International Tax ERFA Group Meeting
11. maj 2016

International Tax Planning
Agenda

• General remarks on International Tax Planning

• Analysis of International Tax Planning Models and Indicators

• Tax Strategy
What is international tax planning?

- "International tax planning is a multifaced discipline and may be defined as the lawful structuring (through the legally acceptable use of domestic tax law and tax treaties) of cross-border investments or activities with the objective of optimizing the overall tax burden and maximizing net income."

- Includes optimization of effective tax rate (ETR) and mitigation of risks and uncertainty.

What is aggressive international tax planning?

- "Taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability."
International Tax Planning

• Nothing wrong in carrying out tax planning
  - Avoid double taxation
  - Direct opportunities in existing tax legislation (e.g. deprecations)
  - Succession on business transactions
  - Effective Tax Rate in competition

• This presentation excludes tax evasion and illegal tax avoidance (this is not ATP)
International Tax Planning

• Which techniques are generally used internationally?
  - Guarding against different position form authority side:
    • Tax clauses in agreements, binding rulings, APAs etc.
  
  - General overview:
    • Corporate structures, holding companies etc.
    • Avoidance of withholding taxes
    • Double tax relief
    • Tax effective supply tax chain management
    • Placement of production, sales and services
    • Migration and lolocation of companies, including head quarters
    • Transfer pricing
    • Financing structures and financing terms
    • Mobile income
    • Treaty shopping
    • Hybrid entities
    • Hybrid financial instruments
    • Loss utilization, including tax consolidation
    • Double dips
    • Leasing
    • IP tax planning
The Models - ATP Structures

• Model ATP structures serve as a means of identifying a set of ATP indicators against which the risk exposure of tax systems can be tested.

• OECD Models:
  – A hybrid financing structure
  – A one-tiered IP and cost contribution arrangement
  – A two-tiered IP structure with a cost contribution-arrangement

• Four additional ATP structures:
  1. An offshore loan structure
  2. A hybrid entity ATP structure
  3. An interest free loan
  4. A patent box ATP structure
The Models - ATP Structures

1 Offshore loan
2 Hybrid financing
3 Hybrid entity
4 Interest free loan

IP models
5 Patent box
6 Two-tiered IP
7 IP and CCA
Model 1 – Offshore Loan

1. Equity
2. Loan
3. Loan
4. Purchase price amount
5. Group taxation
6. Interest
7. Interest
## Model 1 - Indicators

<table>
<thead>
<tr>
<th>MS A</th>
<th>MS B</th>
<th>MS C</th>
<th>State D</th>
</tr>
</thead>
<tbody>
<tr>
<td>No taxation of dividends received.</td>
<td>Tax deduction for interest costs.</td>
<td>Tax deduction for interest costs.</td>
<td>No withholding tax on dividends paid.</td>
</tr>
<tr>
<td></td>
<td>No thin cap/interest limitation-rules.</td>
<td>No withholding tax on interest payments.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No withholding tax on interest payments.</td>
<td>No beneficial owner-test for reduction of withholding tax.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unilateral ruling on interest spread.</td>
<td>Group taxation with acquisition holding company allowed.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No general or specific anti-avoidance rules to counter the structure.</td>
<td>No general or specific anti-avoidance rules to counter the structure.</td>
<td></td>
</tr>
</tbody>
</table>
Model 2 – Hybrid Financing

MNE Group

1. Equity EUR 400m

B Holdco

2. Hybrid loan EUR 400m

C Holdco

3. Loan EUR 600m

Target Co

4. Purchase price amount EUR 1,000m

External bank

5. Interest (deduction/inclusion)

6. Interest/Dividend (deduction/no inclusion)

7. Group taxation

8. Dividend (no deduction/no inclusion)

MS A

State B (non-MS)

