SLOVENIA

OUTLINE

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LIST OF ABBREVIATIONS

Agreement	Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments
Directive	Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payment made between associated companies of different Member States
Merger Directive	Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States
OECD	Organization for Economic Cooperation and Development
OECD MC	OECD Model Tax Convention 2003
Official Gazette	Uradni list Republike Slovenije
Parent-Subsidiary Directive	Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States
Regulation	Pravilnik o izvajanju zakona o davku od dohodkov pravnih oseb (Regulation on implementation of Corporate Income Tax Act)
ZDDPO-1	Zakon o davku od dohodkov pravnih oseb (Corporate Income Tax Act)
ZDavP-1	Zakon o davčnem postopku (Tax Proceeding Act)
ZDavP-1B	Zakon o spremembah in dopolnitvah zakona o davčnem postopku (Amendments to the Tax Proceeding Act)

LIST OF LEGAL REFERENCES

Laws

- Corporate Income Tax Act, official consolidated text, Official Gazette of Republic Slovenia, No. 17/05, 8 March 2005, page 1330.
- Tax Proceeding Act, official consolidated text, Official Gazette of Republic Slovenia, No 25/2005, 14 March 2005, page 2149.
- Amendments to Tax Proceeding Act, Official Gazette of Republic Slovenia, No 109/2005, 6 December 2005, page 4752.

Regulations

- Regulation on implementation of Corporate Income Tax Act, Official Gazette of Republic Slovenia, No 49/2004, 30 April 2004, page 6658.
- Regulation on acknowledged interest rate, Official Gazette of Republic Slovenia, No 130/2004, 3 December 2004, page 15663.
- Regulation on determination comparable market prices, Official Gazette of Republic Slovenia, No 130/2004, 3 December 2004, page 15647.

PART I. IMPLEMENTATION OF THE DIRECTIVE

1. INTRODUCTION

1.1. GENERAL INFORMATION ON THE IMPLEMENTATION OF THE DIRECTIVE

The Slovenian legislator implemented Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payment made between associated companies of different Member States (the "Directive") by adopting provisions in the ZDDPO-1 and in the ZDavP-1. The acts were published on 20 April 2004 in the Official Gazette. The material provisions, included in the ZDDPO-1, were effective from 1 May 2004. The procedural provisions, included in the ZDavP-1, were effective from 21 April 2004. On 30 April 2004, the Ministry of Finance issued the Regulation, effective from 1 May 2004. In general, the Regulation lists the types of eligible companies and taxes.

Formally the provisions, which implement the Directive, were effective as of the date of accession of Slovenia to the European Union, i.e. 1 May 2004. However, Slovenia introduced a withholding tax on interest and royalty payments from 1 January 2005.

The following table shows the relevant provisions of the Slovenian tax legislation implementing the Directive.

Articles of the Directive	Relevant sections of national laws
Art.1 (1)	ZDDPO-1, Art. 70 quarter (1)
Art. 1(2)	---
Art. 1 (3)	ZDDPO-1, Art. 70 quarter (3)
Art. 1 (4)	ZDDPO-1, Art. 70 quarter (4)
Art. 1 (5)	
(a)	ZDDPO-1, Art. 70 quarter (5)
(b)	ZDDPO-1, Art. 70 quarter (5)
Art. 1 (6)	ZDDPO-1, Art. 70 quarter (6)
Art. 1 (7)	ZDDPO-1, Art. 70 quarter (1)
Art. 1 (8)	ZDDPO-1, Art. 70 quarter (7)
Art. 1 (9)	---
Art. 1 (10)	ZDDPO-1, Art. 70 quarter (1)
Art. 1 (11)	---
Art. 1 (12)	ZDavP-1, Art. 360 (1), (3) and (4)
Art. 1 (13)	ZDavP-1, Art. 360 (2)
Art. 1 (14)	ZDavP-1, Art. 360 (5)

Articles of the Directive	Relevant sections of national laws
Art. 1 (15)	ZDavP-1, Art. 360 (6)
Art. 1 (16)	ZDavP-1, Art. 360 (7)
Art. 2 (a)	ZDDPO-1, Art. 70 quarter (8)
Art. 2 (b)	ZDDPO-1, Art. 70 quarter (9)
Art. 3 (a)	ZDDPO-1, Art. 70 quarter (1)
Art. 3 (b)	ZDDPO-1, Art. 70 quarter (1)
Art. 3 (c)	---
Art. 4 (1)	ZDDPO-1, Art. 71
Art. 4 (2)	ZDDPO-1, Art. 70 quarter (2)
Art.5 (1) and (2)	---
Art.7	ZDDPO-1, ZDavP-1

1.2. TAX TREATMENT OF INTEREST AND ROYALTY PAYMENTS UNDER GENERAL TAX LAW

1.2.1. Domestic rules

a. Tax treatment at the level of the paying company

Deduction of interest and royalty payments

Royalties and interest are generally deductible in computing the company's tax base, provided they are incurred for business purposes and the remuneration applied is not excessive. The deduction of excessive interest paid to related parties may be disallowed under the maximum interest rates rules (acknowledged interest rate), transfer pricing rules and thin capitalisation rules. The deduction of royalty payments may be disallowed under the transfer pricing rules.

Maximum interest rate (acknowledged interest rate)

Art. 15 ZDDPO-1 provides that interest payments are deductible up to the amount calculated on the basis of the acknowledged interest rate known at the time of granting a loan. According to Art. 15 quarter (3) ZDDPO-1 the acknowledged interest rate should amount to the interest rate, which would be agreed between unrelated persons in the comparable market. The Ministry of Finance issued a Regulation on acknowledged interest rate in which is prescribed that the acknowledged interest rate for cross border loans amounts to the interest rate of German government securities (BUND). The acknowledged interest rate is published on a monthly basis.

