**Study on Aggressive Tax Planning**

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

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

**Filled in for Hungary**





**QUESTIONNAIRE**

**Hungary**

## Abbreviations

**Tao** = 1996. évi LXXXI. törvény a társasági és osztalékadóról (Corporate and Dividend Tax Act)

**Art** = 2003. évi XCII. törvény az adózás rendjéről (Act on the Rules of Taxation)

**Sztv** = 2000. évi C. törvény a számvitelről (Accounting Act)

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| --- | --- |
| Questions | Answers |
| *Corporate tax rate* | |
| 1. What is the standard rate of corporate income tax applicable for the fiscal year 2015? | 19% (progressive; 10% for tax base up to HUF 500 million). |
| 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 paid from foreign companies are tax exempt, except dividends received from controlled foreign companies. |
| 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? | Yes. However, dividends from controlled foreign companies are not tax exempt. |
| 1. Does this apply regardless of the level of shareholding or voting rights held in the distributing company? | Yes, the exemption regime is not subject to an ownership requirement. |
| 1. Does this also apply if the dividends have been deducted by the distributing company in its taxable income? | No.  Tao 4. § 28/b contains the following definition: “‘dividend’ shall mean the sum shown as dividends under income from financial transactions according to the Accounting Act, provided that this sum is not claimed by the company paying the dividend (including managed assets) as an expense from its pre-tax profit.” |
| 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? | Please, read the answer to point 4. c) above quoting 4. § 28/b of Tao.  The definition of dividend in Tao is in accordance with the definition in Art. 1 of Council Directive 2014/86/EU of 8 July 2014. |
| *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 paid to both resident and non-resident companies are not subject to withholding tax. |
| 1. If yes to 5, |  |
| 1. Does this apply regardless of the amount or percentage of shares, which the foreign company holds? | Yes, the exemption is not subject to an ownership requirement. |
| 1. Does this apply regardless of the tax residence of the foreign company, e.g. member state, treaty state, tax haven? | Yes, the exemption is not subject to any requirement. |
| 1. Is the withholding tax exemption subject to a beneficial ownership requirement similar to that of the OECD model tax convention? | No.  There is no explicit rule similar to beneficial ownership requirement of the OECD model tax convention. |
| 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.  Dividend – in the corporate sphere, apart from the case of CFC referred above – is not an object of taxation. Therefore, there is no withholding or other tax on dividend.  (In case the dividend payment (the title) is a result of any device of tax avoidance, the general and special anti-avoidance rules apply.) |
| 1. Is any other tax levied upon a distribution of a dividend by a company in your MS? | No. |
| 1. Are dividend equivalents (typically a buy-back of shares, a capital reduction-payment or a payment of liquidation proceeds) treated in a similar way as dividends and subject to withholding tax when paid to a foreign company? Please refer to question 4 and 5 above. | Yes.  There is no withholding tax neither on dividend nor on distribution of other kinds of after tax profit (e.g. capital reduction, cessation). Tao 7. § (1) gy)  [Buying back of shares, in our understanding, does not fall in the category discussed here; its result may be capital gain at the shareholder.] |
| *Interest income* | |
| 1. Is interest income from a loan granted by a company in your MS to a foreign group member company taxable? | Yes. |
| 1. If such a loan is granted free of interest (i.e. on non-arm’s length-conditions), would the creditor company resident in your MS have to include any deemed interest income in its taxable income? When responding, please consider Model ATP-Structure no. 4 and assume that FinanceCo B is tax resident in your MS. | Yes.  The creditor company must include an arm’s length interest income in its pre-tax profit. Tao 18. § (1) b)  Model ATP-Structure no. 4 would not be viable through FinanceCo B, a company resident in Hungary. |
| 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.  Tao 4. § 28/b contains the following definition: “‘dividend’ shall mean the sum shown as dividends under income from financial transactions according to the Accounting Act, provided that this sum is not claimed by the company paying the dividend (including managed assets) as an expense from its pre-tax profit;…”.  Model ATP-Structure no. 2 would not operate through B HoldcoHungary.  It should be noted, that the Act on Rules Of Taxation includes an anti-avoidance rule that may apply in this regard, which reads as follows:  “In the case of relationships affected by international treaties promulgated by an act or government decree, where in consequence of differences in the interpretation of the facts on hand or the provisions of the relevant international agreement between the States affected, having regard to incomes from such relationships, neither of those States considers such income taxable in its territory, Hungary shall not exempt such income from taxation” |
