**Study on Aggressive Tax Planning**

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

**Appendix 1 - Questionnaire to national tax experts**

**Filled in for Finland**





**QUESTIONNAIRE**

**Finland**

## Abbreviations

**EVL Laki elinkeinotulon verotuksesta (Business Income Tax Act)**

**KonAvL Laki konserniavustuksesta verotuksessa (The Act on Group Contribution in Taxation)**

**LähdeVL Laki rajoitetusti verovelvollisen tulon verottamisesta (Act on the Taxation of Income of a Person Subjcet to Limited Tax Liability)**

**TVL Tuloverolaki (Income Tax Act)**

**VML Laki verotusmenettelystä (The Act on Taxing Procedure)**

**VYL Laki ulkomaisten väliyhteisöjen verotuksesta (The Act on the Taxation of Controlled Foreign Corporations)**

|  |  |
| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 20 %. |
| 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. |
| *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. The exemption may be based either on a domestic law provision (EVL Sec. 6a), on the EU Parent-Subsidiary or on a tax treaty provision. The exemption based on the Parent-Subsidiary Directive requires at least 10 % holding and certain minimum holding is required also by tax treaties (usually 10 or 25 %). Dividends paid by a company from and European Economic Area state are tax-exempt under EVL Sec. 6a under certain conditions. The distributed profits must have been subject to at least a 10 % tax abroad. There is no minimum holding requirement for this exemption to apply. |
| 1. If yes to question 3: |  |
| 1. Does this apply regardless of the tax residence of the distributing company, e.g. Member State, treaty state, tax haven? | No. Generally, dividends which are not from resident companies of EEA states or tax treaty states are partly or fully taxable.  Also the dividends from EEA states or tax treaty states must meet certain conditions in order for them to be tax-exempt. Under EVL Sec. 6a the distributing company must either have one of the forms listed in the Parent-Subsidiary Directive or be a resident in an EEA member state.  If the distributing company is a resident in an EEA member state and not listed in art. 2 of the Parent-Subsidiary Directive the following requirements apply:   * the distributing company is subject to at least 10% tax on the profits from which the dividends are being distributed, and * the distributing company is a resident in an EEA country and it is not a resident outside of the EEA under an applicable tax treaty. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | Exemption based on EVL Sec. 6a does not require any minimum holding or voting requirement. Certain minimum holding is required if a dividend is not covered by EVL Sec. 6a but must be exempt because of a tax treaty provision. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | If the dividend are exempt because of a tax treaty, the deductibility does not take away the exemption. The same applies if the dividends are from a company covered by the Parent-Subsidiary Directive.  For other dividends it is required that the distributing company is subject to at least 10% tax on the profits from which the dividends are being distributed.  The purpose of this provision is to exclude dividends from tax-exempt entities and entities in low tax countries from the scope of the dividend tax exemption. If interpreted broadly, one could claim that if the dividend distribution itself is deductible, then the company is not subject to tax on the profits from which the dividend is distributed. However, there is nothing that indicates that the exclusion would be interpreted so broadly. |
| 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 EU Parent/Subsidiary Directive amendment will be implemented in domestic law by end of 2015. Once the amendment is implemented the domestic dividend exemption doesn’t apply if the subsidiary has a tax deduction, i.e. in this case the dividend will be fully taxable income.  The Parent/Subsidiary Directive requirement covers only those dividends covered by the Directive. As the scope of the exemption in Finland is broader due to EVL Sec. 6a and due to tax treaties it must be considered whether the requirement should be implemented more broadly. Certain issues, however, must be solved before the implementation. Foreign-source dividends must not be subject to more burdensome treatment than pure domestic dividends in conflict with the TFEU basic freedoms and tax treaties may require exemption despite the domestic law implementation. |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | Yes. Dividends may be distributed without withholding taxes, if:   * the dividend falls under the Parent/Subsidiary Directive (see LähdeVL Sec. 3(6)), * the dividend falls under a tax treaty, which provides for a withholding tax exemption, * the dividend falls under the general exemption of LähdeVL Sec. 3(4) * the dividend falls under the exemption based on the EU Savings Directive (foreign shareholders resident in Switzerland) * the free movement of capital of the TFEU requires exemption   Based on the general rule, dividends are