August 2022

Dividend advances with a deduction

I. Deduction of Estonian CIT possible with flat-rate tax on dividend advances

On 21 July 2022 the National Tax Administration issued yet another interpretation (number 0115-KDIT1.4011.297.2022.2.MR) that permits the deduction from the tax collected on the payment of a dividend advance of a portion of the flat-rate tax paid on corporate income, i.e. so-called Estonian CIT. Several similar interpretations were issued in July. It is therefore fair to assume that the tax authorities have adopted a uniform and consistent line of interpretation on this matter.

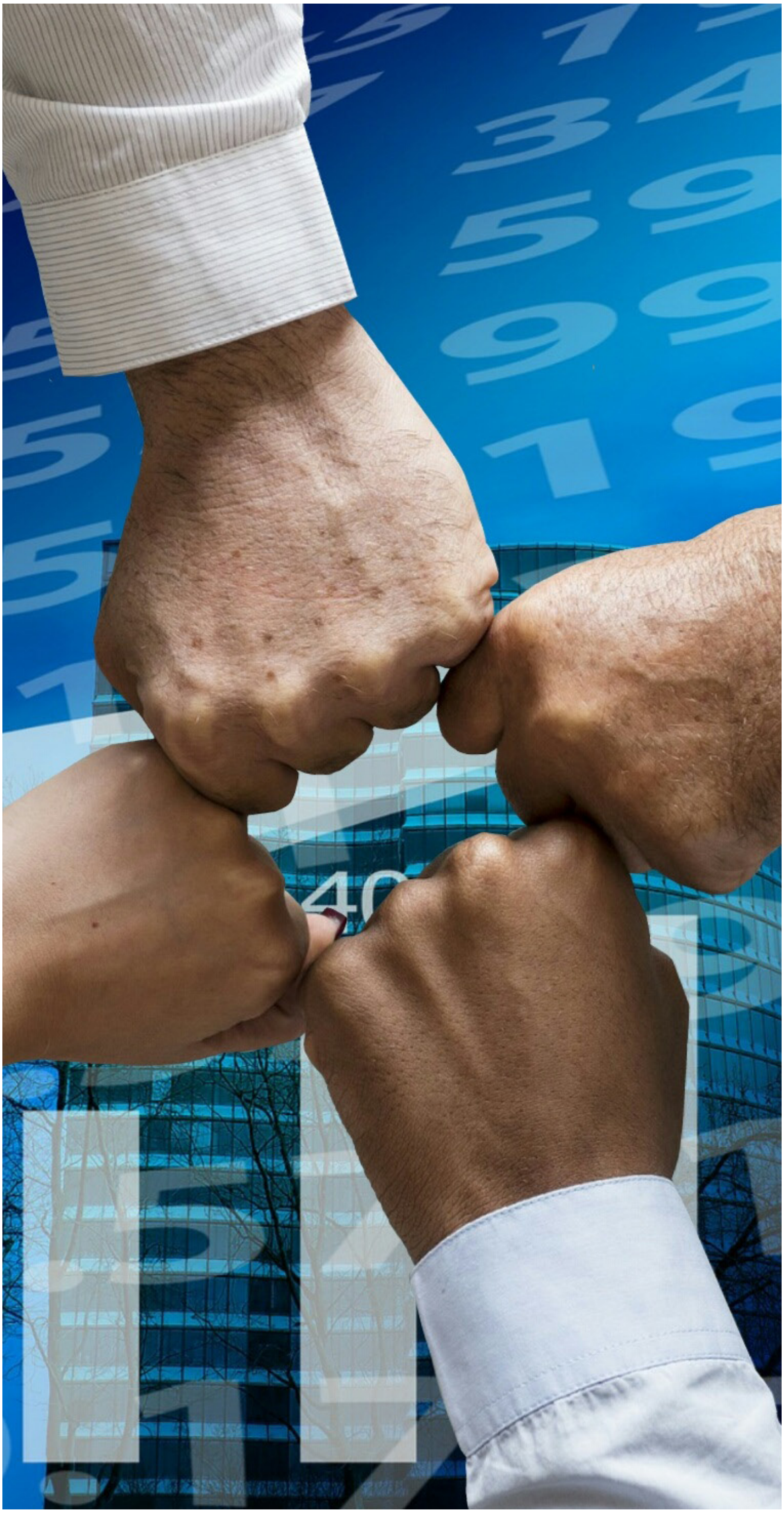
II. Income only if there is a definitive gain

Taxable income includes only income that is permanent, definitive and unconditional at any given time. It will not, therefore, be just any income, but income that will constitute a permanent material gain. Thus as a general rule, the inclusion of a given material gain in taxable income is determined by the definitive nature of the gain in the sense that it actually increases the taxable person's assets in a definitive manner (such that he can dispose of them as owner).

