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## Screening of the corporate income tax systems of EU member states for indicators of aggressive tax planning

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## Introduction

Aggressive tax planning by multinational enterprises has been high on the agenda of the media, the public and policy-makers in recent years. The OECD/G20 BEPS-project, launched in 2012, has produced a shake-up of fundamental principles of international tax law and introduced new guidelines and rules on reporting, transfer pricing, etc. In the EU, the Commission has launched a number of initiatives in the field to address aggressive tax planning.

In this context, Ramboll and Corit Advisory undertook to perform a study for the EU Commission of the corporate income tax systems of the EU member states. The purpose of the study was to perform a qualitative review of the tax system of each member state in order to point to tax rules and practices – so-called indicators – which can facilitate aggressive tax planning by multinational enterprises (MNEs). The study was based on publicly available information regarding ATP-structures and does neither rely nor reveal any tacit information. The study can be found on the EU Commission's website (ec.europa.eu)[2)] under the title »Study on Aggressive Tax Planning and Indicators«. It was made public on the 28th of January 2016 when the EU Commission launched its Anti Tax Avoidance Package.

Although a more circumstantial analysis would be required in order to draw final conclusions, the study stands out as the first of its kind to perform a qualitative review of existing tax systems of large number of states.

This article presents an overview of the methodology applied and the results found.

## 1. Scope and methodology

### *1.1 Definition of Aggressive Tax planning*

It is clear that the concept of *aggressive tax planning* (ATP) is loaded with elements of subjective and political connotation, but the EU Commission had set out a fairly clear definition in 2012. It was natural for the study to base itself on this definition:[3)]

*»[ATP consists] in 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. It may result in double deductions (e.g. the same cost is deducted in the state of source and the state of residence) or double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence)«.*

As can be seen, the primary focus of this definition is on double deductions and non-taxation in cross border transactions.

### *1.2 Scope*

The definition of ATP was further refined to clarify that only the corporate income tax systems were in scope for the study, implying that other taxes, most notably indirect taxes and personal taxes, were excluded. Moreover, to control the level of complexity, only the state-wide (federal) systems were subject of the study while regional tax systems were generally kept out. Finally, it was clear that tax evasion was out of scope by definition, as it infringes tax rules rather than taking advantage of them. The data collection relied on current law at the cutoff date during the summer of 2015.

  

## 1.3 Methodology

In order to review the tax systems, it was necessary to establish a methodological tool with which to perform the review. To our knowledge no such tool existed prior to the study. Such a measuring method was obtained in the form of a list of the so-called ATP-indicators. Most of the ATP-indicators were extracted from a handful of well-known international tax planning structures (ATP-structures).

### 1.3.1 ATP structures

ATP structures representing some empirically proven channels for profit shifting[4)] were identified and described.

The selection of model ATP structures was inspired by the OECD's BEPS reports as well as other tax literature, and has been supplemented from the authors' professional experience and knowledge. This has resulted in the seven model ATP structures which are presented in the list that appears immediately below. The study considers four well-known corporate tax structures identified by the OECD,[5)] and adds an additional three model ATP structure. The seven model structures are:

- A hybrid financing structure
- A two-tiered IP structure
- A one-tiered IP
- An offshore loan structure
- A hybrid entity structure
- An interest-free-loan structure
- A patent-box ATP structure

More details on each of the ATP-structures and their ATP-indicators can be found in the report on the EU Commission's website.

### 1.3.2 ATP indicators

A total of 33 ATP indicators were identified and assessed in the study. They are listed in the left hand-part of Table 1 in the appendix.

ATP indicators were defined for the purpose of the study as those generic characteristics of a tax system which have the potential to facilitate ATP. Technically, an ATP indicator can take the form of a specific piece of legislation or case law, but it can also take the opposite form, namely the absence of such legislation.