tax exempt (LähdeVL Sec. 3(5)), if:   * The foreign shareholder company is similar to a resident company in EVL Sec. 6a or TVL Sec. 33d.4; * The dividend would be tax exempt for the resident company according to EVL Sec. 6a or TVL Sec. 33d(4); * The foreign shareholder company resides in the EEA; * There is a treaty on mutual assistance and exchange of information in force between Finland and the country of the recipient * The recipient cannot fully credit the Finnish withholding tax under the relevant treaty in the country of residence, and the recipient provides evidence of that fact (e.g. a certificate from the Tax Administration). |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | There is no holding requirement for the general exemption rule to apply.  In contrast, the exemption based on the EU Parent/Subsidiary Directive is subject to a 10 % ownership requirement (with no holding period; LähdeVL Sec. 3.6), whereas the exemption based on the EU Savings Directive is subject to a 25% ownership requirement for at least 2 years.  The exemption based on tax treaties usually requires certain holding e.g. 10 or 25 %. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | No. LähdeVL Sec. 3(6) requires that the shareholder is a resident in an EEA Member State. However, due to the TFEU free movement of capital, also dividends paid to residents of other countries may have to be exempted to the same extent as the dividends would be exempt in a comparable domestic situation (see KHO 2015/59 (9)). Also tax treaties may broaden the scope of exempted dividends to residents of states outside EEA. |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | No. |
| 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. | In accordance with the GAAR of VML Sec. 28 any tax benefit can be denied if an arrangement was obviously made in order to avoid tax.  If the tax administration would consider that the dividend recipient is not the beneficial owner the arrangement was made in order to avoid the dividend withholding tax. So in fact the GAAR (see below) apply in the same way as the beneficial ownership test.  The issue, thus, is what is the threshold for the application of the beneficial owner concept or the GAAR. Until recently the threshold for the application of the GAAR has been high, but there is not really case law concerning these situations. Consequently, it is unclear whether the GAAR is as effective as the beneficial owner test. |
| 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. | The exemption of LähdeVL 3(5) covers also distribution of assets by a company from its free own capital treated as a distribution of dividends (LähdeVL Sec. 3(5).  Depending on the payment, dividend equivalents may constitute dividend, capital gain or return of capital for tax purposes. Only dividends are subject to withholding tax for non-residents. |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes. Interest income is subject to the normal 20 % corporate tax. |
| 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. Because of the transfer pricing adjustment provision of VML Sec. 31 an arm’s length interest would be taxable in Finland. |
| 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. currently hybrid loans are not reclassified as equity and interest on them are not reclassified as dividend.  Reclassification is possible only on the basis of the GAAR or VML Sec. 28, if and arrangement was made in order to avoid tax. At the moment there are several cases pending and the applicability of the GAAR in different types of arrangements is tested e.g. whether hybrid loans can be considered an arrangement made in order to avoid tax and therefore reclassified in accordance to the GAAR or VML sec. 28. So, at the moment the threshold for the application of the GAAR in these situations is unclear. The key issue is, whether the taxpayer can show business reasons for the arrangement or not. |
| 1. If yes to 11, |  |
| 1. Please briefly explain which requirements should be fulfilled. | - |
| 1. How will the amendment of Article 4 of the EU Parent/Subsidiary Directive affect your answer? | No effect. |
| *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, they are deductible up to an arm’s length amount. There is, however, an EBITDA-based interest deduction limitation provision in EVL Sec. 18a. |
| 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. |
| 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. | Yes. |
