**Study on Aggressive Tax Planning**

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

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

**Filled in for Greece**







**QUESTIONNAIRE**

**Greece**

## Abbreviations

**Please fill in**

ITC: (New Greek) Income Tax Code (law 4172/2013, as amended)

CTP: (New Greek) Code on Tax Procedures (law 4174/2013)

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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? | According to Art. 58 para. 1 ITC, the tax rate is 29% for taxable income, except for legal persons maintaining a single-entry bookkeeping system. In case a legal person maintains a single- entry system (excluding the non-profit persons), the tax rate is 29% for the first 50.000 euros of taxable income and 33% for any taxable income above 50.000 (Art. 58 para 1 ITC in combination with Art. 29 para 1 ITC). |
| 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, dividends from so-called subsidiary shares may be tax exempt, according to Art. 48 para. 1 ITC. |
| 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 distributing company must be resident in an EU Member State and subject to the Parent-Subsidiary Directive, according to Art. 48 para. 1, case b ITC. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | No. The tax exemption is subject to a 10 % ownership requirement for at least 2 consecutive years, according to Art. 48 para.1, case d ITC. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | Yes (according to the Greek authorities, the provisions of Directive 2015/121/EU amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States have not yet been transposed into domestic legislation). |
| 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? | Yes, if the foreign shareholder company is subject to the Parent-Subsidiary Directive, according to Art. 63 para 1 ITC. |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | If the foreign shareholder company is resident in an EU Member State the exemption only applies if it holds at least 10% in the capital of the subsidiary continuously for at least 2 years, according to Art. 63 para 1. cases a. and b. ITC. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | No. The foreign shareholder must be resident in an EU Member State. (See under 5 above). |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | No. However, the situation will definitely be affected by the new EU Parent-Subsidiary Directive , but it is not possible to predict how. What is possible to say at the moment (without taking into account the new Directive) is that a beneficial ownership requirement could become necessary, based on art. 38 CTP which establishes a GAAR for artificial situations which have been established with the purpose of tax avoidance (see below 45). |
| 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. | No |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | Generally, with the exception of the cases mentioned above and the companies maintaining a single-entry bookkeeping system, the withholding tax for dividends is 10%, according to Art. 64 par. 1, case a. ITC. This withholding tax exhausts the tax liability when the dividend is paid to a natural person or a foreign legal person which does not have a permanent establishment in Greece, according to art. 36, para. 2 ITC and Art. 64, para. 3 ITC. Nevertheless, the tax liability is not exhausted when the dividend is paid to the other legal persons which in addition are not subject to the Parent-Subsidiary Directive. In that case, in addition to the 10%, an extra 26% tax rate applies to the dividend (according to Art. 47 ITC combined with the Art. 58 para 1 ITC), because it is included in the profits of the company. However, the 10% rate is offset against the 26% rate, so the final burden on the dividend equals to 16%, according to Art. 64 para 4 ITC. In the offsetting, it is not impossible to have a tax return if there is a loss for the company. In any case, the 10% tax rate is not withheld for profits paid to the foreign company by its permanent establishment in Greece (as this constitutes “profit distribution” within the same legal person).  *The Greek authorities provided more (and different) details on these rules. However, indicator 2 is avoided anyway.*  The Greek authorities have indicated that in case the person receiving the dividends is a legal person or a legal entity, the withholding tax does not exhaust the tax liability but the dividends received should be subsumed into the remaining income of that taxable person (income from business activity) and be taxed according to the general provisions (i.e. with rate 29%), when the provisions of article 48 of ITC do not apply. They furthermore add that, in case of dividends received by a Greek parent company from a domestic subsidiary or a foreign subsidiary having its residency in another EU member state, the tax paid by the latter as corporate income tax as well as any tax withheld on the dividends shall be credited against the tax of that parent company. To the contrary, with regard to dividends or profits received by a domestic parent company from a foreign subsidiary having its residency in a third country, only the tax withheld on dividends shall be credited against the tax of the parent company, capped at the amount of tax attributed to that income in Greece (article 68 par. 3 of law 4172/2013). For this purpose, the gross amount of received dividends shall be recorded in the books of the parent company in order for the latter to offset any tax paid abroad either as corporate income tax or as withholding tax on dividends (circular no. POL.1039/2015) |
| 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. | Only as far as it concerns the payment of liquidation proceeds, according to Art. 57 ITC.  The Greek authorities have provided further explanation, indicating that by virtue of circular no. POL.1042/2015, any other form of profits distribution, such as Boards of Directors fees and personnel fees deriving from the profits of the legal person or the legal entity, as well as the distribution or capitalization of previous years' profits shall be regarded as dividends. With regard to liquidation proceeds, the Greek authorities note that, despite the fact that they are regarded as profit distribution based on article 57 of ITC, the provisions of articles 48 and 63 of ITC regarding the exemption on intercompany dividends shall not apply in this case.  However, it remains unclear whether the dividend equivalent-payments are subject to Greek tax or not when paid to shareholders abroad. |