| 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? | - |
| *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, if the foreign group member company is not a CFC and the interest paid is related to the business operation or the gainful activity. |
| 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.  If the contract qualifies as loan contract under Hungarian law, the counter value of the loan will qualify as interest.  Model ATP-Structure no. 2 would be viable through C HoldcoHungary.  It should be noted, that the Act on Rules Of Taxation includes an anti-avoidance rule that may apply in this regard, which reads as follows:  “In the case of relationships affected by international treaties promulgated by an act or government decree, where in consequence of differences in the interpretation of the facts on hand or the provisions of the relevant international agreement between the States affected, having regard to incomes from such relationships, neither of those States considers such income taxable in its territory, Hungary shall not exempt such income from taxation” |
| 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.  [Beside the thin capitalisation rules explained below in point 16 , please, read also the rules on CFC in this respect and please note, that only those payments can be deducted that serve the business purposes of the taxpayer. Tao 8. § (1) n) and Schedule no. 3. A)] |
| 1. If yes to 15 |  |
| 1. Please briefly explain the general scope and mechanism of the rules. | Thin capitalisation rule  Interest paid by a taxpayer is not tax deductible to the extent it is paid on that part of liabilities which exceeds three times the taxpayer’s net equity; both equity and liabilities are measured by their daily average during the tax year (debt-to-equity ratio is 3 to 1). The rule applies to interest paid to both related and non-related parties. Exception: interest paid to financial institutions (i.e. credit institution and financial enterprise as they are defined in the Act on Credit Institutions). Tao 8. § (1) j) and (5). |
| 1. In particular, do the rules apply only to interest costs on inter-group debt or more generally to all interest costs? | Generally to all interest costs, apart from interest paid to financial institutions. |
| 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. | As Model ATP-Structures 1-4 designed for corporate groups, therefore both thin capitalization and transfer pricing rules have to be applied.  These structures are viable with the participation of a Hungarian resident taxpayer; however, if the taxpayer (e.g. C Holdco) is established with a minimum share capital, due to the 3:1 ratio, the accepted amount of the loan will also be minimal.  In this sense the thin capitalization rule is effective.  The involvement of a financial institution – including an intra group financial institution – may alter the conditions due to the term of ‘thin capitalization’ that does not include loans from financial institutions. However prudential regulations for the banking industry, theoretically, limit the extent of leverage of the taxpayer.  Under Hungarian law both profit (including partnerships) and not for profit organizations qualify as taxpayers (subjects) under Tao, meaning profit is taxed at corporate level. In this respect Structure 3. is viable on the Hungarian side.  As Tao rates are relatively modest, and in a regional context the (3:1) ratio is relatively high, it can be supposed that Hungary is not a country where to large loan stocks are allocated with the primary objective of tax savings. However, the cost advantage of loan in corporate finance is applied in Hungarian practice. It can also be supposed, that leveraged equity creation is also applied, however, it cannot be controlled by thin capitalisation rules. |
| 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. | Yes.  If the interest of a loan is less than the arm’s lengths price, the taxpayer deduct the difference from its pre-tax profit (“adjust the tax base”) provided three conjunctive conditions are met:   1. the price applied renders the pre-tax profit greater than it would have been had the fair market price been applied, and 2. the foreign associated enterprise (other than a CFC) is subject to corporate tax, and 3. the taxpayer holds a document signed by both parties that contains the amount of the difference. Tao 18. § (1) a).   Point 3. above does not refer to the necessity of corresponding adjustment, only a signed document is the precondition of the price adjustment under Tao. |
| 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? | No. |
| 1. Does your MS levy any withholding tax on interest payments? | No. |
| 1. If yes to 19 | -- |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | -- |
| 1. Are there special withholding tax rules for interest paid on a loan from a group member company? | -- |
