**Study on Aggressive Tax Planning**

*Specific contract No13 under FWC TAXUD/2012/CC116*

**Appendix 1 - Questionnaire to national experts**

**Filled in for Denmark**





**QUESTIONNAIRE**

**DENMARK**

## Abbreviations

**ABL** = Aktieavancebeskatningsloven (Act on Taxation of Capital Gains on Sale of Shares)

**AFL** = Afskrivningsloven (The Act on Depreciation Allowances)

**KSL** = Kildeskatteloven (The Act on Taxation at Source)

**LL** = Ligningsloven (Tax Assesment Act)

**SEL** = Selskabsskatteloven (Corporate Tax Act)

**SFL** = Skatteforvaltningsloven (Tax Administration Act)

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| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 23.5 %.  (As of 2016, the CIT-rate will be 22 %) |
| 1. Some states offer special offshore tax regimes, providing for corporate tax-exemption of certain mobile income types (e.g. royalty) from abroad. Does your MS offer such a tax regime? If yes, please briefly explain, including the conditions to be met. | No. (There is a special tax exempt regime for collective investment vehicles under SEL § 3(1)(9) but it is considered unsuitable for international tax planning.) |
| *Dividends received* | |
| 1. Is it possible for a company in your MS to receive dividends from a foreign company free of tax (or at a greatly reduced rate of tax, e.g. 95% tax-exemption)? | Yes, dividends from so-called *subsidiary shares* (at least 10% shareholding) and *group company shares* (generally more than 50% shareholding) are tax exempt, cf. SEL § 13(1)(2). |
| 1. If yes to question 3: |  |
| 1. Does this apply regardless of the tax residence of the distributing company, e.g. EU member state (“MS”), treaty state, tax heaven? | Dividends from group company shares are tax exempt regardless of the tax residence of the distributing company.  By contrast, dividends from subsidiary shares are only tax-exempt if the distributing company is tax resident in the EU or a tax treaty-state (this is part of the definition of subsidiary shares), cf. ABL § 4A |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | No. Only dividends from subsidiary shares and group company shares are tax exempt.  Subsidiary shares: the shareholder owns at least 10 % of the nominal share capital in the distributing company, cf. ABL § 4A.  Group company shares: the shareholder is entitled to exercise control over the distributing company’s operational and financial management, e.g. based on the majority of the voting rights, cf. ABL § 4B. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | No, dividends deducted by the distributing company are taxable, cf. SEL § 13(1)(2). |
| 1. If yes to b, how will the recent amendment of Article 4 of the EU Parent/Subsidiary Directive, which requires Member States to tax dividends if they have been deducted by the subsidiary, affect your answer? | The rule introduced by the amendment is already part of Danish law. |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes, cf. SEL § 2(1)(c). |
| 1. If yes to question 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | No. This only applies for dividends payable on subsidiary shares and group company shares as defined above, (see under 4b above), cf. SEL § 2(1)(c). |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | No.  For subsidiary shares, dividends can only be distributed without any Danish withholding tax, if the foreign shareholder company is eligible for reduction or elimination of the tax either under the EU Parent/Subsidiary Directive or under a tax treaty, cf. SEL § 2(1)(c).  For group company, dividends can only be distributed without any withholding tax, if the shareholder is a resident of the EEA, and provided the taxation of dividends would have been waived or reduced in accordance with the Parent/Subsidiary Directive or in accordance with an applicable tax treaty, had the group company shares instead been subsidiary shares, cf. SEL § 2(1)(c). |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes (indirectly). The Danish tax authorities enforce such a requirement, even though Danish case law states that currently no such beneficial ownership requirement exists in domestic tax law or the Parent/Subsidiary Directive.  The Danish tax authorities finds that the beneficial ownership requirement exist in SEL § 2(1)(c). Consequently, there are a number of cases pending in the courts concerning the interpretation of SEL § 2(1)(c).”  If the recipient is resident outside of the EU such a beneficial ownership requirement may indirectly apply, as the Danish rules on tax exempt dividends depends on whether the Danish taxation is reduced according to a tax treaty, cf. SEL § 2(1)(c). |
| 1. Is the withholding tax exemption subject to any other anti-avoidance requirements, e.g. based on substance of the recipient? If yes, please briefly explain. | Yes. Withholding tax is levied if the dividends are considered a redistribution of tax exempt dividends received by a Danish company, if the Danish company is not considered to be the beneficial owner of the received (and redistributed) dividends, cf. SEL § 2(1)(c). |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | No. |