A typology of indicators was constructed to reflect the fact that the character of how indicators facilitate ATP can be either active or passive. An ***active ATP indicator*** is one which can directly promote or prompt an ATP structure. Often, it is the active indicators that are the main source of the tax benefit offered by an ATP structure. By contrast, a ***passive ATP indicator*** is one which does not by itself promote or prompt any ATP structure, but which is necessary in order not to hinder or block an ATP structure. A third category, the ***lack of anti-abuse ATP indicators***, represents the lack of rules aimed at counteracting the avoidance of tax.

Additionally, the absence of some anti-abuse and passive ATP indicators can combine with others into ***sets*** which are capable of facilitating the same or similar types of ATP structure.

### 1.3.3 Member state assessments

Using as its basis the list of ATP indicators, a questionnaire was designed for the purpose of factual primary data collection. The questionnaire was completed by national tax experts (NTEs) (consisting of highly esteemed tax professionals in all 28 EU Member States) – one for each member state. Questionnaires filled in by NTEs were sent for comments to the representatives of each member state. The questionnaire responses were then analysed centrally in order to produce individual member state assessments, highlighting the findings and identifying each state's most salient tax features in the light of the indicators.

# 2. Findings

The findings of ATP-indicators per member state are listed in the right hand-part of Table 1.

While the main purpose of the study was to identify the critical ATP indicators which facilitate or allow the functioning of known ATP structures and to review the corporate income tax systems of the member states on the basis of these indicators, the study also allows for a number of interesting general observations when making comparisons across the member states. Such general observations are presented below.

## 2.1 Number and categories of indicators observed

### 2.1.1 Number of indicators

The number of indicators varies widely between member states, from four to seventeen. Most member states exhibit between nine and thirteen indicators.

### 2.1.2 Categories of indicators

*Active indicators* are found in fifteen member states. The maximum number of active indicators found in any member state is three; this situation exists in three member states.

If Indicator 17 (patent/IP box regime) were set aside, the number of member states with active indicators would fall to eleven.

All member states except two have indicators indicating a *lack of anti-abuse measures,* and most member states exhibit between four and six lack of anti-abuse indicators.

Finally, and not surprisingly, *passive indicators* are found in all member states, and here there is less variation in the number than for the two other categories of indicator. Most member states exhibit between three to five passive indicators.

## *2.2 Common findings across member states*

A number of indicators are common to many member states. This section points out the most important ones.

### 2.2.1 Anti-abuse rules to counter base erosion by means of financing costs

All twenty-eight member states exhibit indicators relating to the interest-cost theme (indicators 8-15). In addition, twenty-four member states possess indicators in this category that combine into a set of indicators (Indicator 8 combined with any of Indicators 9 or 12-15) that are capable of facilitating the same base erosion by means of financing costs.

In other words, twenty-four member states offer a general deductibility of interest costs without making it conditional on the creditor being taxed on the interest income and/or without imposing the full scale of thin-capitalization or other interest-limitation rules, interest withholding tax or a beneficial-owner test as a condition for withholding-tax exemptions in the context of group financing.

In particular, as many as twenty member states do not link the tax-deductibility of interest cost to the tax treatment of the interest income in the hands of the recipient (lack of anti-abuse Indicator 9).

Moreover, six member states exhibited the active Indicator 10, which offers a unilateral tax deduction of deemed interest costs on a non-arm's-length interest-free debt.

### 2.2.2 Dividend flow-through possible, although less of an issue

In contrast with the interest-cost theme discussed above, far fewer member states – only thirteen – exhibited a combined set of indicators in the field of dividends received and dividends paid (Indicator 1 in combination with any of Indicators 2-4). This may be taken as an indication that rules in many member states are already better in place in this field than in the interest-cost field to counter ATP based on the tax-free flow-through of dividends.

However, it is noted that at the time of the data collection, thirteen member states did not apply any beneficial-owner test when accepting a claim for the reduction or exemption of withholding tax.

The amendment of Article 1(2) of the Parent/Subsidiary Directive should prevent member states from granting the benefits of the directive to arrangements that are not »genuine«.

