**Study on Aggressive Tax Planning**

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

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

**Filled in for France**





**QUESTIONNAIRE**

**France**

## Abbreviations

**CGI : *Code général des impôts* (French Tax Code)**

|  |  |
| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 33 1/3 % plus:   * a social surcharge of 3.3% applicable on the amount of corporate income tax exceeding EUR 763,000 (art. 235 ter ZC of the CGI); * a special surcharge of 10.7% applicable on the total amount of corporate income tax when the turnover of the company exceeds EUR 250,000,000 (art. 235 ter ZAA of the CGI). Please note that this special surcharge is temporary, as it is supposed to apply for fiscal years closed between 31 December 2011 and 31 December 2016 ; * an additional contribution of 3% applicable on the amount of dividends paid (art. 235 ter ZCA of the CGI). |
| 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, but see 3. |
| *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 participation shares are tax exempt, cf. Art. 145 and 216 of the CGI.  A lump sum of 5% of the gross dividends received is added back to taxable income and taxed under corporate income tax. This 5% amount is deemed to represent non-deductible expenses. As a result, dividends from participation shares are subject to an effective corporate income tax rate of 1.67% (with a corporate income tax rate of 33.33% without surcharges).  To qualify for the participation exemption regime the receiving company (i.e. a French parent company) must meet the following conditions:   * Be subject to corporate income tax at the general rate on all or part of its activities, irrespective of the nature of the activity; * Own in full property shares in the distributing subsidiary that qualify as participation shares for tax purposes (see under 4b); * Own shares that are registered shares or deposited with an approved intermediary; * Own at least 5% of the shares for at least 2 years (this may be relaxed in the case of restructuring operations), or the shares must have been subscribed to upon issue; and   Not undertake any restructuring operations between the members of the group before the end of the short-term period for capital gain purposes. |
| 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. The participation exemption does not apply if the distributing company is located in a non-cooperative state or territory (NCST).  The Constitutional Court however decided on 20 Jan. 2015 that this rule would be unconstitutional if it was not possible for a parent company to demonstrate that it invested in a company located in an NCST for economic (non-tax) reasons. As a result, there is now an unwritten safe harbour rule in the law.  A state or territory is defined as non-cooperative (NCSTs) if it meets the following criteria:   * It is not a member of the European Union; * It is reviewed and monitored by the OECD Global Forum on Transparency and Exchange of Information; * It has concluded no more than 12 TIEAs (tax information exchange agreements) before 1 January 2010; and * It has not signed a TIEA with France.   The list of NCSTs is updated every year on the basis of new developments affecting their OECD status. Moreover, States which have signed TIEAs with France may be added to the list if they do not actually meet their obligations towards France. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | Shares are treated as participation shares for the purpose of the dividend exemption rule if one of the following criteria is met:   * The shares represent at least 5% of the subsidiary’s capital (if the shares also represent at least 5% of the subsidiary’s voting share capital, the exemption is applied to every distribution. If not, the exemption is only applied to the distribution attached to shares with a voting right); * The cost price of the shares exceeds EUR 22,800,000 (even if case the 5% threshold is not met). * Please note that the conditions required for exemption of capital gains derived by the parent company upon the sale of an interest in its subsidiary are slightly different. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | No (art. 72 of the Amending Finance Act for 2014) : Article 145, 6, b) of the CGI provides that dividend exemption does not apply to the extent that dividends received have been deducted from the taxable income of the distributing company. |
| 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? | N/A |
| *Dividends paid* | |
