitation rule applies to all interest cost. |
| 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. | Both rules, the non-deduction of interest paid to low-tax jurisdictions and thin–capitalisation rules are effective tools against erosion of tax base of Slovenian companies. |
| 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. | In general no. Except in case of a corresponding adjustment in cross-border cases by reference to an applicable tax treaty including a provision comparable to article 9(2) of the OECD Model or based on the EU  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? | Yes, as secondary adjustment for transfer pricing purposes is possible. In general the taxpayer may in the course of a tax audit repatriate the benefit. Otherwise the benefit shall be considered as hidden profit distribution or capital contribution, as the case may be. |
| 1. Does your MS levy any withholding tax on interest payments? | In general yes (Sec 70(1) ZDDPO-2). There are, however, certain exemptions from withholding, e.g. for interest payments to certain entities or interest payments on certain corporate bonds. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 15% (Sec 70(1) ZDDPO-2) |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | Yes, exemption from withholding tax under the domestic law implementing the EU Interest and Royalties Directive (Sec 72 ZDDPO-2). |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | Under the domestic law implementing the provisions of the EU Interest and Royalties Directive (2003/49), interest payments are not subject to withholding tax if the beneficial owner of the interest 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 is situated in another EU Member State or Switzerland. |
| 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? | The term beneficial owner is used in ZDDPO-2 but in practice it is not applied. |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | No other specific anti-avoidance rules on interest payments are of relevance. |
| *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, Slovenian tax law does not provide for any patent box or similar preferential tax regimes for income from intellectual property rights. |
| 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? | Sec 55 ZDDPO-2 provides for a R&D tax allowance (additional reduction of taxable base) equal to 100% of the amount invested  in their internal research and development activities or in the purchase of research and development services from third parties. The  allowance is limited to the tax base of the relevant tax year. Any unused allowance may be carried forward for 5 tax years. |
| 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. | R&D tax allowance is available for:  - internal R&D activities of the taxable person including purchases of R&D equipment that is used exclusively and permanently for  R&D activities; and  - the purchase of R&D services including services from related persons or public or private research organizations. |
| 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. The reimbursement would reduce the tax 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. Taxation would be based on the fair market value of the IP at the time of the transfer. A later increase in fair market value will not result in a reopened tax assessment unless there are strong indications that the fair market value was higher already at the time of the transfer. |
| 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? | Transfer of assets between associated entities is taxed in accordance with the arm`s length principle. |
| 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 ruling can be obtained for issues related to transfer prices among associated entities. |
| *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 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% (Sec 70 ZDDPO-2) |
| 1. Are there types of royalty payments which are not subject to withholding tax? | Royalties may be exempt from withholding tax under the domestic rules implementing the provisions of the EU Interest and Royalties Directive (Sec 72 ZDDPO-2). |
| 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 other specific anti-avoidance rules on interest payments are of relevance. |
| *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. | No, tax qualification of foreign entities is based on domestic criteria.  In Slovenia partnerships are legal entities and taxable entities subject to corporate income tax act the same way as corporations (non-transparent). In general, a taxable entity under the ZDDPO-2 is any domestic or foreign legal entity, including corporations, partnerships and other corporate forms (Sec 3 ZDDPO-2).  A taxable person shall also be a foreign partnership that does not have legal personality, providing that it is not considered as a taxable person under the individual income tax act. |
| 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, there are no special rules to counter mismatches in tax qualification. |
| 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, there are no special rules to counter mismatches in tax qualification. |
| *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? | No. In general tax rulings are available, but not for issues relating to transfer prices. |
| 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 general the structure is allowed if in line with the OECD arm´s length principles. |
| 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. | No. |
| *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. |