### 2.2.3 Lack of CFC rules

Half the member states, fourteen, do not have actual CFC rules (lack of anti-abuse Indicator 24). In general, CFC rules can be effective tools for countering ATP structures, particularly those based on financing and IP (royalty) payments. CFC rules would normally impose a tax in the state of the parent company on financial, IP and other mobile income earned by a subsidiary company in another state. On the other hand, as CFC rules normally only apply »downstream« in a group structure, a member state's CFC rules cannot usually counter ATP if the ATP transactions take place in a sister company or at a higher level in the group structure.

### 2.2.4 Lack of rules to counter mismatch in qualification of local entities

Other than Denmark, Spain, and (partly) Hungary, no member state has rules (lack of anti-abuse indicators 26 and 27) to counter the mismatching tax qualification of a local partnership or company by another state (typically the state of the owners).

Such mismatches can lead to hybrid or reverse hybrid mismatches in the form of no income pick-up as illustrated by Model ATP Structure 3 (mainly relevant in relation to US MNEs) or double deductions for the same cost.

Rules applied by some countries to counter hybrid mismatches include linking rules where a member state's tax qualification of a local entity matches the qualification applied by the state in which the owners are resident.

Indicators 26 and 27 are by far the most frequently-encountered lack of anti-abuse indicators observed in the study.

### 2.2.5 Patent-box regimes

Among the active indicators, Indicator 17 concerning patent-box regimes is the most frequent indicator, being found in ten member states. On the background of the initiatives already taken at EU level – in particular, the work of the ECOFIN Code of Conduct Group on Business Taxation[6)] – the study did not perform an in-depth analysis on whether the IP regimes are compliant with the modified-nexus approach.

However, Question 23 of the questionnaire served to gather some details that are relevant to this indicator. In particular, the answers collected revealed that some of the existing regimes allow for acquired existing IP to come under the patent-box regime. Some of the regimes also allow other IP such as know-how and trademarks to be included in the patent-box regime.

  

### 2.2.6 Commonly found passive ATP indicators

As might have been expected, the study found a number of passive indicators that are common to most member states. They include:

- the general tax-deductibility of interest cost (Indicator 8), found in all member states;
- the general tax-deductibility of royalty costs (Indicator 19), found in twenty-six member states; and
- the possibility of filing a group tax return with an acquisition-holding company (Indicator 23), found in seventeen member states.

None of these findings are considered critical by themselves in terms of facilitating ATP. This is logical, given that passive indicators often relate to features of a tax system that generally serve a positive function. However, under some circumstances they may allow for ATP. Even so, the reader should refer to the above discussion regarding Indicator 8 when it is combined with other interest-cost indicators.

### 2.2.7 Positive findings

The study has brought to light a number of positive observations.

Firstly, no member state offers any tax deduction for dividends paid (the active Indicator 5).

Secondly, no member state offers a general nil corporate tax rate (the active Indicator 28).

Thirdly, only one member state allows for a locally incorporated company to claim non-resident tax status (the active Indicator 29), with another earning a remark for the lengthy duration of its grandfathering clause.

Finally, it is worth noting that almost all the member states (twenty-six) have general or special anti-avoidance rules that are capable of countering parts of the model ATP structures considered in the study. Only two member states exhibited the lack of anti-abuse Indicator 32. This should not be taken as a complete overturning or discrediting of the model ATP structures, but rather as an indication that at least some roles in the structures could be impossible for a company that is resident in the twenty-six member states which have been reported to exhibit such anti-avoidance rules.

