Swedish Tax Agency

Double deduction/dual inclusion

Solution

1) Dual inclusion income - interest income taxed in the UK and included in the US?

OECD:s Report “Neutralising the Effects of Hybrid Mismatch Arrangements”

An item of income will be dual inclusion income if the same item is included in income under the laws of the jurisdictions where the double deduction outcome arises. As for deductions, the identification of whether an item should be treated as dual inclusion income is primarily a legal question that requires a comparison of the treatment of that item under the laws of both jurisdictions. (p. 197)

The Swedish Tax Agency´s assessment:

An item of income will be dual inclusion income if the same item is included in income under the laws of the jurisdictions where the double deduction outcome arises. Dual included income can only occur when the same income is included income in both Sweden and US.

Therefore the interest income which is included in income in UK and US is not a dual included income in this case.

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2) Dual inclusion income – GILTI-income?

OECD:s Report "Neutralising the Effects of Hybrid Mismatch Arrangements"

- Dual inclusion income, in the case of both deductible payments and disregarded payments, refers to any item of income that is included as ordinary income under the laws of the jurisdictions where the mismatch has arisen. (Recommendation 12 Definitions)
- A tax administration may treat the net income of a controlled foreign company that is attributed to a shareholder of that company under a CFC or other offshore inclusion regime as dual inclusion income if the taxpayer can satisfy the tax administration that the effect of the CFC regime is to bring such income into tax at the full rate under the laws of both jurisdictions. (p. 127, which also refer to example 6.4)
- In order for a payment to be considered as been fully included under a CFC-regime and be treated as having been included in ordinary income it´s important that it not has been treated as reduced or offset by any deduction or other relief other than in respect of expenditure incurred by the investor under the laws of the investor jurisdiction. (p. 150)

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2) Does the GILTI-income constitute a dual inclusion?

The Swedish Tax Agency´s assessment in this case:

- The calculation of the GILTI-income is made on an aggregated level, resulting in a set off of income and losses from all CFC-companies. The net income is distributed through a pro rata share to the group companies that will be levied a tax upon.
- The GILTI-income includes only revenue exceeding an estimated deduction of 10 % for returns on tangible assets, which is also calculated on an aggregated level.
- Then a deduction of 50 % of the GILTI-income has obtained => an effective tax not exceeding 10,5 %.
- Foreign tax chargeable to the CFC-companies is calculated on an aggregated level, 80 % is set off against the tax levied according to the GILTI-regime.

Conclusion:

In this case it´s not sufficient identity between the income taxed in Sweden and the income subject to tax according to the GILTI regime in US to ensure that it is such an ”ordinary income” which is dual included and have been taxed at the full rate in both jurisdictions.

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Swedish Tax Agency´s statement

When may a CFC-income constitute a dual inclusion income according to the hybrid mismatch rules?

In order for a CFC-income to constitute a dual inclusion income according to the Swedish hybrid rules it has to be subject to taxation in both jurisdictions where the hybrid mismatch outcome arised, and neutralise the tax advantages which the hybrid mismatch otherwise would give rise to.

The Swedish Tax Agency considers that it shall be the same income included in both jurisdictions and the income have to be taxed at the normal tax rate. The income must not be set of against expenses in other companies before it is included in income by the investor company.

Furthermore The Swedish Tax Agency considers that if standard and fictitious deduction not applied to actual costs is deducted at the calculation of the tax base included in the other jurisdiction, then the CFC-income does not constitute a dual inclusion income according to the hybrid rules.

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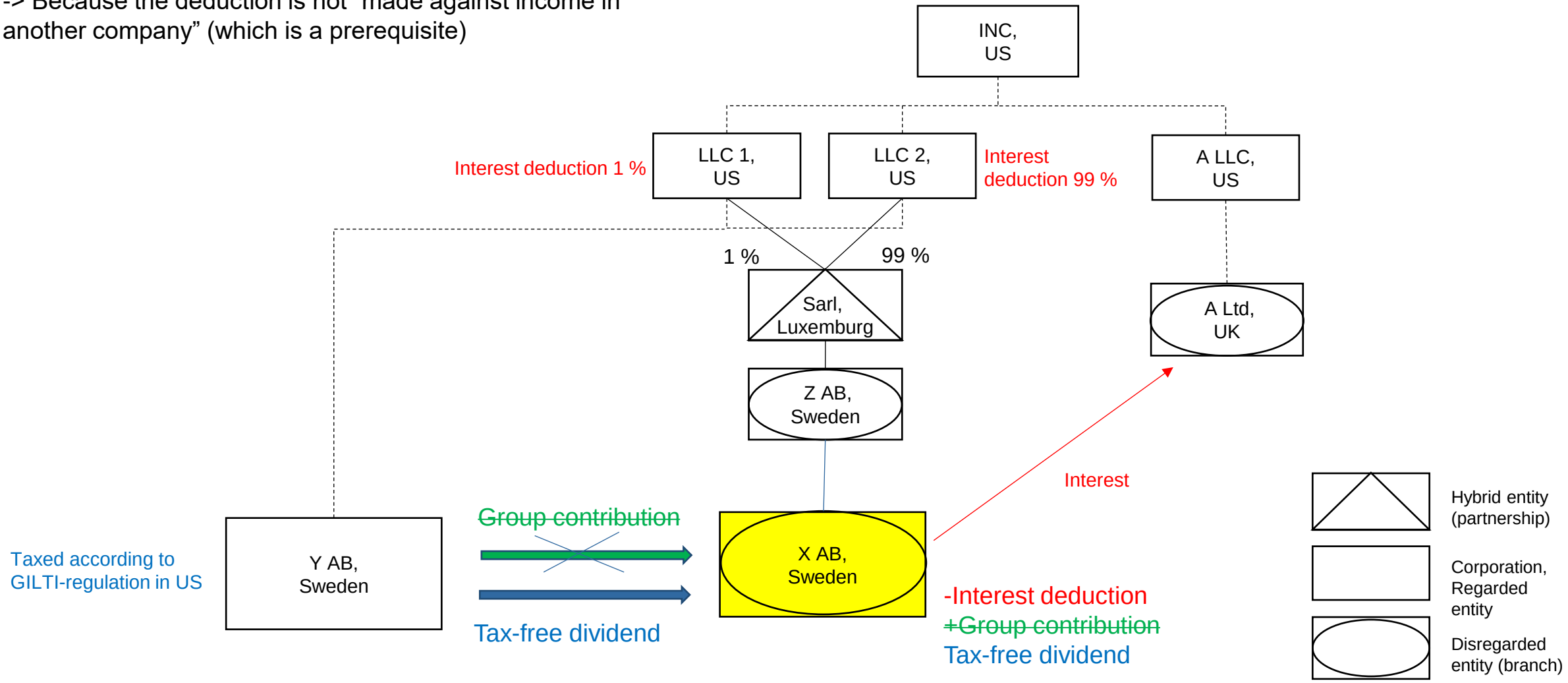
The following year the double deduction rule is no longer applicable,

-> Because the deduction is not “made against income in another company” (which is a prerequisite)



Y AB has operating losses, no income tax
X AB receive deduction for the interest expenses

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