| 1. Is it possible for a company in your MS to distribute dividends to a foreign company without any withholding tax? | In principle, no. The normal withholding tax under domestic law is 30%.  By exception, it may be reduced to nil if the distribution is exempted either by the Parent-Subsidiary Directive or by a tax treaty (see for instance tax treaty with the US which provides for full exemption of withholding tax in some situations). |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | No. France applies the Parent-Subsidiary Directive. It is also bound by the “Denkavit” case of the ECJ (C-170/05) if the percentage of shares held by the foreign company exceeds 5%.  If the 2-year holding period has not expired at the time of the distribution, provisional relief from withholding may apply if certain conditions are met.  In the tax treaty with the US, the exemption applies if the US company holds more than 80% in the distributing company. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | No. The exemption only applies if the dividends are paid to a shareholder company resident in an EEA Member State or Switzerland (art. 119 ter of the CGI and tax treaty with Switzerland). Other specific treaties may achieve this result but this is very rare. |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | Yes. |
| 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. | The participation regime does not apply where the recipient company is controlled directly or indirectly by companies having their place of effective management located outside the European Union (i.e. an ownership test). The taxpayer may still benefit from the exemption, if it can prove that the main purpose for interposing an EU company in the shareholding chain is not merely to benefit from that exemption, cf. Art. 119 ter (3) and quater (3) of the CGI.  The exemption is subject to the GAAR too. |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | Yes, an additional contribution of 3% applicable on the amount of dividends paid (art. 235 ter ZCA of the CGI). |
| 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. | Capital reduction-payment and payment of liquidation proceeds are treated in a similar way as dividends.  Buy-back of shares is treated as a capital gain (since 2015). As a result of double taxation treaties, it may not be taxed in France. It may therefore happen that a buy-back of shares may not suffer any taxation in France while a dividend would suffer a withholding tax if was paid to the same recipient. |
| *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. Art. 38 of the CGI. |
| 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 would have to include an arm’s length interest income (deemed interest income) in its taxable income (primary transfer pricing adjustment; cf. Art. 57 of the CGI). However, case law shows that this principle does not apply if the creditor company evidences a commercial reason that justifies the granting of the advantage. But in Model ATP-Structure no. 4, it seems that FinanceCo B would have to be taxed on a deemed interest if it was a French company. |
| 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). | Generally speaking, this is unlikely as dividend income is considered a return on equity for French tax purposes. Conversely, proceeds from hybrid loans are normally treated as interest.  Besides, dividends received by a French company would not benefit from the participation exemption provisions if they were treated as deductible interests in the state of the debtor company (cf. Art. 145, 6-b of the CGI; anti-abuse provision introduced by the Amending Finance Act for 2014). See 4, c) above. |
| 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? | A similar anti-abuse rule has already been implemented in domestic law (cf question 11). |
| *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. Interest is deductible if the debt is incurred for the business purposes of the company. Limitations apply if the foreign company is located in a low-tax country (see hereafter, 16, 2) |
| 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. But see b) |
| 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, the recent anti-abuse rule preventing deductibility of interests on hybrid loans between related companies would apply (Art. 212 I-b of the CGI; Finance Act for 2014). In order to be deductible, the interest paid has to be subject, at the level of the lending company (whether French or non-resident), to a corporate income tax amounting to at least a quarter (8.33 %) of the standard corporate income tax rate applicable in France. The tax administration has indicated in its official bulletin that the reference tax rate is 9.5 % as the social and the special surcharges must be included in the rate. This anti-hybrid limitation applies to all interest borne by French companies in respect of fiscal years closed as from 25 September 2013. |
| 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. Several limitation rules apply. |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | 1) A general limitation applies to the deduction of the interest incurred by a company. If the net financial expenses paid in a given year exceed EUR 3 million, only 75% of the net financial expenses is deductible. If the net financial expenses exceed the threshold of EUR 3 million, the limitation applies to the entire amount of the net financial expenses - not only to the amount in excess – and no carry forward applies. The amount of the net financial expenses is equal to the total amount of the financial expenses that remunerate the loan granted to the company, minus the total amount of financial income from loans granted by the company (cf. Art. 212 bis of the CGI).  