



## Tax&Legal Highlights

### Estonia

#### Amendments to Income Tax Law related to intra-group loans

The Estonian government's plan to introduce corporate income tax on outgoing loans (so-called pledge tax) was rejected by the parliament. Instead, alternative amendments to the Estonian Income Tax Act were adopted by the Estonian Parliament on 19 June 2017 and the Estonian President announced the Law on 29 June 2017. In accordance with the amended law, the Estonian Tax authority will have the right to tax the loans granted by Estonian companies to their parent or sister companies, in case the loan conditions indicate that in substance the loan may be a hidden profit distribution.

#### Are you ready for the new General Data Protection Regulation?

The new EU General Data Protection Regulation (GDPR) is coming into effect next year in May, bringing along a number of new obligations for data processors. It is important to bear in mind that GDPR affects absolutely every company, which is dealing with processing of personal data in its everyday business – be it the clients' data or even the data of its own employees. It is also crucial to note that GDPR does not merely concern the companies established in the EU, but also those that process data in the EU – for example, offer their products or services on the EU market.

**GDPR brings along the following changes:**

1. Stricter consent requirements - the person's consent for processing of his or her personal data is valid only if it has been given in a voluntary, specific, conscious and unequivocal way, in a form of a statement, confirmation or other consent-expressing deed.

2. Right to the erasure of data („the right to be forgotten“) – the new Regulation gives person a clear basis to request the data processors to erase all the data concerning said person that they have collected.

3. Special rules with regard to personal data of minors – if a person is younger than 16 years old, then in addition to his or her consent, the consent of the parent or trustee is required. In Estonia, the lowest age limit of 13 years will most likely be applied.

4. Obligation to nominate a Data Protection Officer, if a company is one of the following:

- public sector company;
- processing large amounts of data (i.e. the data of at least 5000 persons per year);
- processing special categories of data;
- employing 250 or more workers.

5. Right to data portability from one service provider to another - a service provider must be able to provide a person with his data in a structured, commonly used and machine-readable format, in order for this data to be transferred to another service provider.

6. Obligation to maintain a record of processing activities - each company shall maintain a record of all categories of personal data processing activities and preserve such records.

7. Obligation to notify about the data breaches – the Data Protection Inspectorate must be notified of incidents within 72 hours. In certain cases, the data subjects must also be notified.

8. Obligation to conduct data protection impact assessments - Where a type of processing (e.g. using new technologies) is likely to result in a high risk, the company shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. 9. Sanctions up to 20 000 000 EUR or 4% of the total worldwide annual company's turnover of the preceding financial year - whichever is higher.

**Deloitte has a comprehensive international experience in the field of data protection and is able to help bring the internal processes of your company in compliance with GDPR requirements. We are pleased to offer you the following services:**

1. GDPR maturity assessment – whilst conducting the compliance assessment we provide you with an evaluation of whether the internal processes in your company are in compliance with GDPR requirements, including whether the data protection measures that have been implemented so far ensure the appropriate level of security and identify the security gaps.

2. Drafting and reviewing data protection policies – we will help you review and amend the existing data protection policies or draft the new ones. The documentation in scope could range from the design of data protection policies as such, to the review of in-house implementing procedures, guidelines, contracts, checklists and more.

3. Privacy Help Desk service – if your company does not have the in-house experience in the field of data protection, then Deloitte is able to offer you a “help desk” that, in principle, will efficiently answer any legal or practical questions you may have about data protection, ranging from issues around notification requirements through reviews of contractual clauses with your service providers or the identification of special requirements on a specific subject in a country.

4. Data protection impact assessments - if you are planning a new activity which involves the processing of personal data or want to change an existing one, then we can help you assess whether such initiative could entail a data protection risk and if yes, which would be the best way to address this right from the start of the project.

5. Assistance with communication with Data Protection Inspectorate – we identify relevant registration and/or notification requirements applicable to your company, designing the notification approach, drawing up and submitting the relevant notifications and if your company desires to do so, building a notifications maintenance program to ensure that notifications’ work is appropriately monitored and managed over time.

6. Data protection training – we organize a data protection training course for the management and/or employees of your company, during which we explain the GDPR requirements and how they affect your company, bearing in mind the specifics of your business.

**Deloitte Legal is the official advisor of the Estonian e-Residency team**

**The Republic of Estonia is the first country to offer e-Residency, a government issued digital identity that empowers entrepreneurs around the world to set up and run a location-independent business. Deloitte Legal is the official legal advisor to the Estonian e-Residency team. What is e-Residency? How does it work? What are the legal aspects to be aware of? How to take advantage of it? Find out from Merit Lind’s interview to LexisNexis, a global provider of legal research and analytics.**

**E-residency—how does it work?** (Head of Law Firm Deloitte Legal Merit Lind interviewed by Alex Heshmaty)

**What is e-residency and how does it work?**

E-residency is an Estonian government-issued digital identity, which anyone in the world can obtain. It is a digital identity, which gives its owner access to the online services provided by the Estonian Government as well as the private sector alongside the possibility to conclude transactions fast and conveniently by using legally binding digital signatures. A trust services provider ensures the identification, authentication and verification of the e-resident and its signatures on documents.

