

Hybrid mismatch double residency – imported mismatch?

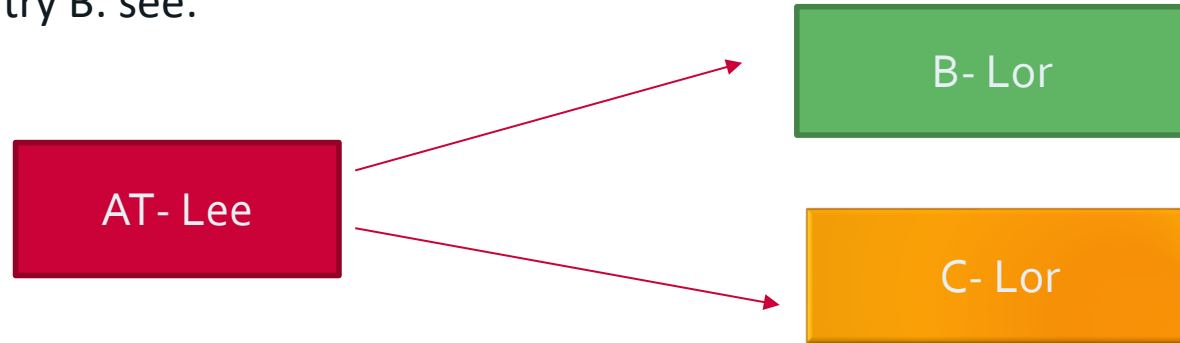
IOTA, Budapest IOTA Case Study Workshop “Tackling BEPS hybrid mismatch structures through the application of anti-abuse rules (GAAR, PPT or the antihybrid mismatch rules from the ATAD)” 7-8 May 2025, Budapest

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Facts of the case:

Basic situation up to 2020; Potential case 1: this seems to be a clear hybrid case (d/ni):

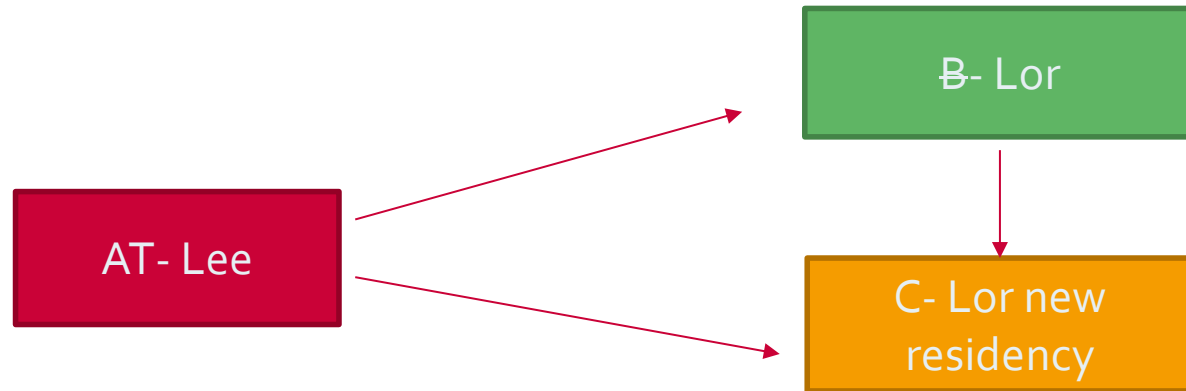
The Austrian Company (Lee) pays a company name and know how royalty based on a percentage of turnover to Licensor (Lor) in country B. Lor is also a resident in country C. Country B assigns taxing rights to country C and country C assigns taxing rights to country B: see:



Facts of the case step 1:

Basic situation up to 2020, real case:

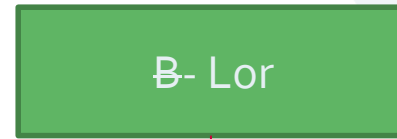
The Austrian Company (Lee) pays a company name and know how royalty (IP) based on a percentage of turnover to Licensor (Lor) in country B. Lor as of 1.1.2020 changes residency to country C. see:



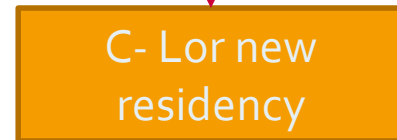
Facts of the case step 2:

Basic situation up to 2020 real case:

As of 1.1.2020 Lor capitalizes the IP value received in country C at “market value” of 15bio but there is no exit taxation in country B.