| 1. Are dividend equivalents (typically a buy-back of shares, a capital reduction-payment or a payment of liquidation proceeds) treated in a similar way as dividends and subject to withholding tax when paid to a foreign company? Please refer to question 4 and 5 above. | Yes. Accordingly, withholding tax is generally levied on dividend-equivalents to the same extent a distribution of dividends would have been subject to withholding tax, cf. LL § 16A. |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes, cf. SL § 4(e). |
| 1. If such a loan is granted free of interest (i.e. on non-arm’s length-conditions), would the creditor company resident in your MS have to include any deemed interest income in its taxable income? When responding, please consider Model ATP-Structure no. 4 and assume that FinanceCo B is tax resident in your MS. | Yes. The creditor company must include an arm’s length interest income (a deemed interest income) in its taxable income (primary transfer pricing adjustment), cf. LL § 2. |
| 1. Is it possible that an interest bearing financial instrument (hybrid loan) granted by a company resident in your MS to a foreign group member company could be qualified as an equity investment in your MS with the result that the return on the investment (treated as deductible interest in the state of the debtor company) is considered a tax exempt dividend or similar? When responding, please consider Model ATP-Structure no. 2 and assume that B Holdco is tax resident in your MS (regardless of the non-MS assumption in the description of the Model). | No, in general this is unlikely as dividend income is considered a return on equity for Danish tax purposes. Thus, if the state of the debtor company does not consider the hybrid loan as an equity investment, the return cannot be qualified as a dividend for Danish tax purposes.  A hybrid mismatch can only occur in a situation where the state of the debtor company considers the hybrid loan as an equity investment for civil law purposes but treats the financial return as (deductible) interest for tax purposes. However, dividends received by a Danish company are not tax exempt if the dividends have been deducted by the distributing company in its taxable income, cf. SEL § 13(1)(2). |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. | N/A |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? | The amendment will not affect the answer. |
| *Interest costs* | |
| 1. Are inter-group interest payments on a loan granted by a foreign group member company tax deductible to a resident in your MS? | Yes, cf. SL § 6(e). |
| 1. If yes to 13, |  |
| 1. Does the tax deductibility depend on how the interest income is qualified for tax purposes in the creditor’s state? If yes, please briefly explain. | No, the deductibility of interest costs does not depend on the qualification of the income in the foreign state. However please see the answer to b) below. |
| 1. In particular, would your MS still allow a tax deduction if the creditor state treats the corresponding interest income as a non-taxable dividend or similar, i.e. if the loan is a hybrid loan? When responding, please consider Model ATP-Structure no. 2 and assume that C Holdco is tax resident in your MS. | No, an anti-abuse rule preventing deductibility of interests on hybrid debt exists. Accordingly, if the creditor state qualifies the hybrid loan as an equity investment, the hybrid loan is also considered an equity investment for Danish tax law purposes. As a consequence, interest expenses are non-deductible. However, this rule only applies if the loan is granted by an affiliated company, cf. SEL § 2B. |
| 1. Is the tax deduction of interest cost on inter-group debt subject to any thin capitalisation-rules or other interest deduction limitations-rules? | Yes. The deductibility of interest cost and capital losses may be restricted under three sets of rules/tests: (1) the thin capitalisation test (SEL § 11), (2) the asset test (SEL § 11B), and (3) the EBIT test (SEL § 11C). |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | Under the thin capitalisation rule, a company is considered thinly capitalized if its overall debt-to-equity ratio exceeds 4:1 at the end of an income year. If so, interest costs etc. on debts owed to a connected legal person (controlled debt) can be wholly or partly disallowed. Third party debt guaranteed by a connected legal person is also considered controlled debt. Controlled debt totaling less than DKK 10 million is not restricted. The debt/equity ratio limitation can be avoided to the extent it is demonstrated that the financing is at arm’s length terms, cf. SEL § 11.  