The main concept of e-residency is giving any person in the world the possibility to apply for a secure digital residency in Estonia without actually living there.

One can apply for e-residency online by filling in a form, adding a scan of a national passport and a photograph, and describing a reason for applying. The reasoning behind the application does not have a significant impact on whether e-residency will be issued or not. One also needs to pay a state fee of EUR 100 upon applying for e-residency. If granted, an e-resident smart ID card will be issued, which can be picked up at the nearest chosen Estonian embassy. After picking up the e-resident smart ID card the person is ready to use it to benefit from any of the required Estonian e-government or private sector online services.

### **What rights does it entail? Are there any immigration law benefits in being an e-resident?**

E-residency will effectively give people the opportunity to be part of Estonia, and for third-country residents an opportunity to be part of the EU, without actually living here. This is a significant development for entrepreneurs. For example, post-Brexit, by using Estonian e-residency, start-ups and other undertakings originating from the UK could consider creating a secondary establishment and thus set up as well as operate their businesses in Estonia to retain their operations in the EU internal market. Also, people from non-EU Member States can also establish and operate their businesses in the EU by using the Estonian e-residency card to set up their company in Estonia. Estonian e-residency as a tool effectively works as a gateway to the European Union for third-country residents.

The e-residency Dashboard reveals that the Finnish people have been the most active in applying for an Estonian e-residency amounting to 2,896 applicants, which makes up 15,33% of the total Estonian e-residents. However, people from Russia (7.63%), the US (5.89%) and Ukraine (5.76%) follow closely. The UK is on the fifth place in terms of where the applicants' come from with 999 UK originated applicants amounting to 5.29% of the total Estonian e-residents (data collected 19 April 2017).

With regard to immigration law, e-residency is neutral. It does not change the e-residents' actual residency, citizenship or right of entry to Estonia or the European Union. It is not a visa or residence permit. However, to facilitate the e-residency programme, a few changes were introduced to Estonian immigration law at the beginning of 2017. The aim of the amendments was to facilitate and simplify the temporary stay, residence and employment of talented and entrepreneurial people in Estonia. From the e-residency perspective, a few important amendments were the relieving of immigration rules for start-up entrepreneurs coming to Estonia and Estonian start-ups recruiting foreign labour as well as for large investors.

### **Does it apply to legal or natural persons (or both)?**

E-residency applies only to natural persons, however, in most cases e-residency is being applied for with the intention of setting up a company in Estonia. Nearly 1,500 new businesses have been established by e-residents and almost 3,000 companies are owned by e-residents.

### **Does it entail any EU passporting rights?**

To be clear, e-residency does not grant nor change its owner's citizenship, tax residency, residence or right of entry to Estonia or to the European Union. Therefore, it does not entail any EU passporting rights. However, setting up a company in Estonia online by an e-resident will grant this person access to the EU internal market.

### **How does it function in practice?**

E-residency allows people to establish and run a company online, have access to payment service providers, digitally sign documents (eg annual reports, contracts) within the company as well as with external partners, declare taxes online and much more (as indicated above). Several of the available digital services offered to e-residents have been listed on the e-Estonia website. It is important to understand the background and impact of each of these. For example, investing through crowd-lending platforms is easier after obtaining e-residency because digital signature capability guarantees conclusion of legally binding agreements online, regardless of the parties' location. Also, to declare the taxes of an Estonian company managed by an e-resident, one can take care of all the formalities online using Estonian e-government services.

### **What are the terms and conditions of digital residency?**

In order to be a suitable applicant a person must be at least 18 years old and not have been convicted of a criminal offence. For example, a person will be denied e-residency, if they have been involved in money laundering. The applicant should also have a reasonable interest in using public e-services in Estonia. An applicant for the e-residency, who comes in the form of an e-resident's digital identity card, cannot be a foreigner who is staying in Estonia on the basis of the International Military Co-operation Act or a person that is holding or applying for an Estonian identity card or residence permit card issued by the Estonian Police and Border Guard Board. One face-to-face meeting is required to collect the card from one of the chosen Estonian embassies and consulates or the Estonian Police and Border Guard Board service points.