## Appendix

| **ATP-Indicators** | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Theme** | **No.** | **Subject** | **Category** | AT | BE | BG | HR | CY | CZ | DK | EE | FI | FR | Total |
| Dividends received | 1 | Too generous tax-exemption of dividends received | Passive | | x | x | | x | x | | x | x | | 15 |
| Dividends paid | 2 | No withholding tax on dividends paid | Passive | | | | | x | | | x | | | 7 |
| | 3 | No withholding tax on dividend equivalents (e.g. buy-back of shares) | Passive | | | | x | | | | | x | | 4(1) |
| | 4 | No beneficial owner-test for reduction of withholding tax | Anti-abuse | | x | x | x | | | | | x | | 13(2) |
| | 5 | Tax deduction for dividends paid | Active | | | | | | | | | | | 0 |
| Interest income | 6 | Income from certain hybrid instruments can be treated as tax-free dividend or similar | Anti-abuse | | x | | | x | | | | | | 6 |
| | 7 | No deemed income from interest-free loan (non-arm's length-transactions) | Active | | | | | | | | | | | 2 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Interest costs | 8 | Tax deduction for interest costs | Passive | x | x | x | x | x | x | x | x | x | x | 28 |
| | 9 | Tax deduction does not depend on the tax treatment in the creditor's state | Anti-abuse | | x | x | x | | x | | x | x | | 20 |
| | 10 | Interest deduction allowed for deemed interest costs on interest-free debt | Active | x | | x | x | | | | | | | 6 |
| | 11 | No taxation of benefit from interest-free debt | Anti-abuse | x | | x | x | | | | | | | 5[3] |
| | 12 + 13 | No interest-limitation rules and no thin-capitalization rules | Anti-abuse | | | | | x | | | x | | | 4[4] |
| | 14 | No withholding tax on interest payments | Passive | x | | | | x | | | x | x | | 8 |
| | 15 | No beneficial owner-test for reduction of withholding tax | Anti-abuse | | | | x | | | | | | | 6[5] |
| Allowance for equity capital | 16 | Notional interest deduction by reference to a company's equity capital | Active | | x | | | x | | | | | | 3 |

[1] MS are not given any indicator on this point if an indicator is already given under number 2 above. This is because there can be no circumvention of dividend withholding tax if no such tax is imposed in the first place.

[2] MS are not given any indicator on this point if an indicator is already given under number 2 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no dividend withholding tax in the first place.

[3] MS can only be given an indicator on this point if Indicator 10 is found for the same MS.

[4] Given that indicator 12 and 13 largely seek to cover the same ATP-concerns, MS are only given an indicator if both rules are absent. And if so, only one indicator will be given.

[5] MS are not given any indicator on this point if an indicator is already given under number 14 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no interest withholding tax in the first place.

| **ATP-Indicators** | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Theme** | **No.** | **Subject** | **Category** | DE | GR | HU | IE | IT | LV | LT | LU | MT | NL | Total |
| Dividends received | 1 | Too generous tax-exemption of dividends received | Passive | | | x | | | x | x | x | x | x | 15 |
| Dividends paid | 2 | No withholding tax on dividends paid | Passive | | | x | | | | | | x | | 7 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 3 | No withholding tax on dividend equivalents (e.g. buy-back of shares) | Passive | | x | | | | x | | | | | 4[(1)] |
| | 4 | No beneficial owner-test for reduction of withholding tax | Anti-abuse | | x | | | x | x | x | | | x | 13[(2)] |
| | 5 | Tax deduction for dividends paid | Active | | | | | | | | | | | 0 |
| Interest income | 6 | Income from certain hybrid instruments can be treated as tax-free dividend or similar | Anti-abuse | | | | | | | x | x | | x | 6 |
| | 7 | No deemed income from interest-free loan (non-arm's length-transactions) | Active | | | | x | | | | | x | | 2 |
| Interest costs | 8 | Tax deduction for interest costs | Passive | x | x | x | x | x | x | x | x | x | x | 28 |
| | 9 | Tax deduction does not depend on the tax treatment in the creditor's state | Anti-abuse | x | x | x | | x | x | x | x | x | x | 20 |
| | 10 | Interest deduction allowed for deemed interest costs on interest-free debt | Active | | | x | | | | | | | x | 6 |
| | 11 | No taxation of benefit from interest-free debt | Anti-abuse | | | x | | | | | | | x | 5[(3)] |
| | 12 + 13 | No interest-limitation rules and no thin-capitalization rules | Anti-abuse | | | | x | | | | | x | | 4[(4)] |
| | 14 | No withholding tax on interest payments | Passive | x | | x | | | | | | | x | 8 |
| | 15 | No beneficial owner-test for reduction of withholding tax | Anti-abuse | | x | | x | | x | | | | | 6[(5)] |
| Allowance for equity capital | 16 | Notional interest deduction by reference to a company's equity capital | Active | | | | | x | | | | | | 3 |

(1) MS are not given any indicator on this point if an indicator is already given under number 2 above. This is because there can be no circumvention of dividend withholding tax if no such tax is imposed in the first place.