Where an advance is paid out towards a future dividend, the company, as the tax remitter, should withhold and pay 19% flat-rate personal income tax and at the same time apply a reduction by the relevant coefficient related to taking into account the Estonian CIT paid by the company.

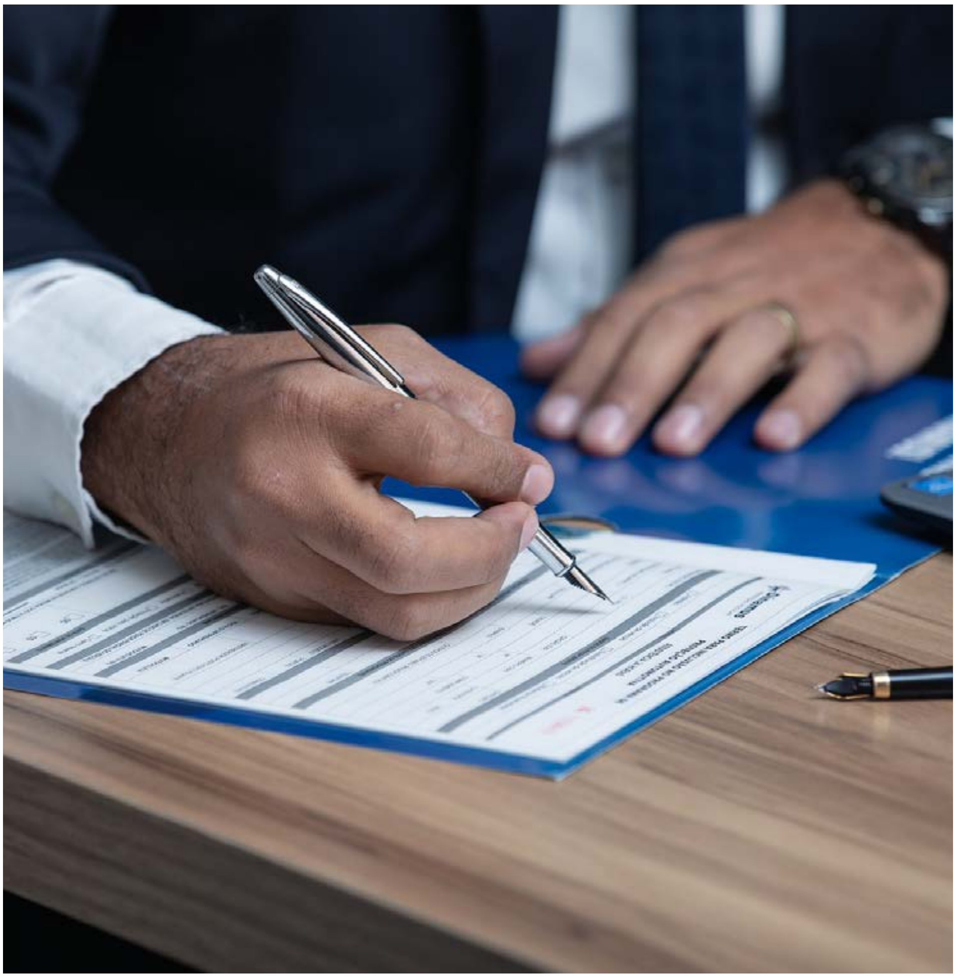
III. Payment of advance towards a dividend results in income

Sources of income include financial capital and property rights. The examples of income (revenues) from shares of profits of legal entities listed by the lawmakers do not include payments of advances towards dividends or towards profits. Nevertheless, the payment of such amounts to a shareholder (including a partner in a limited partnership with its registered office or management in the territory of the Republic of Poland) is treated as an actual receipt of income from a share of the profits of that partnership. Thus, the payment of an advance on a share of the company's profits gives rise to income from capital gains.



IV. Partner's flat-rate tax reduced by portion of Estonian CIT

Dividends and other income from shares of profits of legal entities are subject to 19% flat-rate income tax. This tax may, on certain conditions, be reduced by 90% (when the rate is 10%, i.e. for small taxable persons) or 70% (when the rate is 20%, i.e. for all other taxable persons) of the amount corresponding to the product of the shareholder's share of the company's profit calculated as at the date of his acquisition of the right to the share of distributed profits, and the flat-rate tax on corporate income due on the company's distributed profit from which that income was derived.



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V. Advances towards future dividends constitute income from distributed profit

The literal wording of the regulations indicates that the resulting preference (reduction) may only be applied when a company subject to flat-rate taxation earns so-called income from distributed profits. In this context, the National Tax Administration Director pointed out that the tax explanations presented in the “Guide to Flat-Rate Tax on Corporate Income” of 23 December 2023 indicate that: advances paid towards an anticipated dividend are considered income from distributed profit. In consequence, the term amounts due (payments) from distributed profits also includes advances towards future dividends (advances towards shares of profits).

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.