| ***Interest income*** | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes. A 26% rate applies, according to Art. 58 para 1 ITC. See also above under 1. |
| 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. | According to art. 50 ITC, yes, as the creditor company is a person associated to the company Finance Co D, within the meaning of the Art. 2 ITC. |
| 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 |
| 1. If yes to 11, | N/A |
| 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? | N/A |
| ***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. In general, interest paid by a company is deductible provided the loan relates to its business. However, according to Art. 23 ITC, there is a restriction for loans not provided by banks. The interest exceeding the interest that would derive from the interest rate of a current account credit facility loan to a non-financial corporation is not deductible. The above mentioned interest rate taken into account is the one mentioned in the closest in the time of the loan Bulletin of Conjunctural Indicators of the Bank of Greece. |
| 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 creditor's state. |
| 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. | There is no specific provision which prohibits the tax deductibility in this case. |
| 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, according to Art. 49 ITC concerning the thin capitalization in general, i.e regardless of whether a company is in a group or not. Art. 50 ITC includes transfer pricing provisions which are very general and does not offer special provisions related to interest deduction. |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | According to Art. 49 ITC, in combination with Art. 72 para 9 ITC concerning the thin capitalisation, interest costs are not recognised as deductible business expenses to the extent that the excess interest costs exceed the 50% of the taxable income before interests, taxes and depreciation (EBITDA). This rate will decrease every year (40% from 1.1.2016), to reach 30% from 1.1.2017. Excess interest costs are the interest costs which exceed the interest income (Art. 49 para 1 and 2 ITC).  Interest costs are fully recognised as deductible business expenses if the total net interest costs in the books do not exceed the amount of 5.000.000 euros per year (Art. 49 para 3 ITC). From 1.1.2016, the limit will be 3.000.000 euros.  Every interest cost which is not deductible is transferred to the next accounting year without a time limit (Art. 49 para 4 ITC). |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | The rules of Art. 49 ITC apply to all interest costs (not only to inter-group debt). |
| 1. Do the rules take into account the worldwide debt ratio of the group of companies? | No. |
| 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. | I do not consider the rules of Art. 49 para 3 and 4 ITC especially effective (see above under 16a). |
| 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, according to Art. 50 para1 ITC. |
| 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. The non-paid arm’s length interest will be included in the debtor company profits and will be taxable in Greece, according to Art. 50 ITC. |
| 1. Does your MS levy any withholding tax on interest payments? | Yes. |
| 1. If yes to 19 |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | 15%, according to art. 64 para1 case b ITC |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | No.  *According to the Greek authorities, this answer should be yes since there is an exemption for payments falling under the interest/royalty directive (article 63 par. 2 of law 4172/2013(ITC), no withholding tax is imposed on interest paid to legal person that is listed in the Annex of Directive 2013/49/EE for a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, as in force, provided that the conditions for the application of the aforesaid Directive are fulfilled).* |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | No. According to Art. 63 para 2 ITC, the interests payments are tax exempted when the creditor company is a resident of an EU member State and subject to the EU Interest/ Royalty Directive. Moreover, the tax exemption is subject to 25% ownership requirement for at least 2 consecutive years. |
| 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? | No |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | Furthermore, this exemption is not applied if the interest income has been deducted by the creditor company in its taxable income.  *Answer should be “No” according to the Greek authorities (They state that domestic legislation does not contain provisions to prevent abuse of article 63 of law 4172/2013).* |
| ***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. Greek 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? | There is an enhanced tax deduction. According to Art. 22A ITC (applicable to the companies also, according to Art. 47 para 1 ITC), R&D costs are deductible from the gross income of the company, increased by 30%. Exceptionally, equipment costs in order to be increased for deduction purposes, they are equally divided in the next three years. If there are losses after the reduction of the above rate, they are divided in the following 5 years, as it generally occurs with the transfer of business losses (Art 27 ITC). |
