Arrangements that depend on the main benefit criterion

Information must be provided on the following cross-border arrangements that depend on the main benefit criterion:

1. an arrangement by which the relevant taxpayer or a person participating in the arrangement has undertaken a duty of confidentiality related to the tax advantage;

2. an arrangement for which the information provider is entitled to get remuneration or compensation, which is determined by the amount of the tax advantage resulting from implementation of the arrangement, or according to whether the expected tax advantage is provided by the implementation of the arrangement;

EXAMPLES

- A company is restructured in such a way that there is a change in risks, assets and functions within the group resulting in a reduction or increase in the revenue attributed to the company. In transactions between unrelated parties, higher risk is generally compensated by higher income and lower risk is compensated by lower income. Also in terms of functions, the income from a transaction usually correspond to the tasks performed by the company and to the assets used for that purpose. Therefore, if the arrangement changes the division of the company's/group's risks, assets and functions within the group and results in a tax advantage, information must be provided on such an arrangement.

- The right to a payment exempt from tax is created and the remuneration of the person providing services related to the arrangement depends on the amount of the exemption.

3. an arrangement with a standard structure which can be used by different taxable persons without any significant adjustments each time;

EXAMPLES

- One company purchases another company with loan capital, followed by a merger of the two companies, either under the conditions and in accordance with the procedure laid down in the loan agreement or in accordance with the company's policy. As a result of the merger, the acquiring company will start to pay the cost of the loan capital from the income derived from the economic activities of the acquired company, and the interest cost of the loan can be deducted from the taxable income.

- ※ A merger (or a division) of a resident company with a foreign company takes place, as a result of which part of the assets (including money) and liabilities are either transferred to the foreign company or the foreign company is merged with the resident company. Part of the arrangement is the distribution of the proceeds of the merger or division in the form of dividends.

4. an arrangement implemented by a person who participates in the arrangement with the purpose to acquire a loss-making company, terminate its principal activity and use the losses of that company for reducing its tax liability, whereby the arrangement may also include transfer of losses to another country or jurisdiction or use of the losses for reduction of tax liability in an accelerated procedure;

5. an arrangement by means of which the income received is shown as an asset, gift or other income that is taxed at a lower tax rate or is exempt from income tax;

EXAMPLE

- ※ Income earned from abroad as a result of active work is taken out of an enterprise as revenue from ownership, rather than a payment as remuneration. Since, as a result of the arrangement, the transaction is taxed as a different category of income from its content and gives rise to a tax advantage, information on the arrangement must be reported.

6. an arrangement with the purpose to reallocate resources, for example, through an association which has no substantial economic activity without any other principal commercial purpose or whose transactions have the effect of mutually offsetting, cancelling or any other similar effects;

EXAMPLES

- ※ An Estonian enterprise grants a loan to a foreign enterprise using several enterprises. The aim of such an arrangement is to create a situation in which interest income is deductible from taxable income in countries where it is most beneficial.

- ※ A related party of an Estonian enterprise in a foreign country takes out a loan to an enterprise located in a foreign country in order to make an investment in Estonia. Similarly to the arrangement referred to in the preceding paragraph, the objective here is to reduce (usually under the classical corporate income tax system) profits taxable abroad.

7. an arrangement involving cross-border payments between related parties, which are treated as expenses related to business and in which at least one of the circumstances provided for apply:

- ✓ the payee is a resident of a state or jurisdiction in which no tax is levied on profits earned or distributed by the undertaking or is taxed at zero or near- zero rate;

- ✓ the payment is tax-exempt or is not included in the taxable income in the country of residence or jurisdiction of the payee;

- ✓ there is a more favourable taxation regime established in respect of payment in the country or jurisdiction of residence of the payee.

EXAMPLES

- ※ The use of the patent income arrangement, in which case patents, rights to patents, products containing patent rights, etc. are placed in a country where the income from such rights is taxed at a lower rate than usual. As a result of the use of the patent income arrangement, the effective tax rate of an enterprise is reduced.

- ※ Real estate belonging to an enterprise is placed in a holding company of another tax jurisdiction in order to obtain a tax advantage from special rules on income from those assets in another country.

In their discussions on the implementation of the Directive, Member States and the European Commission have mainly considered a nominal tax rate below 1% as the near-zero rate.

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