Under the asset test, net financing expenses may not be deducted if they exceed DKK 21.3 million and a standard rate of 4.1 % (2015) of the value of the tax base of certain qualifying assets. Net financing expenses include all interest income and costs, irrespective of whether they are paid between related or unrelated parties, cf. SEL § 11B.  Under the EBIT test net financing expenses as defined under SEL § 11B are disallowed to the extent they exceed 80% of taxable income excluding the net financing expenses. As with the asset test, the EBIT test only applies if net financing expenses exceed DKK 21.3 million, cf. § SEL 11C. |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | The thin capitalisation rule only applies to controlled debt, whereas the assets test and the EBIT test apply generally to all financing expenses and financing income, cf. SEL § 11, 11B and 11C). |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | No. Only the position of other Danish group member companies is taken into account, not that of any foreign group member companies. |
| 1. In general, how effective do you consider these rules in countering ATP? When responding, please consider Model ATP-Structures 1 – 4 and assume that C Holdco, B Hybrid and OpCo are tax resident in your MS. | Given the relatively low general limit of DKK 21.3 million per year, the Danish interest limitation rules must be considered effective in this regard. |
| 1. If a loan is granted free of interest (non-arm’s length-condition) by a foreign group member company, could a debtor company resident in your MS claim any tax deduction for a hypothetical (deemed) interest cost? When responding, please consider Model ATP-Structure no. 4 and assume that FinanceCo D is tax resident in your MS. Moreover, please explain whether any deemed deduction would be contingent on a corresponding adjustment in the foreign state. | Yes. The debtor company may deduct an arm’s length interest cost (a deemed interest) from its taxable income provided that a corresponding adjustment of the taxable income of the creditor company is carried out in the foreign state, cf. LL § 2(6). The deemed interest cost is subject to the interest limitations rules mentioned under 16. |
| 1. Would the benefit of such a loan compared to a normal interest-bearing loan on arm’s length conditions be taxable to the debtor company in your MS? If yes, how? | Yes, as a secondary adjustment for transfer pricing purposes. However, the benefit, i.e. the non-paid arm’s length interest, may be tax free if the payment can be considered a tax exempt dividend or a tax free group contribution (e.g. payments between sister companies). |
| 1. Does your MS levy any withholding tax on interest payments? | There is no general withholding tax on interest. However, interest paid to a foreign related entity may be subject to withholding tax, cf. SEL § 2(1)(d). |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 22 % (KSL § 65D(1)) |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | Yes, withholding tax is only levied on interest paid to foreign related entity (i.e. an entity owning or controlling, directly or indirectly, more than 50% of the share capital or voting power in the Danish company paying the interest), cf. SEL § 2(1)(d). |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | No. Withholding tax is not levied on interests paid to a foreign related entity if the Danish interest taxation is reduced or eliminated according to the EU Interest/ Royalties Directive or a tax treaty. Further, no withholding tax is levied if the foreign related entity can demonstrate that the foreign CIT levied on the interest income is at least three quarters of the Danish corporate tax and that the foreign related entity does not re-pay the interest received to another foreign related entity subject to a lower corporate tax, cf. SEL § 2(1)(d). |
| 1. In connection with an exemption, reduction or refund of withholding tax under a tax treaty or the EU Interest/Royalty Directive, is it common tax practice to apply a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes. |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | No other specific anti-avoidance rules on interest payments are of relevance. |
| *Allowance for corporate equity* | |
| 1. Does your MS offer any tax deduction for a notional (fictitious) interest cost on the share capital of a company? If yes, please briefly explain and include any anti-avoidance provisions. In particular, can the deduction be claimed against financial income? | No. |
| 1. Does your MS offer any tax deduction for dividends declared or paid? If yes, please briefly explain. | No. |
| *Royalty and other income from intangible property* | |