The maximum interest rate will be relevant for 2.1.1. *c. Exclusion of interest reclassified as profit distribution or conflicting arm's length*, below.

Transfer pricing

The arm's length principle applies to transactions between related parties under Art. 12 ZDDPO-1. Non compliance with the comparable market price results in adjustment of profit.

The concept of related parties is broad. Amongst others, companies are considered as related if (i) one company holds directly or indirectly at least 25% of the capital or voting rights of the other company, or (ii) a third company holds directly or indirectly at least 25% of the capital or voting rights of both companies.

According to Art. 12 quarter (3) ZDDPO-1 the comparable market price should be determined in accordance with one of, or a combination of, the following transfer pricing methods:

- comparable uncontrolled price method;
- resale price method;
- cost-plus method;
- profit split method;
- transactional net margin method;
- or any other method.

ZDDPO-1 does not provide any specific rules, which would allow a reclassification of the excessive amount as profit distributions.

Transfer pricing will be relevant for 2.1.1. *c. Exclusion of interest reclassified as profit distribution or conflicting arm's length* and for 2.1.2. *c. Exclusion of royalties reclassified as profit distribution or conflicting arm's length*.

Thin capitalisation rules

Art. 25 ZDDPO-1 provides that interest on loans granted by shareholders holding directly or indirectly at any time during the tax year at least 25% of the capital or voting rights of the taxpayer is tax deductible only if the loan does not exceed eight times the value of the share capital owned (paid-in-capital, reserves and retained profit calculated for a tax year as an average at the end of each month). The debt-to-equity ratio will be changed to 6:1 in 2008 through 2010, 5:1 in 2011 and 4:1 from 2012.

Loans granted by a shareholder also include loans granted by third parties if guaranteed by the shareholder, and loans granted by a bank if granted in connection with a deposit held at that bank by the shareholder (back-to-back loans).

Interest related to the excess debt is not deductible from the taxable income of the paying company (Art. 25 quarter (1) ZDDPO-1). The tax legislation does not provide any specific rules, which would allow reclassification of the excessive amount as a profit distribution.

The thin capitalization rules will be relevant for 2.1.1. *c. Exclusion of interest reclassified as profit distribution or conflicting arm's length*.

b. Tax treatment at the level of the beneficiary company

Interest and royalty income derived by resident companies is subject to corporate income tax in the normal manner.

Interest and royalties payments made to non-residents are subject to a 25% withholding tax on their gross amount. According to Art. 84 ZDDPO-1, withholding tax does not apply to payments of interest or royalties accrued before 1 January 2005. Withholding tax does also not apply to interest on government loans, government securities, certain loans and bonds guaranteed by the state and on inter-bank loans, which were granted before 21 April 2004.

However, tax treaties in force between Slovenia and third states entail a reduction of, or an exemption from withholding tax.

1.2.2. Treaties

The tax treatment of interest or royalty payments is also covered by the tax treaties between Slovenia and the relevant Member State or by tax treaties between former Yugoslavia and the relevant Member State (Slovenia continues to honour these treaties). Slovenia has tax treaties with almost all other EU Member States. The only exception is Estonia (a tax treaty which was signed on 13 September 2005, but is not effective yet) (see Annex).

Most tax treaties mentioned provide for a reduction of or an exemption from withholding tax on interest or royalty payments (see Annex for the rates applicable under each bilateral treaty). The withholding tax on interest and royalties is usually reduced to a maximum of 10%, 5% or 0% under Slovenia's tax treaties.

2. SCOPE

2.1. PAYMENTS

2.1.1. Concept of interest

a. Definition

For the purpose of the implementation of the Directive, Art. 70 quarter (8) ZDDPO-1 defines interest as income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profit, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment are not regarded as interest.

The definition of interest in the ZDDPO-1 does not strictly follow the wording set out in the corresponding article of the Directive. The definition of interest in ZDDPO-1 includes the term "government securities" whereas the definition under the Directive uses the term "securities". In practice, government securities cannot benefit from the Directive, since the conditions for withholding tax exemption are not met (e.g. holding requirement). Moreover, interest payments on government securities are also not subject to withholding tax (see 1.2.1. *b. Tax treatment at the level of the beneficiary company*). The ZDDPO-1 does not specifically describe the income from securities as interest income, but it can be considered that this interest is covered by the term "income from debt-claims of every kind".

Although the wording of the ZDDPO-1 does not strictly follow the wording of the Directive, the definition of interest as defined by the ZDDPO-1 appears to be not narrower than the definition of interest according to the Directive.

b. Exclusion of hybrid financial arrangements (Art. 4(1) b)-d))

Under Art. 71 ZDDPO-1 the following types of interest payments are excluded from the withholding tax exemption on the basis of the provisions, implementing the Directive:

- payments, which have the nature of a distribution of profits or of a repayment of capital;
- interest arising from credits, which carry a right to participate in the debtor's profit;
- interest arising from credits, which entitle the creditor to exchange his right to interest for a right to participate in the profit;
- payments from credits which contain no provision for repayment of the principal amount or where the repayment of the principal amount is due more than 50 years after the date of issue.

According to the wording of ZDDPO-1, also interest on credits, which entitle the creditor to exchange his right to interest for a right to participate in the profit, are excluded from the withholding tax exemption (see third indent above). The reference to "a right to participate in the profit" leads to the exclusion of cases where the creditor is entitled to exchange his right to interest for a right to participate in the profit of any other company (e.g. in a parent or a subsidiary company of the debtor).