(2) MS are not given any indicator on this point if an indicator is already given under number 2 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no dividend withholding tax in the first place.

(3) MS can only be given an indicator on this point if Indicator 10 is found for the same MS.

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| [4] Given that indicator 12 and 13 largely seek to cover the same ATP-concerns, MS are only given an indicator if both rules are absent. And if so, only one indicator will be given. |
| [5] MS are not given any indicator on this point if an indicator is already given under number 14 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no interest withholding tax in the first place. |

| **ATP-Indicators** | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Theme** | **No.** | **Subject** | **Category** | PL | PT | RO | SK | SI | ES | SE | UK | Total |
| Divi-dends re-ceived | 1 | Too generous tax-exemption of dividends received | Passive | | | x | x | | | x | | 15 |
| Divi-dends paid | 2 | No withholding tax on divi-dends paid | Passive | | | | x | | | x | x | 7 |
| | 3 | No withholding tax on divi-dend equivalents (e.g. buy-back of shares) | Passive | | | | | | | | | 4[1] |
| | 4 | No beneficial owner-test for reduction of withholding tax | Anti-abu-se | x | x | x | | x | | | | 13[2] |
| | 5 | Tax deduction for dividends paid | Active | | | | | | | | | 0 |
| Interest income | 6 | Income from certain hybrid instruments can be treated as tax-free dividend or si-milar | Anti-abu-se | | | x | | | | | | 6 |
| | 7 | No deemed income from in-terest-free loan (non-arm's length-transactions) | Active | | | | | | | | | 2 |
| Interest costs | 8 | Tax deduction for interest costs | Passive | x | x | x | x | x | x | x | x | 28 |
| | 9 | Tax deduction does not de-pend on the tax treatment in the creditor's state | Anti-abu-se | x | x | x | x | x | | | | 20 |
| | 10 | Interest deduction allowed for deemed interest costs on interest-free debt | Active | | | | | | x | | | 6 |
| | 11 | No taxation of benefit from interest-free debt | Anti-abu-se | | | | | | | | | 5[3] |
| | 12 + 13 | No interest-limitation rules and no thin-capitalization rules | Anti-abu-se | | | | | | | | | 4[4] |
| | 14 | No withholding tax on inter-est payments | Passive | | | | | | | x | | 8 |
| | 15 | No beneficial owner-test for reduction of withholding tax | Anti-abu-se | x | | | | x | | | | 6[5] |
| Allowan- | 16 | Notional interest deduction | Active | | | | | | | | | 3 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ce for equity capital | | by reference to a company's equity capital | | | | | | | | | | |

(1) MS are not given any indicator on this point if an indicator is already given under number 2 above. This is because there can be no circumvention of dividend withholding tax if no such tax is imposed in the first place.

(2) MS are not given any indicator on this point if an indicator is already given under number 2 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no dividend withholding tax in the first place.

(3) MS can only be given an indicator on this point if Indicator 10 is found for the same MS.

(4) Given that indicator 12 and 13 largely seek to cover the same ATP-concerns, MS are only given an indicator if both rules are absent. And if so, only one indicator will be given.

(5) MS are not given any indicator on this point if an indicator is already given under number 14 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no interest withholding tax in the first place.