| 1. Please consider Model ATP-Structure no. 5 and assume that Company B is tax resident in your MS. Does your MS offer any preferential tax regime (compared to the standard corporate income tax) for income from patents and other intellectual property rights? If yes, please briefly explain its main scope, characteristics and any anti-avoidance provisions. In particular, can the preferential tax treatment be applied to income from patents or other IP which has not been developed by the taxpayer (company) itself? Must the company have its own substantial R&D activities? Can the preferential tax treatment be applied also to income from other taxpayers in your MS? | No, Danish tax law does not offer any patent box regime or similar preferential tax regimes. |
| 1. Can a company in your MS obtain R&D tax credits (typically enhanced tax deduction or tax refund) for costs incurred, e.g. in developing IP rights? | A tax loss of up to DKK 25 million per year resulting from fully expensed R&D costs entitles to a tax refund (R&D tax credit), cf. LL § 8X. |
| 1. If yes to 24, |  |
| 1. Please briefly explain the requirements which have to be met, e.g. requirements for certain activity or successful development, etc. | The R&D tax credit for costs only applies for loss making companies. If the tax credit is obtained, losses carried forward are reduced accordingly. |
| 1. Can such credits also be obtained for costs that are ultimately reimbursed by a group member company to the company in your MS? | No. The basis for the R&D tax credit would be reduced by the reimbursement. |
| 1. Can a company in your MS transfer ownership of a patent, trademark or other IP right to a foreign group member company without incurring capital gains tax? When responding, please consider Model ATP-Structure no. 5 and assume that MNE Group is tax resident in your MS. Please also assume that the IP has no significant fair market value at the time it is transferred but it becomes highly valuable shortly (1-2 years) after. | No. Taxation would be based on the fair market value of the IP at the time of the transfer (based on OECD’s TP Guidelines). A later increase in fair market value will not result in a reopened tax assessment unless there are strong indications that the fair market value was higher already at the time of the transfer. |
| 1. If no to 26, i.e. your MS would impose tax on the disposal, |  |
| 1. Is the relevant capital gains tax rate lower than the standard rate? | No. |
| 1. Does taxation arise as a result of an anti-abuse provision or similar? | The transfer of IP rights between related parties should be taxed in accordance with the arm’s length principle, i.e. it is only possible to have a disposal of IP rights taxed at a low or nil value if the arm’s length value of the IP rights is low or nil at the time of the transfer, cf. LL § 2. |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? | No. |
| 1. Can a ruling confirming the value of the IP be obtained? | Generally yes.  However, rulings on the value of assets are only binding for 6 months and the ruling is suspended if – based on a subsequent direct or indirect sale of the asset or the income generated from the asset – it can be argued that the actual value of the asset differs from the value confirmed by the ruling. However, such suspension of a ruling can only be done if the asset value differs at least 30 % and at least DKK 1 mio, cf. SFL § 25. |
| *Royalty and other IP costs* | |
| 1. Is royalty paid by a company in your MS to a group member company in another MS or for utilization of IP tax deductible? | Yes. |
| 1. If yes to 28, |  |
| 1. Is the tax deduction dependent on whether the royalty income is taxed in the hands of the IP-licensor/IP-owner? | No. |
| 1. Are there types of royalty payments which cannot be deducted? | No. |
| 1. Does your MS levy any withholding tax on royalty payments? | Yes. Please note, that for the purpose of withholding tax, the concept of royalties includes payments for the use of, or the right to use, e.g. patents, trademarks, designs or models, plans, secret formulas or process or information concerning industrial, commercial or scientific experience. Payments for copyrights and for the use of equipment are not considered royalties for domestic tax purposes, cf. KSL § 65C(1). |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 22%. The tax is levied on gross payments. |
| 1. Are there types of royalty payments which are not subject to withholding tax? | Yes. Outbound royalty payments between associated companies are exempt from withholding tax if the payment is covered by the EU Interest/Royalties Directive and the companies have been associated for at least one year, cf. SEL § 2(1)(g). |
| 1. In connection with an exemption, reduction or refund of withholding tax under a tax treaty or the EU Interest/Royalty Directive, is it common tax practice to apply a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes. |
| 1. Is the tax exemption/reduction/refund subject to any other anti-avoidance requirements, e.g. based on a test of the substance of the recipient? If yes, please explain briefly. | No (other) specific anti-avoidance rules on royalty payments are of relevance. |
| *Group taxation* | |