2) Further a general limitation applies to interest payments paid, or due, by a French-resident person or entity to a person or entity domiciled or formed in a low-tax jurisdiction or in a country or territory listed as a NCST (non-cooperative states and territories), unless the French-resident debtor demonstrates that the expenses are real and not exaggerated and the main purpose and effect of the transaction is not to locate income in the relevant NCST (Art. 238 A of the CGI).  3) In relation to inter-group loans interest is only deductible if the creditor is taxed at least a quarter of the standard corporate income tax rate applicable in France (anti-hybrid limitation, cf 14b). Further a deduction is only possible if the capital of the debtor is fully paid up. Lastly the deduction is limited to interest paid at a rate not exceeding the annual average rate of interest charged by financial institutions on variable interest rate loans to enterprises with a duration exceeding 2 years (Art. 39, 1-3° of the CGI).  4) A thin capitalization rule applies to inter-group loans and back-to-back loans. The deductibility of interest paid to shareholders and related parties is limited if the following cumulative criteria are met:   * the overall indebtedness in respect of loans granted by the related parties (or not related parties in case of back-to-back loans) exceeds 1.5 times the net equity of the borrower, i.e. a debt/equity ratio of 1.5:1. This ratio can either be assed at the beginning or at the close of the fiscal year. * the amount of the interest paid to these companies exceeds 25% of the adjusted operating profits , i.e. interest/profit ratio of 1:4; and * the amount of interest paid to related parties exceeds the amount of interest received from affiliated companies, i.e. interest paid/interest received ratio of 1:1.   The portion of the interest paid which exceeds all of the three above-mentioned thresholds is not deductible. However, the portion can be deducted if its amount is lower than EUR 150,000 or if the company proves that the debt/equity ratio of the group to which it belongs is higher than its own debt/equity ratio computed on a stand-alone basis. For the purpose of determining the debt/equity ratio of the group, the debt/equity ratios of all group companies are aggregated and certain intra-group transactions affecting such ratios are neutralized. Excessive interest payments exceeding EUR 150,000 may be carried forward in subsequent financial years with certain restrictions. (Art. 212 II of the CGI).  5) Lastly, interest deduction is limited in case of an acquisition of qualifying shares (eligible for the participation exemption regime), unless the acquiring company evidences that it effectively makes decisions (and exercises control or influence) related to those shares. The limitation can be avoided if the value of the shares is lower than EUR 1 million or if the company proves that the debt/equity ratio of the group to which it belongs is higher than its own debt/equity ratio computed on a stand-alone basis. (Art. 209-IX of the CGI). |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | The general interest limitation rule (Art. 212 bis of the CGI), the limitation rule regarding NCST (Art. 238 A of the CGI) and the limitation rule regarding acquisition of qualifying shares for participation exemption(art. 209 IX of the CGI) apply to all interest costs. The remaining interest limitation rules target only inter-group loans. |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | In case of tax consolidation (which is only possible between French companies) the threshold of the general interest limitation rule of 3 EUR million applies at the level of the group, and covers only interest expenses paid to entities which are not member of the group (intra-consolidation loans are neutralized). Further the term “net financial expenses” encompasses all financial income and expenses derived from transactions made with non-related parties, which are not members of the tax group.  The limitation is applied at the level of the group considering the following steps:  - firstly, each company member of the tax group, on a stand-alone basis, has the right to deduct all its financial expenses; and  - the parent company, when assessing the consolidated results, determines the total of the net financial expenses paid by the whole group to “non-related” entities, and if the amount exceeds EUR 3 million, the parent company applies the recapture rule (Art. 223 B bis of the CGI).  Further, the thin capitalization limitation as well as the limitation regarding the acquisition of qualifying shares can be avoided if the company evidences that the debt/equity ratio of the group to which it belongs is higher than its own debt/equity ratio computed on a stand-alone basis (see a) above).  In order to compute the group debt/equity ratio, the tax authorities have explicitly ruled that related entities taken into account may be French or foreign 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. | The numerous interest limitation rules shall be considered effective to counter most structures.  