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| **ATP-Indicators** | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Theme** | **No.** | **Subject** | **Category** | AT | BE | BG | HR | CY | CZ | DK | EE | FI | FR | Total |
| Royalty or other IP income | 17 | Patent box or other preferential tax treatment of income from IP | Active | | x | | | x | | | | | x | 10 |
| | 18 | No or low taxation of capital gain (fair market value) upon disposal of IP | Passive | | | | | | x | | | | | 4 |
| Royalty or other IP costs | 19 | Tax deduction for royalty costs | Passive | | x | x | x | x | x | x | x | x | x | 26 |
| | 20 | No withholding tax on royalty payments | Passive | | | | | x | | | | | | 4 |
| | 21 | No beneficial owner-test for reduction of withholding tax on royalty | Anti-abuse | | x | | | | | | | | | 6(6) |
| | 22 | R&D tax incentive obtainable also for costs that are reimbursed | Passive | | x | | x | | x | | | | x | 9 |
| Group taxation | 23 | Group taxation with acquisition holding company allowed | Passive | x | | | | x | | x | | x | x | 17 |
| CFC-rules | 24 | No CFC-rules | Anti-abuse | x | x | x | x | x | x | | x | | | 14 |
| Foreign legal entities | 25 | Tax qualification of the foreign entity does not follow that of the foreign state | Passive | x | x | | | | | x | | x | x | 18 |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 26 | No rule to counter a mismatch in tax qualification of a domestic partnership between your state and a foreign state | Anti-abuse | x | x | x | x | x | x | | x | x | x | 25 |
| | 27 | No rule to counter a qualification mismatch of a local company | Anti-abuse | x | x | x | x | x | x | | x | x | x | 26 |
| Tax-free company | 28 | Nil corporate tax rate | Active | | | | | | | | | | | 0 |
| | 29 | Locally incorporated company not tax-resident if management/control is situated in another state | Active | | | | | x | | | | | | 1 |
| Ruling practices | 30 | Unilateral ruling on interest spread | Passive | | x | | | | | | | | | 5 |
| | 31 | Excess profits rulings | Active | | x | | | | | | | | | 2 |
| GAAR / SAAR | 32 | No general or specific anti-avoidance rules to counter the model ATP structures | Anti-abuse | | | | | | | | | | | 2 |
| Other themes (residual) | 33 | Any other significant ATP indicator to be identified by national tax experts | | | | | | | | | | x | | 1 |
| **Total** | | | | 9 | 16 | 10 | 12 | 15 | 9 | 4 | 10 | 12 | 8 | |

(6) MS are not given any indicator on this point if an indicator is already given under number 20 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no royalty withholding tax in the first place.

| **ATP-Indicators** | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Theme** | **No.** | **Subject** | **Category** | DE | GR | HU | IE | IT | LV | LT | LU | MT | NL | Total |
| Royalty or other IP income | 17 | Patent box or other preferential tax treatment of income from IP | Active | | | x | | | | | x | x | x | 10 |
| | 18 | No or low taxation of capital gain (fair market value) upon disposal of IP | Passive | | | x | | | | | | x | | 4 |
| Royalty or other IP costs | 19 | Tax deduction for royalty costs | Passive | x | | x | x | x | x | x | x | x | x | 26 |
| | 20 | No withholding tax on royalty payments | Passive | | | x | | | | | x | | x | 4 |
| | 21 | No beneficial owner-test for reduction of withholding tax on royalty | Anti-abuse | | x | | | | x | | | | | 6(6) |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 22 | R&D tax incentive obtainable also for costs that are reimbursed | Passive | | | | | | x | x | | | | 9 |
| Group taxation | 23 | Group taxation with acquisition holding company allowed | Passive | x | | | x | x | | x | x | x | x | 17 |
| CFC-rules | 24 | No CFC-rules | Anti-abuse | | | | x | | x | | x | x | | 14 |
| Foreign legal entities | 25 | Tax qualification of the foreign entity does not follow that of the foreign state | Passive | x | x | x | x | x | x | x | x | x | x | 18 |
| | 26 | No rule to counter a mismatch in tax qualification of a domestic partnership between your state and a foreign state | Anti-abuse | x | x | | x | x | x | x | x | x | x | 25 |
| | 27 | No rule to counter a qualification mismatch of a local company | Anti-abuse | x | x | x | x | x | x | x | x | x | x | 26 |
| Tax-free company | 28 | Nil corporate tax rate | Active | | | | | | | | | | | 0 |
| | 29 | Locally incorporated company not tax-resident if management/control is situated in another state | Active | | | | | | | | | | | 1 |
| Ruling practices | 30 | Unilateral ruling on interest spread | Passive | | | | | x | | | x | | x | 5 |
| | 31 | Excess profits rulings | Active | | | | | | | | | | x | 2 |
| GAAR / SAAR | 32 | No general or specific anti-avoidance rules to counter the model ATP structures | Anti-abuse | | | | | | | | | | | 2 |
| Other themes (residual) | 33 | Any other significant ATP indicator to be identified by national tax experts | | | | | | | | | | | | 1 |
| **Total** | | | | 8 | 9 | 13 | 10 | 9 | 13 | 11 | 13 | 14 | 17 | |

