

Example of the use of anti-abuse clauses

To help taxpayers, the tax authority and courts, the authors of the bill have added examples to the explanatory memorandum of the Income Tax Act of situations which could be taxed in Estonia in the future in light of the change in the way of thinking of international taxation described above.

For example, the provisions can be applied in a situation where royalties are paid from Estonia to a company resident in country A. Tax treaty reduces the rate of the tax to be withheld under the Income Tax Act. After some investigation, it turns out that the company of country A is a link between residents of Estonia and country B to reduce the income tax to be withheld. There is no valid tax treaty between Estonia and country B. In such a case, based on the general anti-abuse provision, it is possible to refuse to apply the contract of country A, and income tax must be withheld from the royalties at the usual rate under the Income Tax Act.

It is important to emphasise that, based on both § 84 of the Taxation Act and the Income Tax Act, **no transaction is taxed, the purpose of which is not to obtain a tax advantage.**

For example, companies will continue to have every opportunity to pay and receive royalties, and natural persons will continue to be able to use their assets in any way to generate income as a private person, self-employed person (in Estonian *füüsilisest isikust ettevõtja*, FIE) or through a company. The amendment to the Income Tax Act will only eliminate the tax advantages of those taxpayers who knowingly create schemes to receive tax advantages that are not meant for them.

Last updated on 08.01.2025