| 1. Does this apply regardless of the tax residence of the creditor company, e.g. member state, treaty state, tax haven? | -- |
| 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? | -- |
| 1. Is such exemption, reduction or refund subject to other anti-avoidance requirements? If yes, please explain briefly. | -- |
| *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? | The term “patent box regime” refers to the preferential tax treatment of royalty and other IP rights (see below).  Further, Tao provides the following preferential regimes:  - tax treatment of capital gains on transferred IP,  - amortization rules for IP, and  - cost regime (double cost counting) for R&D, and  - tax credit for R&D investment.  1. Royalty  1.1. The Tao tax base is calculated by correcting the accounting pre-tax profit by deductions and increasing factors.  The ‘royalty’ preference is tax allowance, meaning a deduction from the pre-tax profit. The maximum amount of the deduction has two limits: (1) the maximum amount is 50 % of the royalty income of the given tax year and (2) the maximum amount cannot exceed 50 % of the pre-tax profit of the given tax year. (Tao 7. § (1) s))  1.2. Royalty has a wide meaning under Tao.  According to 4. § 20. point of Tao: “‘royalty’ shall mean any consideration received by the right holder for the transfer of:  a) a patent, industrial design and other protected intellectual works and know-how exploitation rights,  b) a trade mark, or the right of use of a trade name or trade secret,  c) right of use of authentic works protected by the Copyright Act and rights related to copyright, and  d) rights of use related to protected industrial designs and other copyrighted articles mentioned in Paragraphs a) and c).”  2. The taxpayer is entitled to apply the rules explained above independently of any conditions mentioned in the question, including payments under purely domestic contracts.  Model ATP-Structure no. 5 would be viable inserting Company B Hungary into the scheme. |
| 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. (see below) |
| 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. The scope of R&D  Basic research, applied research, experimental development. (Definitions in a separate act on research activities; no. LXXVI. of 2014.)  2. The tax allowance (“double deduction”)  2.1. It has two methods: (1) deduction of the direct R&D costs of the given tax year from the pre-tax profit; or alternatively, at the taxpayers discretion, (2) if the costs are capitalized (IP), the pre-tax profit can be decreased by an amount equals to depreciation amount calculated at the level of financial accounting. [Tao 7. § (1) t), (17)-(18)]  2.2. The amount of deduction is decreased by the amount of any support (“state subsidy”) requested from the tax authority for the given tax year. [Tao 7. § (1) t)]  At this moment there is no any direct subsidy of this kind (i.e. subsidy requested from the tax authority). However a kind of tax expenditure exists under the enhanced allowance (see below). This enhanced allowance (300 % of direct costs) is qualified as de minimis subsidy. [Tao 7. § (1) t), (17), Regulation 1407/2013/EU]. In general, the Hungarian system of “state subsidy/aid” is in accordance with the respective EU law.  2.3. Enhanced allowance (deduction)  In connection with R&D performed jointly by the taxpayer and a “qualified” institution (e.g. university, Hungarian Academy of Sciences) the taxpayer may claim three times the amount explained above (2.1.) up to maximum fifty million forints.  2.4. The taxpayer can deduct direct costs of R&D arisen only in the scope of its business activities.  [A basic principle of cost deduction both in the frame of Sztv and Tao is that the cost can be deducted only if it serves the business purposes of the company.]  The value of R&D service provided - directly or indirectly - by a resident taxpayer, by the domestic PE of a non-resident entrepreneur or by a private entrepreneur is not deductible. [Tao 7. § (1) t)] The reason is to exclude the duplication of deductible costs of a given R&D product.  3. Associated enterprises  The taxpayer is also entitled to deduct from its pre-tax profit the sum calculated its Tao subject associated enterprise according to the rule in 2.1. above if the associated enterprise opted not to claim it.  A written statement from its associated company showing the direct costs of R&D carried out within the associated company’s own scope of activities during the tax year, and the sum that may be claimed by the taxpayer from that sum is a precondition of the application of the rule explained above.  This rule can be applied only in the case that the certain R&D suits to the business operation of the taxpayer.  4. The Hungarian Intellectual Property Office (HIPO) serves as special authority for the classification of R&D activities and estimation of costs of these activities. Its involvement obligatory in the case of ruling connected to R&D. The taxpayer has to attach the opinion of HIPO to its application for ruling. [Art. 132. § (5a)]. In the case of controlling (audit) proceedings, the tax authority has the right to involve HIPO. [Art. 95. § (5a)] |