In Model ATP-Structure 1, C HoldCo (French company) would fall under the scope of Art. 209 IX of the CGI. It could deduct interest only if it could prove that it makes decisions with respect to shares in Target Co and actually exercises control over Target Co, which would be unlikely given the fact pattern of the case.  In Model ATP-Structure 3, B Hybrid (French company) may fall within the scope of Art. 212 of the CGI. However, this may be discussed, as the legal requirement for denial of interest deduction is that interest is not taxed at a minimum rate at the level of the lender. If the lender’s jurisdiction sees B Hybrid as transparent, it is unclear whether this is a case of “non-taxation” (as the consolidation mechanism in the lender’s jurisdiction also implies that B Hybrid’s full income is taxed at the level of the lender without taking the deduction into account).  In Model ATP-Structure 4, no specific rule seems to counter deduction at OpCo’s level (Opco being a French company), except maybe Art. 212 of the CGI if the conditions are met. Please note however that the anti-hybrid rule enshrined in this provision does not prevent a French company from deducting interest paid to a company located in a state where a general mechanism of notional interest deduction exists. This has been confirmed by tax authorities in published guidelines. The tax administration would therefore have to apply the GAAR in order to counter this scheme. |
| 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. | No, this is unlikely. A deduction may take place tax wise only if the expense has been registered in the accounts. So if no interest has been paid, it would not be possible to deduct anything from the taxable income. |
| 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? | Possibly. Case law provides for taxation of any kind of aids received by companies from related or unrelated parties. Exemption of interest payment in a non-arm’s length situation may be considered as an aid. . |
| 1. Does your MS levy any withholding tax on interest payments? | Yes – but only if the recipient is resident in a country or territory listed as an NCST (non-cooperative states and territories). Cf Art. 125 A III of the CGI. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 75%. |
| 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? | No. the creditor has to be resident in a NCST. Cf Art. 238-0 A of the CGI (see 4, a, above). |
| 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, cf. Art. 119 quater of the CGI and Official Bulletin of the Tax administration. |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | Several treaties concluded by France contain a general anti-abuse requirement.  Further, some treaties require a specific certificate (delivered from the tax administration of the State of residence) that indicates that the interest income is taxed in the State of residence (cf. treaty with Luxembourg). |
| *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. On the contrary, dividends paid trigger an additional burden on the distributing company (3% tax provided by Art. 235 ter ZCA of the CGI). |
| *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? | Proceeds from the licensing of patents, patentable inventions and their improvements and associated manufacturing processes qualify, subject to certain conditions, for a reduced capital gains rate of 15% (art. 39 terdecies of the CGI).  For royalties received pursuant to a sub-license arrangement, the taxation at the 15% reduced rate is subject to the two following conditions: (i) the licensor must not have already qualified for this regime on royalties perceived, and, (ii) the operation of sub-license is real and profitable. Special constraints exist in case of sub-licences where the owner of the patent is located outside France.  The reduced rate also applies to the disposal of such patents, except between related companies. Such disposals are classed as producing ‘long term’ gains or losses (art. 39 terdecies of the CGI).  The law does not explicitly state that the IP must have been developed by the company itself but does require, in case the IP has been acquired from a third party, that a 2-year period has elapsed.  A specific regime applies to « young innovative companies » which may enjoy total exemption of corporate income tax for a limited period of time. The status of “young innovative company” (art. 44 sexies-0 A of the CGI) is granted to SME companies constituted less than eight years ago and whose at least 50% of the capital is held continuously by individuals either directly or indirectly or by some of the venture capital sector, either by scientific associations or scientific foundations recognized as serving public interest or public institutions operating research and teaching and their subsidiaries, either by companies qualified themselves as “young innovative company”. Each year, they must bear research and development costs representing at least 15% of their deductible expenses.  This tax regime is applicable to companies created until 31 December 2016.  They can obtain a total tax exemption upon their income for their first profitable fiscal year, followed by a period of tax allowance of 50% (each of these two periods cannot last more than 12 months).  This preferential tax treatment can be applied to income from patents or other IP which has not been developed by the company itself to the extent that the company bears expenses relatively to these patents. |