Art. 4(1) c) of the Directive provides that the source State is not obliged to ensure the benefits of the Directive for payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor's profit. Therefore, the exclusion of hybrid financial arrangements under ZDDPO-1 appears to be broader than the exclusion

contemplated by the Directive. Consequently, less payments of interest can benefit from the exemption of withholding tax.

c. Exclusion of interest reclassified as profit distribution or conflicting arm's length (Art. 4(1) a) and Art. 4(2))

Art. 70 quarter (2) ZDDPO-1 states that the withholding tax exemption only applies up to the amount of interest payment acknowledged as a tax-deductible expense on the basis of a maximum interest rate (see 1.2.1. a., Maximum interest rate). The maximum (acknowledged) interest rate for cross border loans amounts to the interest rate on German government securities (BUND) as prescribed by the Regulation on acknowledged interest rate. The acknowledged interest rate, as determined by the Ministry of Finance, raises the issue whether it reflects the amount which would have been agreed by the "payer and the beneficial owner in the absence of a special relationship" as provided by Art. 4 (2) of the Directive.

According to Art.15 of the ZDDPO-1, the excess amounts of interest are non-deductible expenses for tax purposes. The ZDDPO-1 does not reclassify the excess interest as profit distributions.

Interest on loans, in excess of the debt-to-equity ratio prescribed by the thin capitalization rules, is treated as non-deductible for tax purposes. The tax legislation does not exclude excessive interest under the thin capitalization rules from the withholding tax exemption.

2.1.2. Concept of royalties

a. Definition

For the purpose of the implementation the Directive, Art. 70 quarter (9) ZDDPO-1 defines royalties as payments of any kind received for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

The definition of royalties in the ZDDPO-1 appears to have a narrower scope than the definition in the Directive. The ZDDPO-1 does not include "payments for the use of, or the right to use, industrial, commercial or scientific equipment" in the definition of royalty payments.

On the basis of Art. 68 ZDDPO-1, lease payments are subject to withholding tax as Slovenian-source income. In general, some tax treaties in force between Slovenia and other EU Member States provide that the above-mentioned payments are subject to lower withholding tax rates in the source State (e.g. tax treaties with Slovakia, Greece, Latvia, Lithuania, Hungary, Spain, the Netherlands, Italy, United Kingdom and Germany). The tax treaties with Sweden and France provide that royalty payments are taxed in the State of residence. The other tax treaties (e.g. tax treaties with Austria, Poland, Portugal, Belgium, Czech, Denmark, Ireland, Luxembourg, Malta and Finland) do not treat payments for the use of, or the right to use, industrial, commercial or scientific equipment as royalty payments falling under Art. 12 OECD MC, but as business income falling under Art. 7 OECD MC.

b. Classification of revenue from leasing and software

Payments for the use or right to use industrial, commercial or scientific equipment are not included in the ZDDPO-1 as discussed in point 2.1.2. *a. Definition*. As described in 2.1.2. *a*

Definition, these payments are subject to withholding tax, unless otherwise provided for under the applicable tax treaty.

c. Exclusion of royalties reclassified as profit distribution or conflicting arm's length (Art. 4(1) a) and Art. 4(2))

Royalty payments, which are not at arm's length, cannot benefit from the withholding tax exemption.

The ZDDPO-1 does not reclassify excess royalty payments as profit distributions.

2.2. COMPANIES

2.2.1. Types of companies benefiting from implementing provisions (Art. 3(a)(i))

a. Other types of entities

The annex to the Regulation reproduces the same list of foreign companies as in the Annex to the Directive.

The Slovenian tax legislation does not explicitly list the Slovenian companies that are eligible to benefit from the exemption of withholding tax. However, all the Slovenian legal forms of companies (except the silent partnership, which is not a legal entity) are listed in the Annex to the Directive.

b. Hybrid entities

Art. 3 quarters (1) and (2) ZDDPO-1 provides that taxable persons are Slovenian and foreign legal entities. Moreover, non-resident associations that do not have legal personality and are not considered as taxable persons for individual income tax purposes are regarded as taxable persons for corporate income tax purposes.

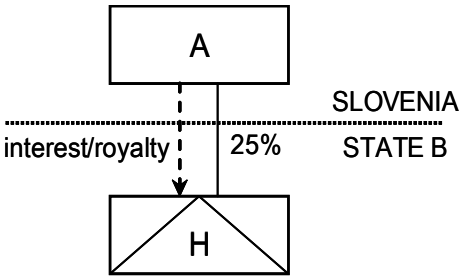
There are no further guidelines of the Ministry of Finance in order to determine when non-resident associations can be considered as taxable persons for corporate income tax purposes. However, the memorandum to the proposal of ZDDPO-1 explains that an association of persons without legal personality is considered as a taxable person for corporate income tax purposes as well (e.g. partnerships).

The issue of the tax treatment of payments in situations involving hybrid entities is considered based on three hypothetical situations described below:

- Case 1: a Slovenian company pays interest and royalties to an associated hybrid entity H located in Member State B;
- Case 2: a Slovenian entity H pays interest and royalties to an associated company in Member State A;
- Case 3: a Slovenian company pays interest and royalties to an associated company through a hybrid entity H, the latter two located in Member State A.

Case 1: Payment to a hybrid entity

A Slovenian company A pays interest and royalties to a hybrid entity H situated in Member State B. Slovenia treats hybrid entities (e.g. partnership) H as non-transparent entities.



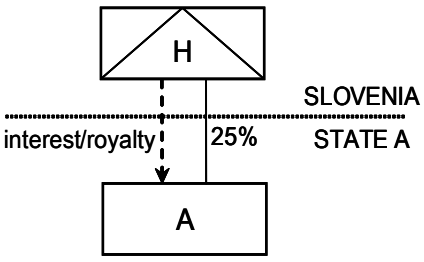
Art. 70 quarter (1) ZDDPO-1 requires, in order to benefit from the withholding tax exemption, that the receiving EU associated company must:

a) have one of the legal forms listed in the annex to the Regulation;
b) in accordance with the tax law of a Member State is considered to be resident in that Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the Community; and
c) be subject to the corporate income tax, listed in the annex to the Regulation, without being exempt.