| 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. | Principally, yes. Transfer of notified IP is tax free and the transfer of not notified IP is conditionally tax free.  Capital gain on transfer of IP rights  Capital gains (losses) are ordinary incomes (losses) in the frame of Tao.  1. The form of preference is allowance, meaning a deduction from the pre-tax profit. Its measure is the difference (margin) between the proceeds and the costs of the given asset, (or in other words the net tax value of the IP). This preference has two forms dependently on the tax status (i.e. notified or not notified) of the certain intangible asset.  2. Two kinds of IP for tax purposes  2.1 Notified IP  According to 4. § 5/a. point of Tao “‘notified intangible asset’ shall mean the acquisition or production of intangible assets embodying rights to royalties (intellectual products, rights) provided that the taxpayer notifies the tax authority concerning the acquisition of such assets within sixty days of the date of acquisition or production …”.  The whole amount of the margin (capital gain) can be deducted from the pre-tax profit, on condition that the IP has shown in the books as asset at least one year prior to the transfer. Tao 7. § (1) e).  [It must be noted that the pre-tax profit shall be increased by the capital loss on a certain notified IP in the case of transfer. Tao. 8. § (1) n)]  2.2. Not notified IP  The pre-tax profit can be deducted by the amount of the capital gain from the sale of ‘not notified’ intangible assets, provided, that this amount is shown in the tied-up reserves of the balance sheet. With other words, that proportion of the capital gain can be deducted that is shown as tied-up reserves. This deduction is conditional and has a time limit: (1) the time limit is 3 years, and (2) the tied-up reserve has to be used for acquisition of IP rights. In case the conditions are not met, the tax postponed and the late sanction payment - base: the difference; measure: 2x central bank basic rate/per day - have to be paid. Tao 7. § (1) c).  Model ATP-Structure no. 5 with MNE Group as a tax resident company in Hungary would be workable. |
| 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? |  |
| 1. Does taxation arise as a result of an anti-abuse provision or similar? |  |
| 1. Would any R&D tax credits obtained in the past be reversed upon a disposal? |  |
| 1. Can a ruling confirming the value of the IP be obtained? |  |
| *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, if the royalty paid is related to the business operation or the gainful activity. |
| 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.  General and special anti-avoidance rules apply, including the principle that only payments made for business purposes of the taxpayer can be deducted for tax purposes. (Payments to CFS-s cannot be deducted as a main rule. However, the taxpayer can prove that the payment serves his business purposes.) |
| 1. Does your MS levy any withholding tax on royalty payments? | No. |
| 1. If yes to 30, |  |
| 1. What is the rate of withholding tax (ignoring tax treaties)? | N/A |
| 1. Are there types of royalty payments which are not subject to withholding tax? | N/A |
| 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? | N/A |
| 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. | N/A |
| *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. |
| 1. If yes to 34, please briefly explain the rules and their scope. | Dividends received from a controlled foreign company (CFC) are included in the taxable base of a resident corporate taxpayer (in contrast to dividends being normally deductible). In addition, items booked as expenses relating to the devaluation of a holding in a CFC or to losses sustained from the withdrawal of such a holding are added back to the taxable base of a resident company to the extent that they exceed the income booked from the holding. Payments (including interest and royalty) to CFCs are not deductible, unless the taxpayer is able to prove that it serves the purposes of his business operations.  The Hungarian taxable base must be increased by the undistributed after-tax profits of a CFC in proportion to the direct interest of the Hungarian taxpayer in the CFC.  A CFC is defined as a foreign person or foreign resident (on account of having a place of management abroad), in which at least one Hungarian resident individual (directly or indirectly) holds a 10% interest (shareholding or voting control) during the majority of the days within the taxable year or such foreign person or foreign resident derives the majority of its income from Hungarian sources, if the effective corporate income tax (or equivalent) burden of the entity is less than 10% or if it is not subject to corporate income tax (or equivalent) on its income because of its zero or negative tax base irrespective of its positive earnings figure.  This provision does not apply if the foreign person has its seat or tax residence within the European Union, an OECD country or a tax treaty partner of Hungary and the foreign person has a real economic presence in the country of its tax residence.  CFC provision does not apply if the foreign person has a shareholder - with at least 25 percent shareholding on each day of the tax year - listed on a recognized exchange for a period of not less than five years effective on the first day of the tax year. The CFC rule does not apply if the shareholder is the affiliated enterprise of a listed company, described above.  CFC rules also cover the PE of the foreign person qualified as CFC. |