| 1. Does your MS allow for group taxation of local group member companies with the effect that profits and losses of different companies are set-off against each other? If yes, please briefly explain. (Please note that group taxation also includes other standard arrangements offered to replicate the benefits of group taxation, e.g. group contributions from a profitable company to a loss-making group member company). | Yes.  All Danish resident companies within a group, including also immovable property and permanent establishments located in Demark, are subject to mandatory group taxation. Group taxation implies that the taxable income of each group member company is pooled and current year losses are set against profits. Except for the thin capitalization and interest limitation-rules, taxable income of each group member company is assessed on a stand-alone basis. Losses originating before the commencement of group taxation cannot be used by other group companies, cf. SEL § 31(2).  Group companies which are part of a group consolidation regime become jointly and severally liable for corporate income tax and withholding tax due, cf. SEL § 31. |
| 1. If yes to 32, is group taxation restricted in situations where a (holding) company has solely been inserted in connection with a leveraged acquisition of the operating company (so-called debt push-down)? When responding, please consider Model ATP-Structures no. 1 – 3 and assume that C Holdco and B Hybrid are tax resident in your MS. | No. But please note that the thin capitalization- and interest limitation-rules apply on a consolidated basis. |
| *CFC rules* | |
| 1. Does your MS apply CFC rules to foreign subsidiaries of a parent company in your MS? | Yes, cf. SEL § 32. |
| 1. If yes to 34, please briefly explain the rules and their scope. | A Danish parent company holding, directly or indirectly, shares and more than 50% control in a foreign or Danish subsidiary must include in its own taxable income any form of taxable income of its Danish or foreign subsidiary if the subsidiary constitutes a CFC.  A subsidiary constitutes a CFC if   1. the Danish parent company holds, directly or indirectly, shares and more than 50% control; 2. the subsidiary’s net financial income exceeds 50% of its overall taxable income for the year; and 3. at least 10 % of the subsidiary’s assets are financial assets (the asset test).   The Danish CFC-rules reach further than most other CFC-regimes. There is no low tax-test, nor is there any black or white list of countries. Moreover, not just financial income is picked up for CFC-taxation but all forms of income are taxed as CFC-income if a subsidiary meets the CFC tests above. Finally, even a Danish subsidiary can constitute a CFC to a Danish parent company.  Credit relief is granted for foreign or Danish corporate income tax paid by the CFC.  An exemption from CFC taxation exists for intermediate local holding companies. Thus, transactions between a subsidiary resident in the same country as the intermediate holding company are in principle disregarded. Other exemptions from the CFC rules exist. |
| 1. Please consider the attached Model ATP-Structures no. 1, 2 and 4 - 6. Assuming that MNE Group is tax resident in your MS, would your MS’s CFC-rules be applied to the structures? If yes, what would be the likely effects? | Yes, the Danish CFC rules would apply in Model ATP-Structures no. 1, 2 and 4 – 6 if MNE Group were a Danish resident parent company.  Model ATP-Structures no. 1: OffshoreCo and B Holdco are subject to CFC taxation. Please note that the taxable net financial income in B Holdco may be insignificant if the interest spread in B Holdco is low.  Model ATP-Structures no. 2: If the interest payment on the hybrid loan received by B Holdco is qualified as tax exempt dividends (from a Danish tax law perspective) the CFC rules does not apply. If however the interest payment on the hybrid loan received by B Holdco is qualified as interests (from a Danish tax law perspective) B Holdco is subject to CFC taxation.  Model ATP-Structures no. 4: FinanceCo B and FinanceCo C are subject to CFC taxation. As the income for CFC purposes is assessed in accordance with Danish tax legislation, a deemed interest payment between FinanceCo B and FinanceCo C should be taken into account. Thus, the taxable net financial income in FinanceCo C may by low due to a low interest spread.  Model ATP-Structures no. 5: Company B is subject to CFC taxation.  Model ATP-Structures no. 6: Company B1, Company B2 and Company D are subject to CFC taxation. Please note that the taxable net financial income in Company B2 and Company D may be low due to a low royalty spread. |
| *Mismatch in qualification of legal entities* | |
