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Tax alert

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AS PricewaterhouseCoopers in Estonia helps clients in finding tax efficient business solutions and managing tax risks.

We work together with our colleagues in other PricewaterhouseCoopers' offices world-wide and use our access to international know-how and long-term experience to quickly and efficiently solve tax issues that arise both locally and in foreign jurisdictions. For more information, please see our contact details below.

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Corporate tax avoidance under siege

The Ministry of Finance has published a draft law on amendments to Income Tax Act transposing the latest changes to EU Parent-Subsidiary Directive No 2011/96/EU ('PSD') into national law.

The objective of PSD is to exempt cross-border dividends and other profit distributions paid by subsidiaries to their parent companies from withholding tax and eliminate double taxation at the level of parent companies. However, a few years in practice proved PSD not only a fair tool for tackling double taxation, but also an effective instrument for those seeking to benefit from double non-taxation. It was the latter that lead the Council to pass two amending directives - 2014/86/EU and 2015/121/EU - in order to impose within EU the "anti-hybrid rule" and the "general anti-abuse rule" respectively.

The "anti-hybrid rule" is aimed to prevent double non-taxation resulting from mismatches in the tax treatment of hybrid loans, i.e. financial instruments that have characteristics of both debt and equity. For example, if the Member State of the paying company considers a payment to be tax deductible interest, while the Member State of the recipient company treats the same transfer as a tax exempt dividend, no taxes would be paid in either of the states.

In order to implement the "anti-hybrid rule" into Estonian legislation, the draft law proposes to limit the applicability of the participation exemption regime for dividends received from qualifying EU subsidiaries to the extent that such dividends are not deductible by the subsidiary. If the dividends are deductible for the subsidiary (as an interest payment), the exemption method may not be applied by the parent company

The "general anti-abuse rule" should prevent the corporate groups benefiting from aggressive tax planning in the form of arrangements that are not "genuine" and that have been constructed to obtain a tax advantage under PSD.

The anti-abuse clause the Ministry of Finance has proposed to be added to Income Tax Act provides that the participation exemption may not be applicable on income from qualifying EU or domestic subsidiaries if "the tax authorities identify that a transaction, a part of the transaction, or, a series of transactions have been put into place for the main purpose or for one of the main purposes of obtaining a tax advantage and are therefore not genuine. A transaction or a series of transactions shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality." The same anti-abuse principle will be applied to the payments from equity (such as capital reduction) if the underlying profits were received in the form of a dividend.

By filing the form TSD 7 (part II) on dividends received a corporate tax payer conjointly confirms that the arrangements which generated the dividends were genuine and do reflect economic reality.

It is yet unclear if the Tax and Customs Board will be authorized to issue a binding ruling for safe landing in this matter.

The proposed amendments should become effective as from 1 July 2016. The draft law and related documents are available in Estonian at: http://eelnoud.valitsus.ee/main/mount/docList/69c48934-6d39-4cf1-89c1-410ef24deac9

Changes in PE reporting

The Tax and Customs Board reminds of amendments effective from January 2015 in the tax reporting for permanent establishments of the foreign companies. According to the changes, the permanent establishments are required to report the distributed profits on the declaration form TSD 3 (no longer on TSD 6 which was applicable before 2015). Moreover, as from 2015, the permanent establishments have to report the distributed profits attributable to them even in the cases where such profits are exempt from Estonian taxation because permanent establishment has not been created within the meaning of a double tax treaty. (Estonian national law provides slightly broader definition of a permanent establishment in comparison to the effective tax treaties.)

The corporate declaration form TSD 3 applicable as from 2015 is available in English at:

http://www.emta.ee/public/vormid/maksuvormid/TSD_TM_TSM_ja_TD/2015/TSD_lisa_3_EST_ENG.pdf

The tax authorities' instructions on how to fill out the form TSD 3 have been published in Estonian language on the following web page:

http://www.emta.ee/public/vormid/maksuvormid/TSD_TM_TSM_ja_TD/2015/Vorm_TSD_lisa_3_2015.pdf

VAT paid to be published

As from 1 August 2014, the state taxes paid by all juridical persons (including companies and private entrepreneurs) and the institutions of the state and local municipalities have been published on the website of the Estonian Tax and Customs Board to ensure fair competition in the market as well as improvement in tax compliance.

The taxes that have been subject to publishing include all amounts and types of state taxes paid during the calendar year, cumulatively on a cash basis. However, the so called employment taxes – social tax, income tax, mandatory funded pension contribution and unemployment insurance contributions – have been set apart from other types of taxes paid. Taking this practice further, the Ministry of Finance has published a draft law which will, if adopted, enable the tax authorities to also highlight the amounts of VAT paid by each VAT registered taxpayer.

The respective online data base is in Estonian and is updated quarterly on the 10th day of the month following each quarter (accessible at: http://www.emta.ee/index.php?id=35927).

Legal acts

Supreme Court on forced VAT deregistration

On 7 May 2015, the Estonian Supreme Court passed its ruling in case No 3-3-1-17-15 which dealt a dispute on whether the tax authorities may cancel VAT registration merely because a company has failed to provide evidence on being actually engaged in trading.

The Supreme Court stressed that while the burden of proof lies with the taxpayer, it cannot be concluded that failing to do so should always result in deregistration from VAT register. Cancellation of VAT registration should depend on specific circumstances of each case and the tax authorities should make the decision in accordance with the right of discretion whereas the taxpayer is obliged to prove its engagement in business and co-operate with the authorities.

In this case, the taxpayer was given an opportunity to provide the requested information on two occasions, however, the taxpayer chose to not oblige. The court held that the taxpayer's conduct significantly narrowed the range of choice for the tax authorities, who were therefore right to conclude that the actual engagement in trading was not proved and thus there were no grounds for VAT registration.

Online filing is now multilingual

Online tax reporting has been available for the Estonian corporate tax payers for over ten years. Although undisputedly remarkable landmark, e-filing has been somewhat challenging for non-Estonian speakers. Therefore we are very glad to announce that as from the end of July, the online corporate tax and payroll reporting application („e-maksuamet") is supported by two more languages: English and Russian.