| 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? | Yes. Industrial, commercial or agricultural companies that bear research and innovation expenses are eligible to a tax credit called “Crédit d’impôt recherche” (art. 244 quater B, I of the CGI)..  The tax credit is equal to 30% of the portion of expenses not exceeding EUR 100,000,000 and 5% above this threshold. |
| 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. | There are no specific requirements, except that law strictly enumerates the expenses eligible to the tax credit. Generally, it concerns expenses for achieving scientific and technical research operations (basic research, applied research or experimental development). |
| 1. Can such credits also be obtained for costs that are ultimately reimbursed by a group member company to the company in your MS? | Tax authorities answer positively, to the extent that the company is not qualified as a public research company. Case law is more ambiguous. |
| 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. To the extent that the asset is no longer in the balance sheet, the transfer generates a capital gain which is taxed at the ordinary CIT rate of 33,33% (and not the 15% rate described above at No 23) |
| 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 in this case (because parties are related). |
| 1. Does taxation arise as a result of an anti-abuse provision or similar? | No. |
| 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? | French rulings aim at explaining the applicable tax regime to an individual taxpayer, according to the information delivered by the latter. Therefore, it is unlikely to obtain a tax ruling only confirming the value of an IP. |
| *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? | Art. 39. 12 of the CGI provides that royalties paid to a related company may only be deducted up to 15/33.33 of their amount if the licensee does not effectively exploit his rights. In order to enjoy full deduction, the licensee must prove that the licence triggers added value over the whole period of the licence, that it is real and cannot be regarded as an artificial arrangement in order to circumvent French tax legislation.  Deduction is granted as long as it do not stem from (i) an act of management of abnormal nature, or (ii) a transaction not consistent with the arm’s length rule. |
| 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. |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 33 1/3 %. |
| 1. Are there types of royalty payments which are not subject to withholding tax? | Royalty payments are exempt from withholding tax (articles 119 quater and 182 bis of the [CGI](http://online.ibfd.org/linkresolver/static/cta_fr_abb_cgi?WT.z_nav=crosslinks)), provided that the beneficial owner of the interest 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. |
| 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. Case law of the French Supreme Court even implements a beneficial ownership test where the tax treaty does not provide explicitly for such a test. |
| 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. | Yes. Exemption is allowed only, among other criteria, if the recipient has its place of effective management in another EU Member State. Such a test requires an analysis of the substance of the recipient. |
| *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.  There are two alternatives for consolidated assessment open to French companies for tax purposes.   1. The Tax Integration Regime: The French Tax Code contains a set of rules that allow French companies that are members of a group to file a consolidated tax return under the “tax integration” regime (articles 223 A to 223 Q of the [CGI](http://online.ibfd.org/linkresolver/static/cta_fr_abb_cgi?WT.z_nav=crosslinks)). 2. Horizontal Tax Integration Regime: Since 2015, the regime allows the tax consolidation regime between French sister companies having a common parent company established in an EU Member State or in an EEA state if the EEA state has concluded an agreement on administrative assistance with France. |
| 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 see above, 16, d). |
| *CFC rules* | |
| 1. Does your MS apply CFC rules to foreign subsidiaries of a parent company in your MS? | Yes. |