MS C

Seller
## Model 2 – Indicators

<table>
<thead>
<tr>
<th>State A</th>
<th>State B</th>
<th>State C</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No taxation of dividends received.</td>
<td>• No withholding tax on dividends paid.</td>
<td>• Tax deduction for interest costs.</td>
</tr>
<tr>
<td>• No CFC Rules.</td>
<td>• Income from certain hybrid instruments can</td>
<td>• Tax deduction does not depend on the tax</td>
</tr>
<tr>
<td></td>
<td>be treated as tax free dividend or similar.</td>
<td>treatment in the creditor's state.</td>
</tr>
<tr>
<td></td>
<td>• No taxation of dividends received</td>
<td>• No interest limitation-rules.</td>
</tr>
<tr>
<td></td>
<td>regardless of deduction by the distributing</td>
<td>• No withholding tax on interest payments.</td>
</tr>
<tr>
<td></td>
<td>company (hybrid loan).</td>
<td>• No effective beneficial owner-test for</td>
</tr>
<tr>
<td></td>
<td></td>
<td>reduction of withholding tax.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Group taxation with acquisition holding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>company allowed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No general or specific anti-avoidance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>rules to counter the model ATP structures.</td>
</tr>
</tbody>
</table>
Model 3 – Hybrid Entity

State A (MS or non-MS) → MNE Group → MS B

- Loan (1)
- Interest (3)

C Hybrid

- 4 Hybrid seen as opaque. C Hybrid included in group taxation (4)
- C Hybrid seen as transparent (5)

TargetCo → Seller

- Purchase price (2)
# Model 3 – Indicators

<table>
<thead>
<tr>
<th>State A</th>
<th>State B</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No rule to counter a qualification mismatch of entities.</td>
<td>• Tax deduction for interest costs.</td>
</tr>
<tr>
<td>• No general or specific anti-avoidance rules to counter the model ATP structures.</td>
<td>• Tax deduction does not depend on the tax treatment in the creditor's state.</td>
</tr>
<tr>
<td></td>
<td>• No interest limitation-rules.</td>
</tr>
<tr>
<td></td>
<td>• No withholding tax on interest payments.</td>
</tr>
<tr>
<td></td>
<td>• Group taxation with acquisition holding company allowed.</td>
</tr>
<tr>
<td></td>
<td>• Tax qualification of foreign partnership does not follow that of the foreign state.</td>
</tr>
<tr>
<td></td>
<td>• No rule to counter a qualification mismatch of entities.</td>
</tr>
<tr>
<td></td>
<td>• No general or specific anti-avoidance rules to counter the model ATP structures.</td>
</tr>
</tbody>
</table>
Model 4 – Interest-free Loan

(1) Equity
(2) Loan
(3) Loan
(4) Interest
(5) Dividend

MS A

MS B

MNE Group

FinanceCo B

MS D

FinanceCo D

MS C

OpCo
## Model 4 – Indicators

<table>
<thead>
<tr>
<th>State A</th>
<th>State B</th>
<th>State C</th>
<th>State D</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No taxation of dividends received.</td>
<td>• No deemed income from interest-free loan (non-arm's length-transactions.</td>
<td>• No withholding tax on dividends paid.</td>
<td>• No withholding tax on dividends paid.</td>
</tr>
<tr>
<td>• No CFC-rules.</td>
<td>• Tax deduction for interest costs.</td>
<td>• Interest deduction allowed for deemed interest costs on interest-free debt.</td>
<td>• Tax deduction for interest costs.</td>
</tr>
<tr>
<td>• No general or specific anti-avoidance rules to counter the model ATP structures.</td>
<td>• No taxation of benefit from interest-free debt.</td>
<td>• No interest limitation-rules.</td>
<td>• No interest limitation-rules.</td>
</tr>
<tr>
<td></td>
<td>• No withholding tax on interest payments.</td>
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<td>• No general or specific anti-avoidance rules to counter the model ATP structures.</td>
<td>• No effective beneficial owner-test for reduction of withholding tax.</td>
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International IP Tax Planning

- **What is IP**
  - The notion of intangibles
  - The notion of royalties

- **IP Tax Planning in its simplest form**
  - Timing:
    - In the start up phase
    - Development of IP
    - Migration of existing IP rights
  - Long term assets v. direct costing
  - Tax and other incentives
  - A tax-friendly structure (model)
    - Low taxation of income (Patent boxes)
    - CFC and other parent-issues?
Model 5 – Patent Box Structure