The benefit of the withholding tax exemption on interest and royalty income paid by the Slovenian associated company will not be granted if company H is not subject to corporate income tax. For this reason, the withholding tax exemption under the Directive is most likely to be denied in situations where the payment is made to a hybrid entity, which is not subject to corporate income tax in its state of residence.

Case 2: Payment from a hybrid entity

A hybrid entity H in Slovenia pays interest or royalties to an associated company A in Member State A.

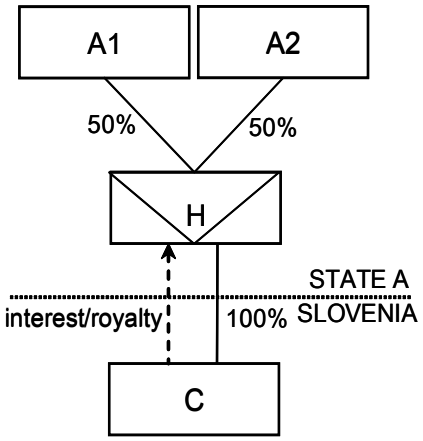


All Slovenian legal forms of companies are subject to corporate income tax at the level of the company. Consequently, interest or royalty payments from Slovenian unlimited partnerships (*družba z neomejeno odgovornostjo*) and limited partnerships (*komanditna družba*), may benefit from withholding tax exemption if the other conditions are met.

For the determination of associated companies see 2.2.4. Associated company.

Case 3: Payment through a hybrid entity

Companies A1 and A2 are the members of the hybrid entity H, all located in Member State A. The hybrid entity H holds all the shares in company C, located in Slovenia. Company A1 grants a loan to the hybrid entity H and the hybrid entity H grants a loan to the company C. Interest flows from the company C to a member A1 through the hybrid entity H.



Art. 70 quarter (1) point 2 ZDDPO-1 provides that a direct participation should be held in the associated company or companies. Consequently, the conditions for withholding tax exemption must be met at the level of the associated companies, in the case at hand, at the level of the company H and C.

The benefit of withholding tax exemption on interest paid by a Slovenian associated company will not be granted if company H is not subject to corporate income tax on its income. For this reason, the withholding tax exemption under the Directive is most likely to be denied in situations where the payment is made through a hybrid entity.

2.2.2. Residence requirement (Art. 3(a)(ii))

a. Implementation of the requirement

Art. 70 quarter (1), point 4 ZDDPO-1 provides that the payer or the beneficial owner should be a resident for tax purposes in the respective Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the Community.

The wording of the provision could lead to the conclusion that it is sufficient, if one of the associated companies (the payer or the beneficial owner) meets the residence requirement. However, Art. 360 quarter (2) ZDavP-1 provides that the payer has to submit evidence of the beneficial owner's residence for tax purposes (see 3.3.1. General).

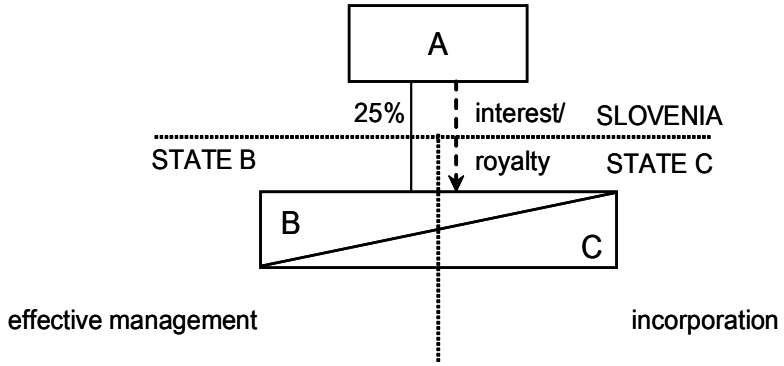
b. Application of the requirement in dual residence cases

There are no specific guidelines with respect to the application of the exemption from withholding tax when interest or royalties are paid to or received from dual resident companies. The conclusions on the tax treatment of such payments are drawn on the basis of general implementing provisions of the ZDDPO-1. The issue of tax treatment of payments in situations involving dual residency is considered based on three situations described below:

- Case 1: a Slovenian associated company A makes an interest or royalty payment to a dual resident company BC incorporated in Member State C but with its effective management in State B;
- Case 2: a dual resident company BC incorporated in Member State C but with its effective management in Slovenia makes an interest or royalty payment to an associated company A resident in Member State A;
- Case 3: a dual resident company BC incorporated in Slovenia but with its effective management in State C makes an interest or royalty payment to an associated company A located in Member State A.

Case 1: Payment to a dual resident

A Slovenian company A makes an interest or royalty payment to an associated dual resident company BC incorporated in Member State C but with its effective management in Member State B.



Slovenian law requires the receiving EU associated company to meet, inter alia, the following conditions (Art. 70 quarter (1) point 4 ZDDPO-1):

a) have one of the legal forms listed in the annex to the Regulation;
b) in accordance with the tax law of a Member State is considered to be resident in that Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the Community; and

c) be liable to one of the corporate income tax, listed in the annex to the Regulation, without being exempt.

In addition, Art. 13 quarter (4) Regulation provides that as a corporate income tax is meant a tax in the State, where the payer or the beneficial owner is the resident for tax purposes.