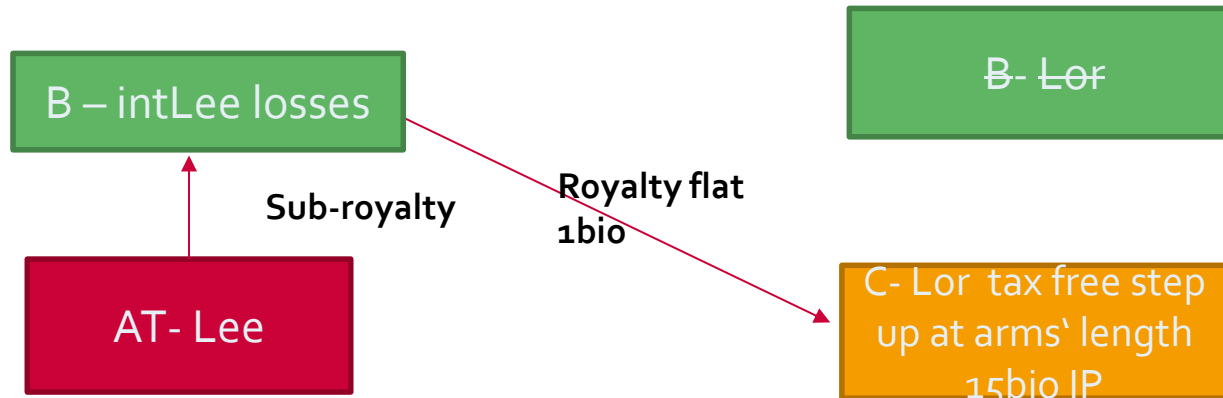


Transfer of business with IP
on 1.1.2020



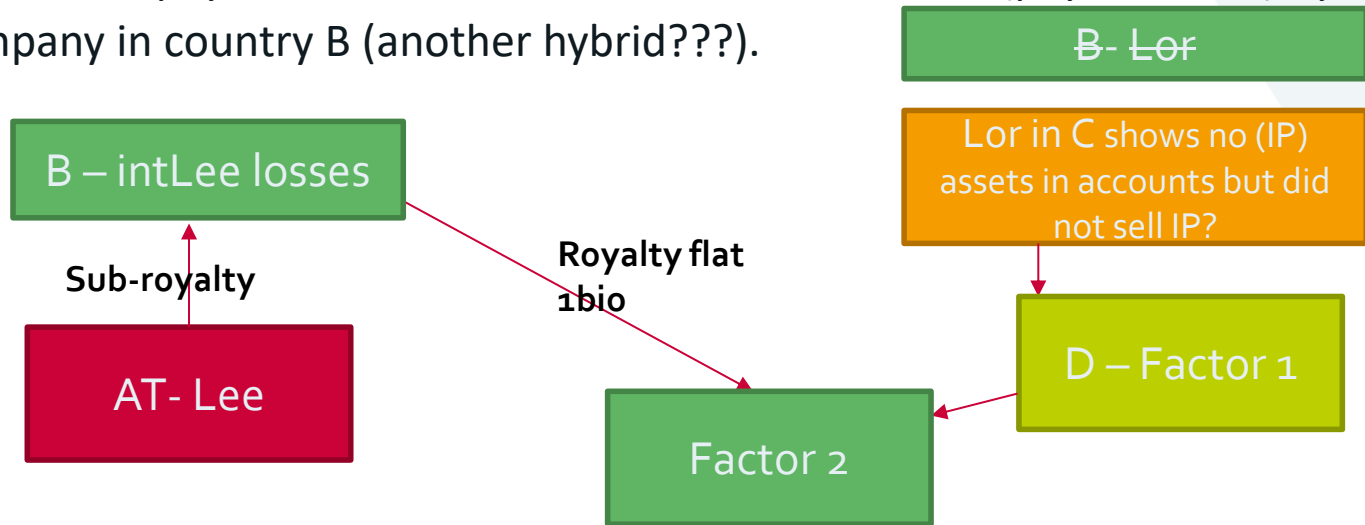
Facts of the case step 3:

The “License and Know How” business activities are transferred from Lor to an intermediate Licensee (intLee) in country B. But the rights in the IP itself are retained by Lor and now licensed to intLee in B at a flat amount of 1bio – contract 75 years. AT-Lee now pays a turnover based sub-royalty to intLee in country B. IntLee bears the flat royalty and current cost of maintaining the IP and incurs losses.



Facts of the case step 4:

Lor as a resident in C (or from that country's perspective) "factors" out all future receivables from license payments by IntLee at the market value of 15bio (which is more or less the same value as it capitalized the IP) to Factor 1 in D. Profits are recognized by Lor (no appropriate tax visible in accounts of Lor) and distributed tax exempt to the shareholder. Factor 1 factors the same amount out to Factor 2 in B. IntLee now pays to Factor 2 in B. Factor 2 is refinanced (pays interest) by another company in country B (another hybrid??).



Thank you for your attention! 😊

Horst Rinnhofer