MS A

(1) Transfer of IP

(3) Dividend

MNE Group

Company B

(2) License

(2) Payment of royalty

Company C

MC C

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# Model 5 – Indicators

<table>
<thead>
<tr>
<th>State A</th>
<th>State B</th>
<th>State C</th>
</tr>
</thead>
</table>
| • No taxation of dividends received.  
  • No or low taxation of capital gain (fair market value) upon disposal of IP.  
  • No CFC-Rules. | • No withholding tax on dividends paid.  
  • Patent box or other preferential tax treatment of income from IP. | • Tax deduction for royalty costs.  
  • No withholding tax on royalty payments.  
  • No effective beneficial owner-test for reduction of withholding tax.  
  • No general or specific anti-avoidance rules to counter the model ATP structures. |
Model 6 – Two-Tiered Structure

(1) Transfer of IP

Incorporated in MS B but tax resident in State E

(5) Dividend

(2) License and royalty payment

(3) Sub-license and royalty payment

(4) Sub-license and royalty payment

(1) Transfer of IP

Company B1

Company B2

Company D

OpCo
# Model 6 – Indicators

<table>
<thead>
<tr>
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<th>State D</th>
<th>State E</th>
</tr>
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<tbody>
<tr>
<td>• No taxation of dividends received.</td>
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<td>• Tax deduction for royalty costs.</td>
<td>• No taxation of dividends received.</td>
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<td>• No withholding tax on royalty payments.</td>
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<td></td>
</tr>
<tr>
<td>• No CFC-Rules.</td>
<td>• No withholding tax on royalty payments.</td>
<td>• No effective beneficial owner-test for reduction of withholding tax.</td>
<td>• No effective beneficial owner-test for reduction of withholding tax.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Locally incorporated company not tax resident if management/control is situated in another state.</td>
<td>• Excess profits are tax exempt (ruling can be obtained).</td>
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<td></td>
</tr>
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<td></td>
<td></td>
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</table>
Model 7 – IP and Cost Contribution Agreement

(1) Transfer of non State A IP
(2) Production and sales responsibility
(3) License and royalty payment
(4) Manufacturer agreement
(5) Sale of products
(6) Dividend
## Model 7 – Indicators

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<td>• No withholding tax on dividends paid.</td>
<td>• Tax deduction for royalty costs.</td>
</tr>
<tr>
<td>• No or low taxation of capital gain (fair market value) upon disposal of IP.</td>
<td>• Patent box or other preferential tax treatment of income from IP.</td>
<td>• No withholding tax on royalty payments.</td>
</tr>
<tr>
<td>• R&amp;D tax incentive obtainable also for costs that are reimbursed.</td>
<td>• Absence of corporate income taxation or very low corporate tax rate.</td>
<td>• No general or specific anti-avoidance rules to counter the model ATP structures.</td>
</tr>
<tr>
<td>• No CFC-Rules.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
International tendencies

• The era of globalization
  • Media attention – “naming and shaming”
  • NGO and activist attention
  • Moving towards transparency
  • Fairness in taxation

• Tightened domestic legislation
• BEPS
• EU Anti Tax Avoidance Package

• Tax strategy is becoming increasingly important
Tax Strategy

• Taxes are moving up the agenda – entering the board room as well.
• Historical efforts were limited to either doing nothing or general remarks on the company webpage.
• More and more companies are becoming aware of the importance of tax strategy and the potential consequences of increased attention (e.g. consumer goods: Vodafone, Starbucks, 3, Nordea etc., etc.)
  – As a consequence more companies have developed detailed tax policies and tax strategies, which are aligned with management.
• However, far from all companies.......  
  – Possible explanations:
    • Corporate governance: No tax policy requirement yet in guidelines
    • Bonus schemes: wrong P&L lines – above taxes!
  – Need to communicate better and strategic on taxes
  – Not merely a paper CRS excercise.
Tax Strategy

• How to prepare?
  – Develop a tax policy to demonstrate publicly how taxes are handled, also in times of full transparency
  – Develop an internal tax strategy to provide the internal guidelines for the daily tax work:
    • Practical tool
    • Do’s and dont’s.
    • How to communicate? - Communications team must be involved...
    • General principles on tax planning, compliance, tax audits, public information, media, communication on taxes etc.
    • Short-medium-long term initiatives on compliance, risk, tax planning
• Experiences
  – Suprising that many still have not made this excercise.
  – Good experiences with making this as hands on practical as possible.
  – Stressing the importance of anchoring ownership throughout the organisation (tax, finance, accounting, management, board, audit committee, communications team, etc).