In the case at hand, company BC meets requirements (a) and (b), since it takes the legal form of a company of Member State C listed in the annex to the Regulation. The company BC is also not, within the meaning of tax treaties concluded with third states, considered to be resident for tax purposes outside the Community.

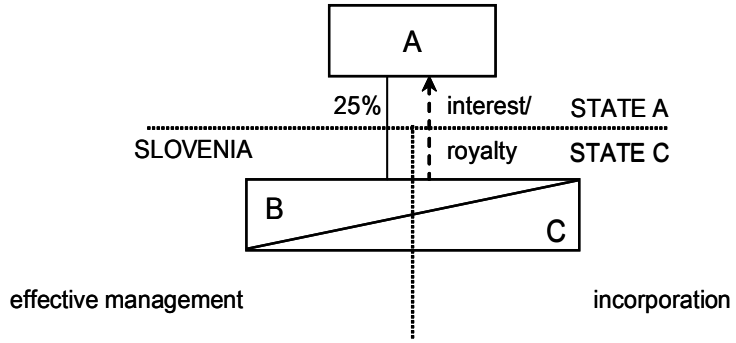
In respect of (c), generally, the company BC might be subject to corporate income tax in Member State B and in Member State C under the domestic tax law of Member State B and Member State C, respectively. The issue of dual residence of the recipient dual company will be solved under the provisions of the tax treaty between Member States B and C.

Assuming that the tax treaty between B and C is identical to the OECD MC, the company BC will be considered resident for treaty purposes in Member State B where its effective management is located (Art. 4 (3) of the OECD MC). Consequently, the company BC is considered a resident of Member State B and also liable to corporate income tax in a Member State B.

In this situation, Slovenia should grant the withholding tax exemption in respect of the payment made to the dual resident company BC, provided that also the other conditions for withholding tax exemption are met.

Case 2: Payment by a dual resident with the place of management in Slovenia

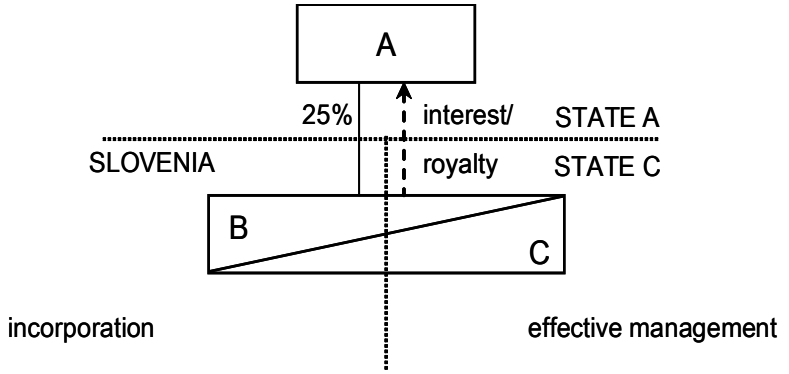
A dual resident company BC incorporated in Member State C but with its effective management in Slovenia makes an interest or royalty payment to an associated company A resident in Member State A.



The law explicitly does not provide any requirements, which should be met by the payer of interest or royalties. However, in the case at hand it could be argued that the company BC should have a form, listed in the annex to the Regulation.

Case 3: Payment by a dual resident with the place of incorporation in Slovenia

A dual resident company BC incorporated in Slovenia but with its effective management in State C makes an interest or royalty payment to an associated company A located in Member State A.



Under the Slovenian implementing provisions, the withholding tax exemption is not restricted to payments made by Slovenian companies listed in the Annex to the Directive. The law does not explicitly describe any requirements, which should be met by the payer of interest or royalties for benefiting from the withholding tax exemption.

However, in order to determine whether a withholding tax applies under general rules, it is necessary to consider the situation of company BC for Slovenia-State C tax treaty purposes in respect of the residence of the Slovenian incorporated company.

Assuming that the tax treaty between Slovenia and Member State C follows the OECD MC, the tie-breaker rule under Art. 4 (3) of the tax treaty between Slovenia and Member State C will designate Member State C, where the effective management is located, as the country of residence for tax treaty purposes. The interest or royalty payment will be deemed to arise in Member State C, so that Slovenia will be prevented from applying a withholding tax, unless the interest deduction is attributable to a permanent establishment in Slovenia.

Where the interest payment is attributable to a permanent establishment in Slovenia, Slovenia will have to apply the withholding tax exemption under the Slovenian rules implementing the Directive (Art. 70 ZDDPO-1) in respect of the interest and royalties paid by the Slovenian permanent establishment to an associated company A in Member State A.

2.2.3. Subject-to-tax requirement (Art. 3(a)(iii))

a. General

According to Art. 70 quarter (1) point 4. c) ZDDPO-1 the payer or the beneficial owner must be subject to one of taxes, listed in the Regulation, without being exempt.

The wording of the provision could lead to the conclusion that it is sufficient, if one of the associated companies (the payer or the beneficial owner) meets the subject-to-tax requirement. However, for obtaining a withholding tax exemption the payer has to submit evidence of the beneficial owner's residence for tax purposes, as it is prescribed by ZDavP-1 (see 3.3.1. General).

The ZDDPO-1 does not require that the interest or royalty incomes are actually subject to tax (objective requirement). It is sufficient, that the beneficial owner is subject to tax in general (subjective requirement).

b. Proof to demonstrate compliance with the subject-to tax requirement

The proof that the beneficial owner meets the subject-to-tax requirement should be submitted by the payer of the interest or royalties to the competent tax authorities before the payment is made (Art. 360 quarter (2) ZDavP-1, see 3.3. Decision on application of the relief). The certificate has to be issued by the local tax authorities of the beneficial owner of interest or royalties.

c. Application of the requirement to hybrid entities

In the case when a hybrid entity is not subject to corporate income tax listed in the annex to the Regulation, the withholding tax exemption does not apply. When a hybrid entity is subject to corporate income tax in its state of residence for tax purposes, the proof that the beneficial owner meets the subject-to-tax requirement should be submitted (see 2.2.3. *b. Proof to demonstrate compliance with the subject-to-tax requirement*).