### **Amendments to the Estonian Income Tax Law**

**Amendments to the Estonian Income Tax Law were adopted by the Estonian Parliament on 19 June 2017 and Estonian President has announced the Law on 29 June 2017. There are many different changes in the above mentioned law that make the employers' life easier when providing bonuses to the employees, on the other hand there are new income tax rates, as well as the imposed advance corporate income tax to credit institutions, not to mention additional anti-avoidance provisions related to loans issued to other group entities.**

### **Amendments, that will come into force on 1 August 2017:**

#### Amendments to fringe benefit taxation

- In case, where a personal car is being used for business purposes, the parking payments made during the course of performance of the professional duties can be reimbursed by the employer without any tax liability.
- The reimbursement of the accommodation expenses of the employee are exempt from fringe benefit taxes for the employer, in case, where the

need for accommodation is related to the business of the employer itself, the expenses are within the marginal rate established by law, the employee's home is at least 50 kilometers far from his place of work and the employee does not own any residential real estate, which would be located closer by. In Tallinn or Tartu the maximum expense per employer in one month shall not exceed EUR 200 and in other parts of Estonia EUR 100.

- The employer's expenses related to the employees' transportation will not be taxable as fringe benefits, in case the transportation by bus, in accordance with the Traffic Act is organized or if the employee lives at least 50 kilometers from the workplace.
- With regard to a person, who has been identified as having full or partial incapacity for work or who has a degree of disability, the expenses for the provision of aids to 50% of the amount of social tax paid during that year shall not be considered as fringe benefit.

#### Basic exemption deduction

A resident natural person has the right to deduct an additional basic exemption from the income tax period for a resident spouse of up to EUR 2160, if the taxable income of a resident natural person and his spouse does not exceed a total tax liability of EUR 50,400. The provision will be implemented retroactively as of 1 January 2017.

#### Changes in the taxation of the employees' share options.

The aim is to establish that the period between the issuance of the share option and its realization, in order to receive a fringe benefit, does not have to be 3 years, in case of the transfer of shares of the company or the death of the employee. This way the amount taxable as a fringe benefit would only be the part left from those three year. In case the option agreement is not digitally signed or notarized, the employer has to send the agreement to Estonian Tax and Customs Board within 5 working days.

#### **Amendments that will come into force on 1 January 2018:**

##### New CIT rates on regular profit distributions

Under the Income Tax Act, the CIT rate on regular profit distributions has been reduced from 20% to 14%. Dividends paid to natural persons will be subject to an additional 7% income tax withholding, if such dividends have been received from an Estonian company and are subject to a 14% CIT rate. The income tax rate for all amounts exceeding the last three years' average profit distributions will remain taxable at the regular 20% rate (technically, 20/80 on the top of net distributed dividend).

The first year, when the 14% rate will apply is going to be 2018 and the 14% will be applied as follows:

- 1) In 2019 to one third of 2018 taxable distributed profit
- 2) In 2020 to one third of the 2018 and 2019 taxable distributed profit combined.

Tax-exempt dividends received from subsidiaries will not be included in lower tax rate profit distribution calculations, as well as tax on hidden profit.

New Tax regime for credit institutions

•The resident credit institutions and the Estonian branches of the non-resident credit institutions shall have an obligation to pay the advance payments of income tax at the rate of 14% from the profits earned in the previous quarter. The advanced payments will have to be made by the 10th calendar day of the 3rd month of the ongoing quarter.

Increased burden for given loans within group entities.

•Instead of deposit income tax, the Parliament has adopted the additional reporting requirements, as well as the new requirements for taxpayers to prove that intra-group loans are not a hidden profit distribution. Loan agreements between related parties that involve transactions, where the main purpose is not to do business, but to avoid CIT (hidden profit shifting) are taxable. Loans with terms (or extensions) longer than 48 months raise an obligation for the taxpayer to prove (if the tax authority so insists) the payee's ability to pay such loan back and the intention to do so. The tax authority has to give 30 days to respond to such request. The obligation to (quarterly) declare given loans will affect the loans that have been issued or significantly changed after July 1, 2017.

New rules to calculate fringe benefit on company's car

•In case, where an employer is enabling an employee to use the company's car for personal purposes, it will now be possible to calculate the fringe benefit only on the kilowatt basis, regardless of the distance travelled. Also, an obligation to inform the Estonian Road Administration about using a certain car only for business purposes has been added.

Increased basic exemption

•Two formulas for the calculation of basic exemption deductible from a resident natural person's income have been introduced into the law:

1) If the income exceeds EUR 14 400, the amount of basic exemption is calculated according to the following formula:  $6000 - 6000/10\ 800 \times (\text{amount of income} - 14\ 400)$ . However, the tax-free income may not be less than zero.

2) The amount calculated, according to the following formula is calculated on the basis of the taxpayer's written application in the calendar month before deducting income tax from the resident natural person, which is calculated according to the following formula:  $500 - 500/900 \times (\text{payment} - 1200)$ . This amount cannot be less than zero. In his application the taxpayer may ask for a deduction of a smaller amount.

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