(6) MS are not given any indicator on this point if an indicator is already given under number 20 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no royalty withholding tax in the first place.

| **ATP-Indicators** | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Theme** | **No.** | **Subject** | **Category** | PL | PT | RO | SK | SI | ES | SE | UK | Total |
| Royalty or other | 17 | Patent box or other preferential tax treatment of income from IP | Active | | x | | | | x | | x | 10 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| IP income | 18 | No or low taxation of capital gain (fair market value) upon disposal of IP | Passive | | x | | | | | | | 4 |
| Royalty or other IP costs | 19 | Tax deduction for royalty costs | Passive | x | x | x | x | x | x | x | x | 26 |
| | 20 | No withholding tax on royalty payments | Passive | | | | | | | | | 4 |
| | 21 | No beneficial owner-test for reduction of withholding tax on royalty | Anti-abuse | x | | x | | x | | | | 6[(6)] |
| | 22 | R&D tax incentive obtainable also for costs that are reimbursed | Passive | x | | | x | | x | | | 9 |
| Group taxation | 23 | Group taxation with acquisition holding company allowed | Passive | x | x | | | | x | x | x | 17 |
| CFC-rules | 24 | No CFC-rules | Anti-abuse | | | x | x | x | | | | 14 |
| Foreign legal entities | 25 | Tax qualification of the foreign entity does not follow that of the foreign state | Passive | | | x | | x | x | | x | 18 |
| | 26 | No rule to counter a mismatch in tax qualification of a domestic partnership between your state and a foreign state | Anti-abuse | x | x | x | x | x | | x | x | 25 |
| | 27 | No rule to counter a qualification mismatch of a local company | Anti-abuse | x | x | x | x | x | | x | x | 26 |
| Tax-free company | 28 | Nil corporate tax rate | Active | | | | | | | | | 0 |
| | 29 | Locally incorporated company not tax-resident if management/control is situated in another state | Active | | | | | | | | | 1 |
| Ruling practices | 30 | Unilateral ruling on interest spread | Passive | | x | | | | | | | 5 |
| | 31 | Excess profits rulings | Active | | | | | | | | | 2 |
| GAAR / SAAR | 32 | No general or specific anti-avoidance rules to counter the model ATP structures | Anti-abuse | x | | | | x | | | | 2 |
| Other themes (residual) | 33 | Any other significant ATP indicator to be identified by national tax experts | | | | | | | | | | 1 |
| **Total** | | | | 11 | 10 | 11 | 9 | 11 | 7 | 8 | 8 | |

[(6)] MS are not given any indicator on this point if an indicator is already given under number 20 above. This is because the absence of a beneficial owner-test would not constitute a further critical issue if there is no royalty withholding tax in the first place.

## Noter

**(1)** Errors and omissions are those of the authors only. The views expressed in this paper are those of the authors and shall not be attributed to the European Commission.

**(2)** http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf.

**(3)** Commission recommendation of 6.12.2012 on aggressive tax planning, C(2012) 8806 final, Brussels, 6.12.2012.

**(4)** (i) Debt shifting, (ii) Location of intangible assets and intellectual property, and partly (iii) Strategic Transfer Pricing.

**(5)** See OECD: *Addressing Base Erosion and Profit Shifting*, 2013, OECD Publishing, Paris, Annex C, p. 73 et seq.

**(6)** See Council Document of 11 December 2014 – 16553/1/14.

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