| 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 requirements which have to be met are not different from those required for the deduction of expenses in general (see below under 28) In parallel, a Presidential Decree is to be issued for the implementation of Art. 22Α).  *The Greek authorities provided more detailed explanation, indicating that under circular POL. 1113/2.6.2013 it was accepted that until the issuance of the relative presidential degree, in order to determine the criteria for the characterization of an expense item as scientific and technological research expenses, the provisions of no. 12962 POL.2029/3.11.1987 (Governmental Gazette 743 B’) Decision of the Minister of Industry Energy and Technology should be taken into account, which has not been abolished. They add that as far as the provisions of article 72 of law 3842/2010 are concerned, necessary condition for the granting of the exemption is the appearance of the exempted profits in a tax free reserves account.*  *However, since indicator 22 is avoided anyway because of the answer to question 24.* |
| 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 |
| 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. | Yes, the provision according to which they were taxable was abolished by Law 4172/2013 (ITC). Until then, a capital gains tax rate of 20% was imposed to the ownership transfer of a patent, trademark or other IP right. According to the former provision, the value taken into account was the fair market value at the time of the transfer. There is no longer any rule for taxation of a capital gain realized by a Greek company on sale of patents or other IP.  *The Greek authorities have stated their disagreement to this interpretation. They insist that capital gains are taxable as ordinary income; it was only the WHT that was abolished as a result of the change of law in 2013. They state that according to article 47 par.2 law 4172/2013, all type of income acquired by legal persons and legal entities referred in cases of article 45 is regarded as income from business activities and is taxed with 29%. Therefore, they state that any capital gains accrued from the transfer of the said royalties (patents, trademarks, intellectual property, etc) will be taxed under the general provisions. They further indicate that the abolished provisions quoted above refer to the withholding of 20% tax that was imposed on income from capital gains from the transfer of royalties, that did not exhaust the tax liability of the legal persons of article 101 par. 1 of law 2238/1994 (Société Anonyme, limited enterprises, etc.)".* |
| 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? | 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? | No |
| ***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? | According to Art 47 ITC, in combination with Art. 22 ITC, yes, as all business expenses meeting the following requirements: they are made to the interest of the company or according to its usual business transactions, they correspond to actual transactions whose value is not deemed higher or lower than the market value, they are registered in the books of the period within which they occur and they are proven with the appropriate receipts or invoices. According to Art. 23, case 13 ITC, expenses paid to a natural person, corporation or legal entity are not deductible when the former, at the time of the issue of the notice of payment or at the time of the transaction are residents either in a non-cooperative State in tax matters (art 65 ITC) (Art 23 case 13, a ITC) or in a state with a privileged tax regime (Art. 65 par. 4 ITC) (Art 23 case 13, b ITC). Also, expenses paid to a de facto attached corporation which has not deposited a master file and a country file prior to the transaction or the issue of the notice of payment (according to Art 21 CTP) (Art 23 case 13, c ITC) are not deductible either. The same applies to expenses paid to a corporation which does not have at its residence or at an attached corporation the required infrastructure in order to conduct by profession the same kind of transactions (as by practise and by profession the transaction for which the notice of payment was issued) (Art 23 case 13, d ITC).  In addition, from a legal point of view, it would be possible for the Greek tax legislation to include a patent box system. |
| 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? | Yes, sometimes, as it is taken into account whether the IP- licensor/ IP- owner is situated in a state with a privileged tax regime (See above 28, Art 23 case 13, b ITC). |
| 1. Are there types of royalty payments which cannot be deducted? | Νο |
| 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)? | The tax rate is 20%, according to Art. 64 para. 1, case c. ITC. |
| 1. Are there types of royalty payments which are not subject to withholding tax? | According to Art. 63 para 2 ITC, the royalty payments are tax exempted if the recipient company is a resident of another EU member State and subject to the EU Interest/ Royalty Directive. Moreover, the tax exemption is subject to 25% ownership requirement for at least 2 consecutive years. |
| 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? | No |
| 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, except for the requirement for an actual transaction (see above under 28). |
| ***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). | No. |
| 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. | N/A |
| ***CFC rules*** | |
| 1. Does your MS apply CFC rules to foreign subsidiaries of a parent company in your MS? | Yes, according to Art. 66 ITC. |
| 1. If yes to 34, please briefly explain the rules and their scope. | A Greek parent company, alone or together with associated persons, owning, directly or indirectly, a percentage higher than 50% of the capital of the CFC, or having the right to collect more than 50% of the profits of the subsidiary company must include in its own taxable income (in Greece), the non-distributed income of this subsidiary, if the subsidiary constitutes a CFC.  A subsidiary constitutes a CFC if  1. the Greek parent company owns directly or indirectly a percentage higher than 50% of the capital, or has the right to collect more than 50% of the profits of the subsidiary,  2. the subsidiary is subject to taxation at a non-cooperative state or a state with a privileged tax regime  3.more than 30% of the net income (calculated before taxes) of the subsidiary falls into one or more of certain categories of income (namely interests, royalties, dividends and gain from stock transfers, revenue from movable and immovable property, income from insurance, bank and other financial activities) and exclusively if more than a half of this income (50% of the relevant category of income) comes from transactions between the subsidiary (CFC) and the Greek parent company or the associated with the Greek parent company persons.  