Hybrid mismatch double residency – imported mismatch?

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Conclusions and questions

This is an open case, we have not taken any decision yet, but:

Due to the process of tax exempt recognition in country B and step up - valuation at arm's length in country C at Lor and subsequent flat license rate deduction paid by intLee to Lor (and „legal successors" of benefits) there is no tax liable on the royalty income. Our questions to you are:

1. Is the tax exempt transfer and amortization of capitalised royalties equal to a (imported) deduction/non inclusion situation of royalty payments?

2. If yes, is there any limitation/cap of „non deductibility" in general and in terms of the Lee in Austria in this case?

3. When applying local GAAR provisions can they also be combined with hybrid mismatch rules? Which means setting aside the artificial combination of transactions and looking through at a hybrid mismatch situation as economic facts and circumstances?

4. What difficulties are to be faced when establishing hybrid mismatch facts and what are your experiences with EoI?

Thank you for your attention! ☺

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