| 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. Finland has an EBITDA-based limitation rule (EVL Sec. 18a). |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | Net interest payments, i.e. the interest payments in excess of received interest income, are deductible up to EUR 500 000 per tax year. If the limit of EUR 500 000 is not exceeded the total of the interest payments is deductible. The limit of EUR 500 000 is calculated on the basis of all interest payments, i.e. not only on the basis of the associated payments but also the interest payments made to third parties.  If the net interest cost exceeds EUR 500 000 in a tax year the net interest cost is not deductible to the extent that  1) it exceeds 25 % of the results of the business added up with interest costs, tax deductible depreciations, received group contributions and deducted by group contributions given to other group companies; and  2) the amount of the net interest cost in excess of the 25 % limit does not exceed the net interest cost between associated parties.  For the purposes of the calculation of the 25 % limit both interest on associated loans and third part loans are taken into account.  Despite the 25 % limit, the amount of the non-deductible net interest cost, however, does not exceed the amount of the net interest cost between associated parties. The part of the net interest cost, which exceeds the 25 % limit is deductible to the extent that it exceed the net interest cost between associated parties. If a company does not pay any interest to associated parties, the interest deduction limitation provision does not limit the deductibility of the interest at all.  EVL Sec. 18a(3) includes a solvency test based on which otherwise non-deductible net interest cost may become deductible. The net interest cost is deductible despite the EUR 500 000 limit and the 25 % limit, if the taxpayer provides evidence that the ratio of the equity of the taxpayer to the balance sheet total is not below the corresponding ratio of the group balance sheet in the end of the tax year.  Non-deductible net interest expenses may be carried forward indefinitely. |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | Only to interest costs on intra-group debt. |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | Yes. EVL Sec. 18a(3) includes a solvency test based on which otherwise non-deductible net interest cost may become deductible. The net interest cost is deductible despite the EUR 500 000 limit and the 25 % limit, if the taxpayer provides evidence that the ratio of the equity of the taxpayer to the balance sheet total is not below the corresponding ratio of the group balance sheet in the end of the tax year. |
| 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. | Because of the generous limits, the interest deduction limitation provision is not effective enough. There is still a lot of tax planning based on taking advantage of interest deductions. |
| 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 C is tax resident in your MS. Moreover, please explain whether any deemed deduction would be contingent on a corresponding adjustment in the foreign state. | No. Only real interest payments are deductible. The arm’s length transfer pricing adjustment provision of VML Sec. 31 does not operate in benefit of a taxpayer. A corresponding adjustment is possible if a tax treaty requires it when the other state has made a primary adjustment. |
| 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? | The amount of an arm’s length interest may be considered to constitute a hidden dividend distribution in benefit of the Finnish company if the benefit is received in a shareholder relationship (VML Sec. 29). However, the hidden dividend distribution may be tax-exempt under the normal provisions concerning dividends. |
| 1. Does your MS levy any withholding tax on interest payments? | No, there is no withholding tax on interest paid to non-residents, unless the debt on which the interest was paid is comparable to equity (TVL Sec. 9(2)). The exception is very rarely applied. So, in practice interest paid to non-residents is exempt in Finland. In contrast, interest payments to residents are subject to withholding tax. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 20 % for corporate entities. |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | No. |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | Same rules. There is, however, a special exemption provision concerning the interest covered by the EU Interest/Royalty Directive, but it has no much relevance because interest payments are exempt already based on TVL Sec. 9(2). |
| 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, but the treaty provisions or Directive provisions do not have practical relevance in Finland, because based on the general provision of TVL Sec. 9(2) interest is not subject to withholding tax in Finland. |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | Any tax benefit can be denied based on the GAAR of VML Sec. 28 if the arrangement was obviously made in order to avoid tax.  If the tax administration would consider that the dividend recipient is not the beneficial owner the arrangement was made in order to avoid the dividend withholding tax. So in fact the GAAR (see below) apply in the same way as the beneficial ownership test.  The issue, thus, is what is the threshold for the application of the beneficial owner concept or the GAAR. Until recently the threshold for the application of the GAAR has been high, but there is not really case law concerning these situations. Consequently, it is unclear whether the GAAR is as effective as the beneficial owner test. |
| *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. |