2.2.4. Associated company (Art. 3(b))

Under Art. 70 quarter 2, point 2 ZDDPO-1, two companies are "associated companies" if:

(i) the payer has a direct minimum holding of 25% in the capital of the beneficial owner; or
(ii) the beneficial owner has a direct minimum holding of 25% in the capital of the payer; or
(iii) a third EU company has a direct minimum holding of 25% in the capital of the paying and beneficiary companies.

The holding must involve only companies from EU Member States and must have been held for at least two years (see 3.1. Minimum holding period).

Slovenia applies a threshold that is identical to the threshold mentioned in the Directive. There is no extension to situations of indirect participation. The criterion “holding of capital” is the only criterion to determine associated companies. The holding of voting rights is therefore not relevant.

There are no guidelines with respect to the interpretation of the definition “holding in the capital”. In practice, holding in the capital is interpreted as a holding of the issued capital.

Although Slovenian partnership companies (i.e. “*družba z neomejeno odgovornostjo*” and “*komanditna družba*”) are listed in the Annex to the Directive, it is not clear how the associated companies are determined in such cases, since there is no holding of issued capital and the criterion “holding of voting rights” is not transposed into Slovenian tax legislation.

2.2.5. Beneficial ownership (Art. 1(4))

Art. 70 quarter 4 ZDDPO-1 requires that the beneficial owner should receive the interest and royalty payments for its own benefit. An intermediary, such as an agent, trustee or authorised signatory is not considered a beneficial owner.

There are no guidelines issued with respect to the interpretation of beneficial ownership. Since the withholding tax on interest and royalty payments was introduced on 1 January 2005 (see 1.1. General information on the implementation of the Directive) there is no relevant case-law at the moment that covers the interpretation of the term “beneficial ownership”.

2.3. PERMANENT ESTABLISHMENTS

2.3.1. Definition (Art. 3(c))

The Slovenian legislator did not provide a definition of a permanent establishment for the purpose of the implementation of the Directive. However, Arts. 6 and 7 ZDDPO-1 provide a general definition of a permanent establishment.

A permanent establishment is defined as a place of business through which the business of non-resident is wholly or partially carried on. This definition generally includes offices, branches, factories, and workshops. A building site, construction or installation project could be a permanent establishment, if they last for more than 6 months.

A permanent establishment is also deemed to exist in the following cases:

- if the supply of services, including consultancy or management services, continues for more than 90 days in any period of 12 consecutive months;
- dependant agent of a non-resident; and
- if an independent agent wholly or mainly acts on behalf of a non-resident and their relation differs from the relation between unrelated parties.

Art. 7 ZDDPO-1 provides exceptions from the general definition of a permanent establishment. Amongst others, a permanent establishment does not exist in case a place of business is maintained only for the purpose of preparatory or auxiliary activities for the non-resident itself.

2.3.2. Application of source rules (Art. 1(2))

At this moment, we are not aware of any cases in which Slovenia as a source state would have interpreted Art. 3 (c) of the Directive more narrowly than Art. 5 of the OECD MC and as a consequence would have imposed withholding tax on interest or royalty payments from its sources to an associated company in another Member State.

2.3.3. 'Tax-deductible expense' requirement (Art. 1(3))

At this moment, we are not aware of any cases where Slovenia or another Member State have refused to recognize the payment as a tax-deductible expense, because it would consider that the expense is not attributable to the permanent establishment.

2.3.4. Beneficial ownership (Art. 1(5))

Art. 70 quarter (5) ZDDPO-1 provides that a permanent establishment is considered as the beneficial owner of interest or royalties if:

(i) the debt-claim, right or use of information in respect of which interest or royalty payments arise is effectively connected with that permanent establishment; and

(ii) the interest or royalty payments represent income in respect of which that permanent establishment is in the Member State in which it is situated subject to one of the taxes, listed in the annex to the Regulation, whereas a company, which is tax exempt is not considered subject to tax.

There are no further explanations from the tax authorities, regarding the rationale for adding to the act the phrase “whereas a company which is tax exempt is not considered subject to tax" with respect to situations where a permanent establishment is involved.

The interpretation of the requirement that the debt claim, right or use of information has to be effectively connected with the permanent establishment, has not been clarified by the Ministry of Finance. In our view, there must be a genuine economic link between the debt claim or licence from which the interest or royalty arises and the permanent establishment. According to the OECD Commentary to Arts. 11 and 12 of OECD MC the effectively connected test is met when the debt-claims or intangible assets form a part of the assets of the permanent establishment or it is “otherwise effectively connected” with that permanent establishment. It is more likely, that the effectively connected requirement is met at least where the debt claim or intangible assets are part of the business assets of the permanent establishment.

In order to benefit from the withholding tax exemption, the permanent establishment must be effectively subject to tax on the interest or royalty income (objective “subject-to-tax” requirement).

2.3.5. Permanent establishment in a third country (Art. 1(8))

Art. 70 quarter (7) ZDDPO-1 provides that the exemption from withholding tax based on the Directive does not apply where interest or royalties are paid by or to a permanent establishment situated in a third state of a company of a Member State and the business of the company is wholly or partly carried on through that permanent establishment.