| 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? | CFC rules would not be applied to the structures referred.  Please note that two basic elements of the CFC definition of Tao are: (1) private person as – direct or indirect - shareholder, or alternatively (2) Hungarian source revenue. |
| *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. | Both the foreign and Hungarian criteria are observed, however finally the decision is based on the Hungarian criteria. It must be added that there is no published judicial decision on the subject in the tax field. (It is a personal view.)  Model ATP-Structure no. 3 would not work with MNE Group as a Hungarian resident.  From a Tao perspective any and all revenue acquired by the taxpayer (e.g. MNE Group) is calculated to the pre-tax profits and there are no rules to disregard an income due to the legal form of the source entity.  Transparent entity does not exist - apart from a very special case that has no practical relevance in this context - under Hungarian tax laws.  From a corporate tax perspective the only question to be decided is whether the foreign person is a natural person or an organization. As the question is a Hungarian legal question, the final decision will be based on Hungarian criteria; however one has to observe the qualification of the given person under its personal legal system to understand what to compare. (There can be borderline cases as they exist under Hungarian law as well, - from a foreigner perspective – however they have no practical relevance in this context.)  From a personal income tax perspective - and from the perspective of the budget – Hungarian practice ought to look through foreign transparent entities. |
| 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.  Tao regards all Hungarian entities established in one of the legal forms listed by it as resident. The effective place of management only has relevance regarding non-Hungarian entities, which may still be regarded as resident if their effective place of management is in Hungary. |
| 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? | No. |
| *Tax ruling practices* | |
| 1. Some states offer tax rulings (incl. so-called APAs) that confirm non-arm’s length-transactions or the amount of spread between interest or royalty income and cost in various international flow through-structures. As an example, please refer to Model ATP-Structure no. 1. Does your MS offer this form of tax ruling practices or APAs? | No. |
| 1. Do your local transfer pricing-rules allow for the stripping of income from a domestic company by taking away legal ownership of functions, assets and risks? In other word, is it accepted that relatively small amounts of the group’s income is taxed in your MS on the basis of low risk, few assets held and only few functions performed in your MS? | No. |
| 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? | a) No.  b) May be, yes.  (If under deemed expenses the reduction of the tax base due to e.g. interest free loans is to be understood, an APA might provide this.) |
| *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 model structures 1-7 are clear models followed by clear questions on certain topics like interest, royalty, and dividend. The answers to the questions above contain certain obstacles of the structures, like the limitation of cost deduction or TP rules. Whether these clear models supposedly workable or not with the involvement of a Hungarian resident taxpayer is explained above. However, the variations of these models or certain facts added may involve other general or special anti-avoidance rules that are contained in Art (e.g. substance over from, general anti abuse rule, special rule on transfer pricing) or in Tao (e.g. tax relief can be used if the transaction manifests the purpose of tax allowance).  Tax jurisdiction is local while business is global, meaning that tax laws of a given state cover only a part of the structures. Overriding national frontiers on unilateral basis has certain legal limits. Unilateral solutions are rather defensive. Therefore coordinated solutions like beneficial ownership or those that will be the result of the BEPS project in treaty context or the two latter modifications of Parent-Subsidiary directive (CD 2014/86/EU and CD (EU) 2015/121) could provide new ways of handling the problems.  To answer the question: there might be rules to be applied; however these are dependent on the facts of a certain case. There are not many cases about international direct taxation decided by the judicial system of Hungary. Therefore, it would be difficult to build up a reasoned opinion on solutions worked out by the practice. |
| *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. |