| 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? | No. |
| 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. | - |
| 1. Can such credits also be obtained for costs that are ultimately reimbursed by a group member company to the company in your MS? | - |
| 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. A later value increase will not result in a reopened tax assessment unless it can be proven that the value was higher already at the time of the transfer or if it is established that the transfer was made in order to avoid tax (the GAAR of VML Sec. 28). |
| 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? | VML Sec. 31 requires that an arm’s length value was used and VML Sec. 28 allows any tax benefit denied if a transaction was made in order to avoid tax. |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? | There are no such special credits. |
| 1. Can a ruling confirming the value of the IP be obtained? | Advance rulings are possible only concerning a planned specific transaction or arrangement for which the taxpayer asks how the tax laws are interpreted. The rulings do not allow any special agreements between the tax administration and the taxpayer, but they only allow explaining how tax law is interpreted in a specific situation. |
| *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, royalty payments are deductible. If paid to a related company, the royalty must correspond to that which parties dealing at arm’s length would charge. |
| 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. Generally any cost related to acquiring of income is deductible, unless specifically mentioned as non-deductible. |
| 1. Does your MS levy any withholding tax on royalty payments? | Yes. |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 20 % for corporate entities. |
| 1. Are there types of royalty payments which are not subject to withholding tax? | Under the domestic law provisions implementing the provisions of the EU Interest and Royalties Directive (2003/49), (interest and) royalty payments are exempt from withholding tax, provided that the recipient is an associated company of the paying company and is resident in another Member State or such a company’s permanent establishment situated in another Member State (LähdeVL Sec. 3b). Also tax treaties limit the possibility to levy withholding tax. |
| 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. | There are no specific provisions but the GAAR of VML Sec. 28 may apply if a transaction was obviously made in order to avoid tax. Hidden dividend distribution (VML Sec. 29) may be subject to withholding tax unless they qualify as a tax-exempt dividends. |
| *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). | Contributions between resident companies may be deducted under the following conditions (KonsAvL Secs. 2-7):   * the resident company (parent company) has owned, either directly or indirectly, during the entire tax year, at least 90% of the shares of another resident company (subsidiary); * both companies are engaged in business and are not financial, insurance or pension institutions; * the accounting year of the paying and receiving companies ends on the same date, unless the Accounting Committee has granted an exception; * the contribution is recorded in the annual accounts of both companies and affects their annual net income; and * the contribution is not a mere capital investment.   Group contributions, subject to the conditions stated above, are deductible expenses for the paying company and part of the taxable income of the receiving company. A group contribution may not exceed the net taxable business income of the paying company, and cannot be part of losses to be carried forward for tax purposes by that company (KonsAvL Secs. 4 and 6). |
| 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, there is no specific restriction. However, the GAAR of VML Sec. 28 may apply if the payment of a group contribution forms a part of an arrangement which was obviously made in order to avoid taxes in Finland. |
| *CFC rules* | |
| 1. Does your MS apply CFC rules to foreign subsidiaries of a parent company in your MS? | Yes, there is a special act concerning CFCs (VYL). |
| 1. If yes to 34, please briefly explain the rules and their scope. | According to the CFC regime, a resident of Finland (individual or company), who is a shareholder of or has certain other type of interest in a non-resident separately taxable entity, which is controlled by Finnish residents, is taxed on the income of the non-resident entity regardless of whether or not the income is distributed to the shareholder if:   * the shareholder owns at least 25% of the capital of the non-resident entity or is entitled to at least 25% of the yield of the entity’s assets (alone or together with interest parties) (VYL Sec. 4); and * the effective tax of the CFC in the entity’s state of residence is less than three fifths of the Finnish effective corporate tax (3/5 × 20% = 12 %) (VYL Sec. 2).   