4. the subsidiary is not a company whose main category of stocks is negotiated in an organized market (stock exchange).  The scope of this innovative for the Greek legislation provision is to locate the real beneficiary in Greece. This provision does not apply in case of a subsidiary resident of a member state of the Union, except for the case in which the establishment or the economic activity of the subsidiary is an artificial situation created to the exclusive purpose of tax avoidance.  According to Art. 65 para 6 ITC, a presumption for the residence in a state with a privileged tax regime is established in the following three cases:  -the company is not subject to taxation  -or the company is not indeed taxed  -or it is subject to income tax or capital tax inferior or equal to 50% of the corporate tax rate which would be owed, according to the Greek tax legislation, if this company had its residence or PE in Greece. |
| 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? | Model ATP-Structures no1: Offshore Co could be subject to CFC taxation, as it is resident of a state with a privileged tax regime. However, in addition, the interests that it receives from the Β HoldCo must also be higher than 30% of its net income and exclusively if more than a half of these interests come from transactions between the Offshore and BHoldCo. The other Cos are situated in MS. So, primarily for this reason, they are not CFCs, unless it is deemed that they are merely artificial situations created to the exclusive purpose of tax avoidance. However, when these are artificial situations, their characterization as CFCs will depend on the percentage of the interests in their (total) net income.  Model ATP-Structures no2: It is irrelevant whether the payment is characterized as interest or dividend. What is essential in order to characterize as a CFC the BholCo, which is not resident in an EU Member State, is the percentage of the interests/ dividends that receives being higher than 30% of its net income and exclusively if more than a half of this income comes from transactions between BHolCo and the other companies. The other companies that are residents in Member States cannot be CFCs in principle, unless it is deemed that they constitute artificial situations etc.  Model ATP-Structures no4: No company can be a CFC in principle, as they are all residents in EU Member States. See above.  Model ATP-Structures no5: It goes the same as above mentioned.  Model ATP-Structures no6: The Company B may be a CFC, because it is resident in a State with a privileged tax regime. In addition, the royalties rates must be more than 30% of its net income and exclusively if more than a half of this income comes from transactions between Company B1 and the associated persons. The other companies that are residents in Member States cannot be CFCs in principle, unless it is deemed that they constitute artificial situations etc. |
| ***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 Greek tax law considers all the foreign companies as legal entities in general, without applying any special criterion or taking into account the tax qualification of the foreign legal entity. This applies also to the foreign partnerships. |
| 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. | Νο, because according to Art. 4 para 3 ITC, the criteria defining whether the state of residence is Greece are either the law according to which the company was established or the place of the actual management of the company etc. |
| 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? | In Greece, the CTP in force since 1.1.2014 provides in Art. 22 CTP the possibility of unilateral APA’s which have different functions from the traditional tax rulings (multilateral or bilateral APAs). In Greece, they are about the methodology concerning the pricing of a certain future cross-border transactions and they have a 4-year maximum duration without the possibility of a rollback.  *(The Greek authorities provide more details on the mechanisms and requirements. Not considered critical for the decision not to grant an indicator 30. They indicate that* *Greek tax law does not provide for the issuance of cross-border tax rulings in advance. More specifically the provisions of article 22 of law no. 4174/2013 (Tax procedure Law) foresees a concluding procedure of unilateral, bilateral and multilateral Advance Pricing Agreements (APAs) commencing into force from 1.1.2014 onwards, which forms a specific type of cross border decisions regarding transfer pricing. They further comment that APA’s duration cannot exceed 4 years, that APA’s subject is an appropriate set of criteria that are used such as the method, comparable and appropriate adjustments thereto, and that critical assumptions as to future events for the determination of the transfer pricing for those transactions over a fixed period of time. The procedure for the conclusion, revision, withdrawal and repeal of an APA, fees thereof, the negotiation procedure with the competent authorities of the involved countries, the type and the content of the decisions of the Tax Administration have been determined by circular POL. 1284/2013 of the Secretary General.* |
| 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? | They don't. |
| 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 |
| ***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. | In Greece, since 1.1.2014 when the CTP was put into force, the general anti-avoidance rule (Art. 38 CTP) as it is provided in the EU Commission Recommendation of the 6th December 2012 was adopted. Therefore, in the Model ATP Structures 1-7, if all the requirements were met, it could be deemed that there are artificial situations to the purpose of tax avoidance (see above under 36). |
| ***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. | Νο |