3. PROCEDURE

In order to benefit from the withholding tax exemption, the payer and the recipient of the interest or royalties have to be associated companies for at least two years (see 2.2.4. Associated company). If the conditions for the withholding tax exemption are met, the exemption can be applied at source or through a refund procedure. To benefit from the withholding tax exemption at source, the payer has to obtain a decision of the tax authorities before the payments are made.

3.1. MINIMUM HOLDING PERIOD (ART. 1(10))

3.1.1. General

The Slovenian legislator implemented the option of not granting the withholding tax exemption if the 24 months holding period has not lapsed at the time of payment of the interest or royalty.

According to Art. 70 quarter (1) point 3 ZDDPO-1, the minimum holding in the capital has to be maintained for a period of at least 24 months. This requirement has to be fulfilled at the time of payment, as it is stated in the Art. 70 quarter (1) ZDDPO-1.

The law does not explicitly prescribe that the 24 months holding period should be held for an uninterrupted period of time. There are no guidelines, which clarify this issue.

3.1.2. Relief before the holding period requirement is satisfied

No relief will be granted before the holding period requirement is satisfied (see 3.1.1. General). It is not possible to obtain a refund of withholding tax paid before the end of the minimum holding period, after the holding period elapses.

3.1.3. Appeals

If the tax authorities deny a withholding tax exemption on the basis of non-compliance of the holding period requirement, the taxpayer can file an appeal against the decision of tax authorities. The appeal procedure is equal to the normal one, i.e. the appeal must be filed within 15 days following the receipt of the decision from tax authorities. The appeal should be filed with the tax authorities competent for the paying company.

3.2. ATTESTATION (ART. 1(11) AND 1(13))

Slovenia does not require submitting an attestation in order to benefit from the withholding tax exemption.

3.3. DECISION ON APPLICATION OF THE RELIEF (ART. 1(12))

3.3.1. General

The Slovenian law implementing the Directive provides that the payer must obtain a decision (authorisation) stating that application of the withholding tax exemption is allowed.

In order to obtain a decision (authorisation), the payer has to submit an application to the competent tax office (Art. 360 quarter (1) ZDavP-1). According to Art. 360 quarter (3) ZDavP-1 the application has to be filed for each interest or royalty payment. Proofs, attached to the application, are valid for one year from the date of issue.

The payer has to submit the following documentation (Art. 360 quarter (2) ZDavP-1):

- proof of residence for tax purposes of the receiving company or of existence of permanent establishment (i.e. certificate issued by the tax authorities of the Member State in which the receiving company is resident for tax purposes or in which the permanent establishment is situated);
- proof of beneficial ownership of the recipient company or of the fulfillment of the requirements “effectively connected” and “subject-to-tax” for permanent establishment (see 2.3.4. Beneficial ownership);
- proof of the fulfillment of the condition “subject-to-tax” requirement of the recipient company (see 2.2.3. Subject-to-tax requirement);
- proof of holding requirement and holding period (see 2.2.4. Associated company and 3.1.1. General);
- specification of the amount of interest or royalty payments and the method used to calculate these payments, if the interest or royalty payments are or could be in conflict with the arm’s length principle (see 2.1.1. Exclusion of interest reclassified as profit distribution or conflicting arm’s length and 2.1.2. Exclusion of royalties reclassified as profit distribution or conflicting arm’s length); and
- the legal basis for the payment (contract).

Art. 70 quarter (10) ZDDPO-1 prescribes that the benefit from withholding tax exemption can be granted on the basis of the decision (authorisation) of the tax authorities. Therefore, the authorisation has to be obtained before the actual payment of interest or royalties takes place. The authorisation is valid for one year after the date of issuing.

After the complete application has been filed, the tax authorities have to issue the decision within 3 months.

3.3.2. Supporting documents

Art. 360 quarter (2) ZDavP-1 provides that the payer has to submit the specification of the amount of interest or royalty payments and the method used to calculate these payments, if the interest or royalty payments are or could be in conflict with the arm’s length principle (see 3.3.1. General). The other requested supporting information is identical to the provision of the Directive.

3.3.3. Appeals

The appeal procedure is equal to the normal one (see 3.1.3. Appeals).

3.4. APPLICATION FOR REFUND (ART. 1(15) AND 1(16))

Slovenia applies the system of exemption at source as well as the system of refund procedure.

3.4.1. General

Art. 360 quarter (6) ZDavP-1 provides that a refund application for the tax withheld at source can be submitted by the recipient if the conditions for withholding tax exemption were met at the time of payment. The tax authorities may request to submit the information, specified in 3.3.1. General. The refund should be requested within 5 years after 1 January following the year, in which the tax has been withheld.

If the tax authorities positively decide on the request for refund, they have to repay the tax withheld within one year following the receipt of the application and submission of the supporting information reasonably requested by the tax authorities. If the tax is not refunded within that period, the receiving company or permanent establishment is entitled to payment of interest at the general interest rate for late payment of taxes (Art. 360 quarter (7) ZDavP-1). The interest rate for late payment of taxes is fixed at 0.04247 % per day, as determined in Art. 31 ZDavP-1. The amendments of ZDavP-1, which will enter into in force from 1 January 2006 further, provided that the interest rate for late payments is fixed at 0.02986 % per day (Art. 15 quarter (1) ZDavP-1B).

There is no clear information on the average time-period within which such refunds are made by the tax authorities. However, in other cases, where refund procedures take place, the average refund time is between 1 and 3 months.

3.4.2. Appeals

The appeal procedure is equal to the normal one (see 3.1.3. Appeals).

4. FRAUD AND ABUSE (Art. 5)

With respect to preventing fraud or abuse of the provision of the Directive only general anti-abuse provisions are applicable (see 4.1. Measures under Art. 5(1) of the Directive, below). The Slovenian legislator has not introduced any specific measures as included in Art. 5(2) of the Directive.