| 1. Does your MS’s tax qualification of a foreign legal entity (e.g. a partnership) follow that of the foreign state, or does it apply its own criteria? Please briefly explain. When responding, please consider Model ATP-Structure no. 3 and assume that MNE Group is tax resident in your MS. | No, the tax qualification of foreign legal entities is based on domestic criteria.  Whether the legal entity is considered a company or not for tax purposes depends on a comparison with the characteristics of a Danish limited liability company.  Based on case law, the key elements in the classification are:   * Articles of Associations * Capital * Liability * Participants * Organization * Decision making * Distribution of liquidation surplus |
| 1. Does your MS apply rules to counter another state’s mismatch in tax qualification of a legal entity (company) resident in your MS? If yes, please briefly explain the rules and their scope. When responding, please consider Model ATP-Structure no. 3 and assume that B Hybrid is established and tax resident in your MS. | Yes. A specific Danish anti arbitrage provision exist, SEL § 2A. If a Danish company is considered a transparent entity in the country in which the parent company is resident, the Danish company is re-characterized as a transparent entity for Danish tax purposes. Consequently, B Hybrid is taxed as a permanent establishment of MNE Group in Denmark, SEL § 2A. This has the effect of disallowing the interest cost paid to MNE Group. |
| 1. Does your MS apply rules to counter another state’s mismatch in tax qualification of a transparent entity (partnership or similar) in your MS? If yes, please briefly explain the rules and their scope. | Yes. A specific Danish anti arbitrage provision exist whereby if a Danish transparent entity (e.g. a limited partnership) is treated as non-transparent by a majority of its foreign owners, the Danish entity is also considered a non-transparent entity (i.e. a taxable entity) for Danish tax purposes, cf. SEL § 2C.  Please note that a Danish transparent entity is also treated as a non-transparent entity (i.e. a taxable entity) for Danish tax purposes if more than 50 % of the owners are resident in tax heavens (i.e. non-EU and non-treaty states), cf. SEL § 2C. |
| *Tax residence of company* | |
| 1. Based on domestic tax rules, without the application of any tax treaty, can a company incorporated in your MS be considered non-tax resident if its management and control is situated in another state? If yes, please explain under which circumstances. | No. |
| 1. If yes to 40, please consider Model ATP-Structure no. 6. Would the Structure work if Company B1 is incorporated in your MS but managed and controlled abroad in an offshore-state? | N/A |
| *Tax ruling practices* | |
| 1. Some states offer tax rulings (incl. so-called APAs) that confirm non-arm’s length-transactions or the amount of spread between interest or royalty income and cost in various international flow through-structures. As an example, please refer to Model ATP-Structure no. 1. Does your MS offer this form of tax ruling practices or APAs? | No. |
| 1. Do your local transfer pricing-rules allow for the stripping of income from a domestic company by taking away legal ownership of functions, assets and risks? In other word, is it accepted that relatively small amounts of the group’s income is taxed in your MS on the basis of low risk, few assets held and only few functions performed in your MS? | In theory yes, if the income assessment is in accordance with the OECD’s arm’s length principle. However, there is no ruling practice in Denmark on unilateral APAs or other such TP rulings. |
| 1. Can a company in your MS obtain a ruling or APA that a) provides for tax exemption of profits considered to exceed an arm’s length-income or considered to have been left to the company by its shareholders (capital contribution), or b) provides for the deduction of deemed expenses that would have been due under arm´s length conditions? | No to a.  Yes to b. A tax deduction for deemed costs can be obtained but would generally be conditional on a corresponding adjustment in the other state. |
| *GAAR/SAAR* | |
| 1. Please consider Model ATP-Structures no. 1-7. Are you aware of any general or specific anti-avoidance rules or practice in your MS which could impede or counter the ATP objective of any of the structures? If yes, please describe briefly the scope of the rules/practice and how they could be applied to each of the structures. | As of April 2015 two new anti-avoidance rules have been enacted, cf. LL § 3.  The first rule is the implementation of the GAAR in the amended EU Parent/Subsidiary Directive. The scope of the GAAR is extended to cover payments covered by the EU Interest/Royalty Directive and the Merger Directive.  The second rule is an anti-avoidance rule applicable for treaty benefits and follows the Principle-Purpose-Test outlined in Action 6 of OECD’s BEPS project.  It is still unclear how the GAAR and PPT can be applied to the Model ATP-Structures. |
| *Other ATP indicators* | |
| 1. Are you aware of any tax rules, tax practice or lack of tax rules (loopholes) – other than those discussed in the preceding answers - which could facilitate your MS’s role in ATP? If yes, please briefly explain. | No. |