| 1. If yes to 34, please briefly explain the rules and their scope. | A French corporate tax entity may be assessed to tax in France on a proportional share of the income realized by, and deemed received from, a controlled legal entity established in a low-tax jurisdiction (article 209 B of the CGI). If the foreign entity is a permanent establishment of the French corporate tax entity, the income derived by the permanent establishment is treated as business income.  The CFC legislation applies to resident companies that directly or indirectly hold a participation of more than 50% in a foreign legal entity or permanent establishment which is established or constituted in a country the effective taxation of which is at least 50% lower than that of France.  An anti-abuse provision reduces the participation threshold to 5% in situations where more than 50% of the shares in the foreign entity are owned by French companies or by foreign entities directly or indirectly controlled by a French company within the meaning of article 57 of the CGI.  The CFC rules do not apply :   * Within the European Union, unless the structure is purely artificial and its sole purpose is to avoid French tax; and * outside the European Union, if the foreign entity or permanent establishment demonstrates that the operations mainly pursue a purpose and an effect other than allowing the location of profits in a low-tax jurisdiction (for example, if the foreign entity is principally engaged in commercial or industrial activities). |
| 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? | In Model ATP Structure no. 1, there does not seem to be any ground for implementation of the CFC rule, unless interest is subject to a low level of taxation in State D (<50% of the French corporate income tax). If the CFC rule applied, interest received by Offshore Co would be taxed at the level of MNE Group at the 33.33% tax rate.  In Model ATP Structure no. 2, it is unclear whether the French CFC rule could apply.  In other ATP structures with MS jurisdictions, France as the country of the MNE group would wonder whether there is an artificial arrangement that justifies the denial of tax exemption related to dividends received by MNE Group. |
| *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 qualification of a foreign legal entity for tax purposes does not necessarily follow that of the foreign State. The tax qualification is conducted *lege fori*, which means that the foreign (civil or tax) qualification of an entity is not compulsory for the French administration.  When confronted with a foreign entity that might be liable to tax in France, the tax judges identify which category of French taxable entity corresponds best to the foreign entity (resemblance test).  In this process, the judges often take into account the civil or commercial characteristics of the entity in its State of residence by using a non-limitative list of elements (liability of the partners, number of participants, legal personality of the entity…). Cf. Artemis Case, 2014.  In a specific case, the *Conseil d’Etat* also considered the foreign tax status of the entity (cf Diebold Case, 1999) but this case seems to be overruled by later case law. |
| 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, but the Tax Administration could apply the domestic concept of abuse of tax law to counter the use of a hybrid entity in the indicated operation. |
| 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, see 38. |
| *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, France has a territorial system of CIT. Accordingly, French companies and French branches of foreign companies are subject to CIT for profits derived from businesses run in France (companies are only subject to corporate income tax on income derived from French source). |
| 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.  However, companies may obtain APAs regarding their transfer pricing method. France follows the OECD approach in this field. |
| 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? | France follows the OECD approach in transfer pricing.  Also note that in the case of commissionaire arrangements, the French Supreme Court has taken the view that the civil law approach of the contract should prevail in order to establish whether a foreign company has a PE in France (Zimmer case, 2010). In practice, it is therefore possible for foreign groups to change their distribution structures in France and favour commissionaire structures which raise less revenue for the French State. However, this case does not mean that multinational groups may do away with OECD principles. |
| 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 and to b). |
| *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. | I) The general concept of abuse of law (French GAAR rule) could be tested against all of the structures. Pursuant to Art L. 64 of the Tax Procedure Code (which defines abuse of law), the French tax authorities may disregard legal acts (1) that are deemed to be “fictitious” or (2) that in addition to being solely motivated by tax purposes, seek to take advantage of a literal application of a rule that is contrary to the lawmaker‘s objectives. There is substantial case law in France on the concept of abuse of law.  II) The tax administration may also use the abnormal act of management theory (*acte anormal de gestion*) to counter some structures. Under this concept, a tax deduction may be refused for charges not incurred for the benefit of the business or not arising from normal commercial operations (Model ATP Structure n° 4). This theory also provides a basis for taxation of non-received income in non-arm’s length situations.  For SAARs, see observations above. |
| *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. |