4.1. MEASURES UNDER ART. 5(1) OF THE DIRECTIVE

4.1.1. Domestic

The Slovenian tax authorities may challenge abusive constructions by applying the abuse of law provisions of Art. 7 ZDavP-1. This provision contains a general substance-over-form rule allowing to disregard the formal structure of a particular transaction and to take into account its substance. According to Art. 7 quarter (5) ZDavP-1 fictitious transactions are not taken into account for tax purposes.

If a legal transaction is invalid or constitutes a breach of law, this transaction is not taken into account for tax purposes, i.e. the economic consequences of such transactions are not taken into account (Art. 7 quarters (3) and (4) ZDavP-1).

Since the abuse of law provisions were introduced on 1 January 2005, there is no relevant case-law yet with respect to interpretation of these rules.

4.1.2. Agreement-based

Certain tax treaties concluded between Slovenia and certain Member States contain anti-abuse provisions. It is not clear whether the tax authorities will apply such anti-abuse provisions to transactions covered by the Directive.

4.2. MEASURES UNDER ART. 5(2) OF THE DIRECTIVE

The Slovenian legislator did not implement any specific anti-abuse provision with the purpose to deny the relief under the Directive pursuant to Art. 5(2). Instead, the general domestic provisions may be applied (see 4.1.1. Domestic).

4.3. COMPARISON WITH SIMILAR MEASURES UNDER PARENT-SUBSIDIARY AND MERGER DIRECTIVES

Also when transposing Parent-Subsidiary and Merger Directives into Slovenian law the Slovenian legislator did not implement any specific anti-abuse provision.

5. SUMMARY

Slovenia generally implemented the provisions of the Directive.

Objective scope

In general, Slovenia implemented the definition of interest and royalty income set out in Art. 2 of the Directive.

The definition of royalties does not include payments for “the use of, or the right to use, industrial, commercial or scientific equipment”.

Excess interest paid in conflict with the maximum interest rate (acknowledged interest rate) rule and excess royalties paid in conflict with the arm’s length principle, do not benefit from the withholding tax exemption. The acknowledged interest rate for cross-border loans is based on the interest rate of German government securities (BUND).

Subjective scope

Slovenia generally implemented the provisions laid down in Art. 3 (a) (i) of the Directive. Slovenia requires a direct shareholding as mentioned in Art. 3 (b) of the Directive. The tax authorities may deny the application of the withholding tax exemption for payments through a hybrid entity on the grounds that the subject-to-tax requirement is not met.

The Slovenian tax legislation does not provide any requirements for the company acting as a payer in order to apply the withholding tax exemption, except that it must have one of the legal forms listed in the Annex to the Directive.

The associated companies are determined only on the basis of the capital requirement. It is not clear how the associated companies are determined when payments are made by Slovenian partnerships such as “družba z neomejeno odgovornostjo” (unlimited partnership) and “komanditna družba” (limited partnership).

The general definition of permanent establishment is also applicable for the provisions implementing the Directive. Slovenia adopted an objective subject-to-tax requirement for permanent establishments.

Procedure

Slovenia adopted the system of withholding tax exemption at source, by means of decisions (authorisation). The requirements under Slovenian law generally follow the provisions of the Directive. The beneficiary of the payment cannot benefit from the withholding tax exemption before the completion of the 2-year holding period. In addition, Slovenian law provides a refund procedure in case the conditions for the withholding tax exemption were met at the time of payment, but the exemption was not applied at source.

Fraud and abuse

Slovenia will most certainly apply its domestic and tax treaty-based anti-abuse provisions, but this approach requires further clarifications from the tax authorities. Slovenia has not adopted any special anti-abuse provision with respect to the implementation of the Directive.

PART II. THE AGREEMENT

At the moment no further legislation or other regulatory measures concerning the ratification or interpretation of Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (the "Agreement") or its Memorandum of Understanding has been issued in Slovenia.

Under the Slovenia - Switzerland tax treaty, signed on 12 June 1996, interest and royalties are subject to 5% withholding tax (Art. 11(2) and 12(2) respectively). In addition, if the royalties or interest are derived through a permanent establishment which the Swiss company maintains in Slovenia, the income is included in the taxable profits of the permanent establishment and is subject to corporate income tax under the standard rules (Arts. 11(5) and 12(4)).

ANNEX

Table of maximum withholding tax rates on interest and royalty payments under the tax treaties between Slovenia and other EU Member States.

EU Member State	Interest (%)	Royalties (%)
Austria	5	0/10 <1>
Belgium	10	5
Czech Republic	5	10
Cyprus	10	10
Denmark	5	5
Estonia <2>	10	10
Finland	5	5
France	0	0
Germany	0	10
Greece	10	10
Hungary	0	10
Ireland	5	5
Italy	10	10
Latvia	10	10
Lithuania	10	10
Luxembourg	5	5
Malta	5	5
Netherlands	0	10
Poland	10	10
Portugal	10	5
Slovak Republic	10	10
Spain	5	5
Sweden	0	0
United Kingdom	10	10

<1> The 10% rate applies if the Austrian company holds directly at least 25% of the capital in the Slovenian company.
<2> The tax treaty has been signed on 13 September 2005, but it is not effective yet.

UPDATE FOR SLOVENIA

In order to ensure that the formal procedures for applying a withholding tax exemption for interest and royalty payments under the Agreement are met, the recently introduced Art. 106 ZDavP-1B states that the provisions of Art. 360 ZDavP-1 (see 3. Procedure) are applicable to interest and royalty payments under the Agreement. Art. 106 ZdavP-1B is effective as of 1 January 2006. Consequently, the procedure of application of the exemptions under the Agreement is identical to that under the Directive.