



ATAD 2

Hybrid mismatch arrangements

Hybrid mismatches

- *Hybrid mismatches exploit differences between tax systems to achieve double non-taxation: double deduction, deduction without inclusion and non-taxation without inclusion*
- *Hybrid mismatches result in base erosion.*
- *Part of the OECD BEPS project.*

What is hybrid?

Many forms of hybrids.

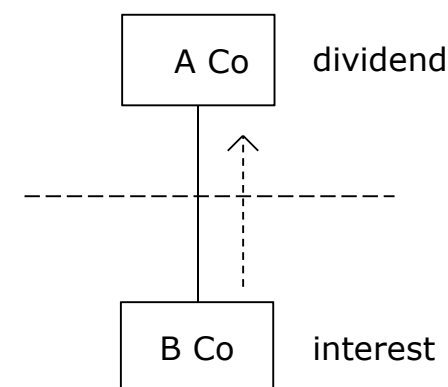
Different characterisation by two countries of an entity, payment or business activities.

Example:

Payment by B to A.

A sees it as dividend (not taxed).

B as interest (deductible).





Anti-Tax Avoidance Directive

- *Rules on hybrid entity and hybrid financial instrument mismatches in the ATAD, but only between MS.*
- *Request by ECOFIN for rules on hybrid mismatches with 3rd countries, consistent with and as effective as recommended by the OECD.*
- *ATAD 2 will be an amendment to the ATAD.*



ATAD 2

- *ATAD 2 will cover various kinds of mismatches with 3rd countries*
- *To provide for a comprehensive framework as recommended by the OECD.*



European
Commission

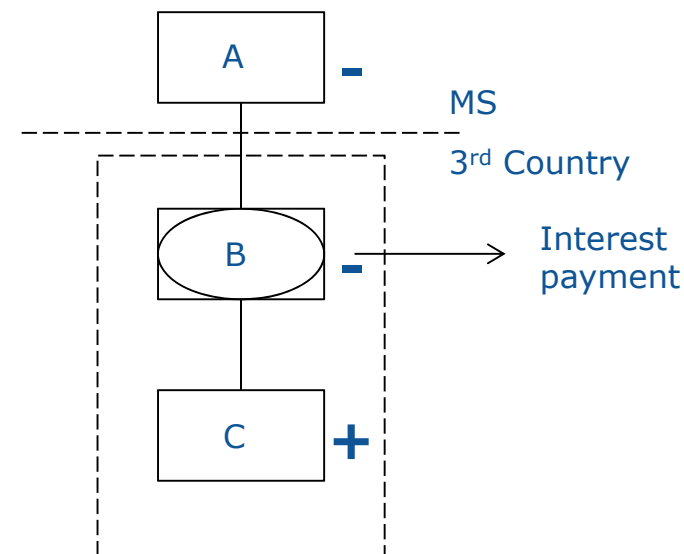


Hybrid entity double deduction

*HE B is non-transparent in the 3rd country,
but regarded as transparent by the MS.*

*Interest payment deducted by A Co
and by HE B. Payment by B is set-off
against income of C Co under group tax
regime.*

*Based on ATAD 2 the MS should deny
the deduction of the payment.*

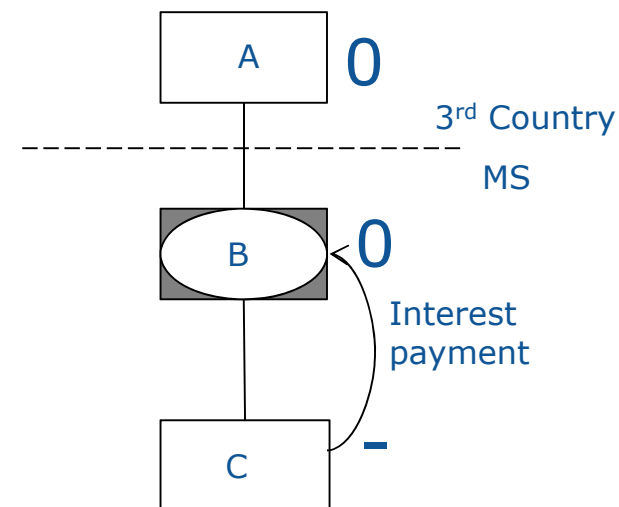


Hybrid entity deduction without inclusion

*HE entity B is transparent in the MS,
but is regarded as non-transparent by
the 3rd Country (reverse HE).*

*Interest payment to reverse
RHE B is deducted by C Co, but is
neither included by RHE B nor by A Co.*

*Based on ATAD 2 the MS should deny
the deduction of the payment.*



Hybrid PE no taxation without inclusion

3rd Country B does not recognise a PE.

No taxation in state B.

*MS A sees a PE in 3rd country B
(reverse hybrid PE).*

*Profits attributed to reverse
hybrid PE are exempt in the MS.*

*Based on ATAD 2 A Co should include
and not exempt the profit attributed to the PE.*

