

## ESTONIA

### TRANSFER PRICING PROFILE

#### 1. Reference to the Arm's Length Principle

**Subsection 2 of Article 8 of Estonian Income Tax Act** (*Related parties*) stipulates that the difference between the price used in the transaction of related parties (referred as a transfer price) and the value of a similar transaction between unrelated parties (referred as an arm's length price) is taxable according to transfer pricing rules (Article 14 (*Business Income*), Article 50 (*Income tax on dividends and other profit distributions*) and Article 53 (*Taxation of permanent establishment of non-resident legal person in Estonia*) of Estonian Income Tax) if it is not a fringe benefit.

**Subsection 4 of Article 50 of Estonian Income Tax Act** (*Income tax on dividends and other profit distributions*) and **subsection 4<sup>6</sup> of Article 53 of Estonian Income Tax Act** (*Taxation of permanent establishment of non-resident legal person in Estonia*) stipulate the arm's length price rule – if the price of a transaction conducted between a resident legal person or a non-resident who has a permanent establishment in Estonia with associated persons is not in accordance with the arm's length price, the tax obligation will occur either on the income which the taxpayer would have derived or the expense which the taxpayer would not have incurred if the transfer price had been in accordance with the arm's length price. A similar provision is contained in **subsection 7 of**

**Article 14 of Estonian Income Tax Act** that regulates taxation of business income of sole proprietor.

#### 2. Reference to the OECD Transfer Pricing Guidelines

The OECD Transfer Pricing Guidelines (OECD TPG) have no legal status within the Estonian tax system. However, they have been translated into Estonian and, according to **Article 20 of the Regulation no. 53** drafted by MoF (in force since 1.01.2007), taxpayers and tax administrations are encouraged to use the OECD TPG for those situations not covered by the Regulation, as far as the guidance in the OECD TPG is not in contradiction with the Regulation.

#### 3. Definition of related parties

The definition of the concept of related persons is contained in **Article 8 of the Income Tax Act** and according to that persons are deemed to be associated if they have common business interest or if one party has dominant influence over other. This article also includes an illustrative list of related parties:

##### **§ 8. Associated persons**

(1) Persons are deemed to be associated if they have a common commercial interest or if one person has dominant influence over the other. The following persons are always deemed to be associated:

- 1) spouses, civil partners, direct or in-law relatives;
- 2) companies belonging to one group as defined in § 6 of the Commercial Code;
- 3) a legal person and a natural person who owns more than 10 per cent of the share capital, total number of votes or rights to the profits of the legal person;
- 4) a legal person and a person who owns, together with other associated persons, more than 50 per cent of the share capital, total number of votes or rights to the profits of the legal person;
- 5) legal persons if more than 50 per cent of their share capital, total number of votes or rights to the profits belongs to one and the same person or associated persons;
- 6) persons who own more than 25 per cent of the share capital, total number of votes or rights to the profits of one and the same legal person;
- 7) legal persons whose management board members or bodies substituting the management board are the same persons;

- 8) an employer and an employee, the employee's spouse, civil partner or direct blood relative;
- 9) a legal person and a member of its management board or controlling body (§ 9), the spouse, civil partner or a direct blood relative of a member of the management or controlling body.

Transfer pricing rules apply to transactions of resident legal persons, non-resident persons operating in Estonia through a permanent establishment and also transactions of sole proprietors with any related persons.

#### 4. Transfer pricing methods

**The Regulation no. 53** provides five methods – the CUP, cost-plus and resale price method as well as the profit split method and transactional net margin method (TNMM) – that are the same as those in the OECD Guidelines. There is no compulsory hierarchy or system for applying the methods. It is up to taxpayer which method he chooses, but the choice needs to be appropriate.

#### 5. Transfer pricing documentation requirements

For implementation of transfer pricing rules a resident company is required to submit additional information on the transactions with associated persons, activity of companies belonging to the same group and structure of the group at the demand of a tax authority. The tax authority shall grant the company a term of at least sixty days for submitting such information (**Subsection 7 of Article 50 of the Income Tax Act**).

The requirements for the information as well as the methods for determining the value of transactions are established by **the Regulation no. 53**.

Additional documentation requirements for transactions between related persons are contained in **Article 18** of the Regulation.

These additional requirements are imposed on the following persons and situations:

- resident credit institutions, insurance companies and companies quoted on the stock market;
- in case of transactions with related persons resident in low-tax jurisdictions;
- resident companies and non-resident persons operating in Estonia through a permanent establishment which, when considered with related persons, meet at least one of the following conditions: (1) they hire at least 250 employees, (2) their turnover in the financial year preceding the transaction was at least EUR 50 million or (3) their consolidated balance sheet total is at least EUR 43 million.

The detailed documentation consists of two parts, namely (1) the main file (i.e. documents which contain unified information about all the members of a group) and (2) documents which contain information about transactions of a particular taxpayer concluded with related persons

For other taxpayers document requirements are optional as recommendations.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf/2013/summary-ms.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf)

#### 6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

There are no specific TP audit procedures.

There are specific TP penalties: Article 17, paragraph 3, SKL penalises shortcomings in TP documentation; Article 14, paragraph 4, SKL penalises wrongful use of documentation relief for SME's.

## 7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/profile-ee.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-ee.pdf)

## 8. Information on dispute resolution

|                                                              |                                                                                                                                                                                                                      |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Competent Authority</b>                                   | Ministry of Finance<br>Suur-Ameerika 1<br>Tallinn<br>15 006 Estonia<br>Tax and Customs Board<br>Lõõtsa 8a<br>Tallinn<br>15 176 Estonia                                                                               |
| <b>Organization</b>                                          | Tax and Customs Board                                                                                                                                                                                                |
| <b>Scope of MAP &amp; MAP APA</b>                            | Application of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxation of income                                                                           |
| <b>Domestic guidelines &amp; administrative arrangements</b> | Instructions in Estonian: <a href="http://www.emta.ee/index.php?id=21387">http://www.emta.ee/index.php?id=21387</a>                                                                                                  |
| <b>Time for filing</b>                                       | According to Article 25 (1) of the Tax Treaty, the case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement. |
| <b>Form of request</b>                                       | No specific form                                                                                                                                                                                                     |
| <b>Documentation requirement</b>                             | No formal requirements                                                                                                                                                                                               |
| <b>User fees</b>                                             | None                                                                                                                                                                                                                 |
| <b>Tax collection / penalty / interest</b>                   | General provisions apply                                                                                                                                                                                             |
| <b>Other dispute resolution mechanisms</b>                   | EU Arbitration Convention                                                                                                                                                                                            |
| <b>Government Website</b>                                    | Ministry of Finance: <a href="http://www.fin.ee/?lang=en">http://www.fin.ee/?lang=en</a><br>Tax and Customs Board: <a href="http://www.emta.ee/">http://www.emta.ee/</a>                                             |

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Estonia on Article 8 of the Arbitration Convention (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The term "serious penalty" will be interpreted as signifying criminal penalties for tax fraud pursuant to Estonian domestic law (Penal Code)."

## 9. Relevant regulations on Advance Pricing Arrangements

None.

## 10. Links to relevant government websites

Ministry of Finance of Estonia: <http://www.fin.ee/?lang=en>

Estonian Tax and Customs Board: <http://www.emta.ee/?lang=en>

## 11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)