A non-resident entity is deemed to be controlled by Finnish residents if one or more residents jointly own, directly or indirectly, at least 50% of the capital of the entity or its total voting power, or if one or more residents are entitled to at least 50% of the yield of the entity’s assets (VYL Sec. 3).  The [CFC](http://online.ibfd.org.esc-web.lib.cbs.dk/linkresolver/static/cta_fi_abb_cfc?WT.z_nav=crosslinks) law is not applied to entities residing in the [EEA](http://online.ibfd.org.esc-web.lib.cbs.dk/linkresolver/static/cta_fi_abb_eea?WT.z_nav=crosslinks) if the following conditions are met (VYL Sec. 2a):   1. EU Directive on administrative co-operation in the field of taxation (2011/16/EU) applies to the country in question or the countries have concluded a treaty on administrative assistance which ensures adequate exchange of information; and 2. the entity has in reality been established in that state and conducts economic activities there.   Also entities resident in tax treaty states are excluded from the scope of the CFC regime provided that the corporate tax in the state does not differ substantially from the corporate tax in Finland and provided that the entity did not enjoy any special tax benefits. There is considered to be a substantial difference in taxation, if the effective foreign corporate tax in average in that country is less than three fourths of the effective corporate tax in average in Finland (VYL Sec. 2).  If the primary part of income of a foreign entity is from production or shipping it can never be a CFC (VYL Sec. 2). |
| 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? | The Finnish CFC rules would apply in Model ATP-Structures no. 1, 2 and 4 – 6 in regard to such companies that are subject to low corporate tax in each respective state of residence. In regard to tax treaty state residents also the general corporate tax level in the country would have to be low, if the entity did not enjoy any special tax benefits. The CFC regime would apply to the EEA resident companies only if the entity is not in reality established in its state of residence to conduct economic activities. |
| *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. | The tax qualification in a foreign state is not decisive for the Finnish tax purposes. The tax qualification for the Finnish tax purposes depends on which Finnish entity form the foreign entity resembles the most.  However, there is published court praxis in which the qualification has followed that of the establishment state (KHO:2004:116 and KVL 1997/195).  In determining the qualification all relevant factors are taken into account. |
| 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. | No. |
| 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. | No. |
| *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? | - |
| *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. Advance rulings are possible only concerning a planned specific transaction or arrangement for which the taxpayer asks how the tax laws are interpreted. The rulings do not allow any special agreements between the tax administration and the taxpayer, but they only allow explaining how tax law is interpreted in a specific situation. |
| 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? | Yes, as long as the arm’s length principle is followed and provided that the arrangement was not made obviously in order to avoid tax in Finland. |
| 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? | 1. No. An advance ruling which would provide for tax exemption of profits exceeding and arm’s length amount is not possible. The amount exceeding an arm’s length amount may be tax-exempt only if it is the type of income which is tax-exempt (e.g. tax-exempt dividends or capital gains). Capital contributions are not taxable for the receiving company, but profits of a company cannot be considered to be capital contributions from the shareholders. 2. No. Deemed expenses are not deductible. They may become deductible only afterwards if a correlative transfer pricing adjustment is made after a primary adjustment in another country and a tax treaty requires the adjustment. |
| *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. | The GAAR of VML Sec. 28 can be applied to deny any income tax benefit where a transaction or an arrangement was obviously made in order to avoid tax in Finland. The threshold for the application of the GAAR is rather high, but typically it may be applied if an arrangement lacks real economic substance and the taxpayer is not able to show adequate business reasons for the arrangement. Until recently, the GAAR has rather rarely been applied to counter international tax planning structures. The recent tendency, however, includes testing its applicability in different types of arrangements. There are cases pending before the courts at the moment. The future will show where the threshold for the application of the GAAR will settle in regard to ATP-structures. Until now relatively minimal business reasons have prevented the application of the GAAR. |
| *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. | Place of management does not make a foreign entity a resident for Finnish tax purposes. |