



The ATOZ Chair for European and International Taxation welcomes you to:

ATAD Implementation in Luxembourg A Critical Assessment





Speakers

- General Introduction & Exit Taxation: Werner Haslehner
 Professor, ATOZ Chair for European and International Taxation
- The New GAAR A Significant Change?: Alain Steichen
 Partner, BSP; professeur associé at University of Luxembourg
- The Controlled Foreign Company Regime: Georges Simon Partner, Ashurst
- The Interest Limitation Rule: Jean Schaffner Partner, Allen & Overy
- The Anti-Hybrid Rules: Jan Neugebauer Partner, Arendt & Medernach





The ATAD – Introduction



- EU implementing BEPS recommendations but going beyond!
- Adopted June 2016 based on Art. 115 TFEU goals achieved?
- To be implemented (mostly) by January 2019
- Attempting to square case law on freedoms with BEPS goals

Art. 1 ATAD

 Scope of ATAD: Corporate taxation (EU corporate taxpayers including PEs of non-EU entities)

Art. 3 ATAD

 Minimum level of protection: Directive allows 'higher level of protection for domestic corporate tax bases'





Exit taxation – Art. 5 ATAD

Preamble: Recital 10

- Aligning taxation with value creation
- Align 'exit State' and 'receiving State' dispute resolution mechanism?
- Align with 'Union law' option to pay immediately or in instalments

Art. 2 ATAD: **Definitions**

- 'Transfer of assets' = loss of taxing right •
- 'Transfer of tax residence' = end of residence for tax purposes
- 'Transfer of a business carried on by a PE' = ceasing taxable presence
- Para 1 and 4: Defining 4 'exits' leading to taxation
- Para 2: Right to 'deferral' through instalments over five years
- Para 3: Option: interest payments and guarantee may be required
- Para 5: Recipient State 'shall accept the value established by' exit State
- Para 6: Definition of market value: 'the amount for which an asset can be **exchanged** ... between willing unrelated buyers ... in a direct transaction'
- Para 7: Exceptions for temporary transfers







Implementation: Art. 38 LIR + § 127 AO



- New rule replacing old system, but exit taxation itself not new to Luxembourg (in contrast to CFC, Interest Limitation, Anti-hybrids)
- Existing exit taxation grants interest-free *deferral until realisation* + deduction of later losses if not recognised by recipient State
- Treat as disposal against consideration if Lux. taxing right lost due to the
 - (1) transfer of an enterprise/PE to foreign country
 - (2) transfer of assets from domestic entity/PE to a foreign head office/PE
 - (3) transfer of residence (except for assets connected to domestic PE)
 - (4) transfer of activity to a foreign country
- Exceptions: temporary transfers (<12 M)
- Upon request, taxation in up to five annual instalments, if transfer within EEA
- No interest or guarantee to be charged
- Deferral (délai de paiement) ends if recovery no longer possible due to change
- Inbound transfers: Accept value established by exit State
- Entry into force: 1 January 2019, unless specified entry as of 1 January 2020
- No effect for deferral granted in relation to exits during accounting years ending prior to 1 January 2020





Assessment of the draft law

re ATAD

re
Primary law

- Clearly attempting to align with ATAD obligations
- What consequences for the **transfer of assets that are exempt** under domestic law (e.g. significant participation)?
- Extension to individuals:
- In compliance with case law?
 - National Grid Indus;
 - DMC & Verder Labtec
 - Commission v Portugal (C-503/14)





DISCUSSION

What are your comments & questions?







The new GAAR: the Holy Grail or merely additional confusion?

Alain Steichen

A Directive-based GAAR had to be expected

Abuse of (tax) law

- Emsland Stärke (1974): "objective circumstances and a subjective element"
- Halifax (2006): "sole purpose or essential purpose"

GAAR authorization

- The (former) PSD: "This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse."
- Merger Directive: "A Member State may refuse to apply or withdraw the benefit of [the Directive] where it appears that (...)".

GAAR codification

• P/S (amended): "Member States shall not grant the benefits of this Directive (...)"

Comparison of texts

Old GAAR: The tax liability can not be circumvented or reduced as a result of an abuse of forms and design possibilities of civil law

New GAAR: For the purposes of calculating the corporate tax liability, a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.

Does Luxembourg have to act?

Article 3 ATAD I

- "This Directive shall not preclude the application of domestic or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases."
- Scope: "corporation tax bases", to apply in a "uniform manner" (domestic setting, cross-border situation within the EU and with third countries)

Would a stricter Luxembourg GAAR really have been possible?

- Compatibility with ECJ case-law doubtful if the domestic GAAR would be even harsher
- A different Lux GAAR for domestic transaction should be possible, provided the wording is distinct from the one used under the ATAD I Directive (ECJ Leur Bloem)
- Feasibility of two different GAARs in one single jurisdiction?

The only relevant question: is the existing Lux GAAR already strict enough?

The draft bill

In general

- A mere combination of the old GAAR and the GAAR under the ATAD Directive
- "Tax law can not be circumvented by an abuse of legal forms and institutions. There is abuse within the meaning of the preceding sentence if the legal route that has been used to obtain, as a primary objective or as one of the main objectives, a circumvention or a reduction in the tax burden contrary to the object or purpose of the tax law, is not genuine in the light of all the relevant facts and circumstances. For the purposes of this provision, the legal route, which may include several stages or parts, is considered non-genuine to the extent that it has not been used for sound business reasons that reflect the economic reality."

In particular

- "Institutions of private law" to get replaced by "institutions"
- Case-law based "use of inadequate means" to get replaced by "non-genuine arrangements" being those that have "not (been) put into place for valid commercial reasons which reflect economic reality"
- "obtaining a tax advantage that defeats the object or purpose of the applicable tax law" (consistent with existing case-law)
- Case-law based "absence of valuable extra-tax reasons" to get replaced by "put into place for the main purpose or one of the main purposes of obtaining a tax advantage"

Interaction with specific anti-avoidance provisions

"GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules"

What if there is no abuse of a tax treaty under the specific antiavoidance provision of the MLI? May the GAAR provision apply nevertheless?

- Generalia specialibus non derogant
- Subsidiary principle for filling the gaps outside the scope of the areas covered by the specific anti avoidance provisions

Conclusion





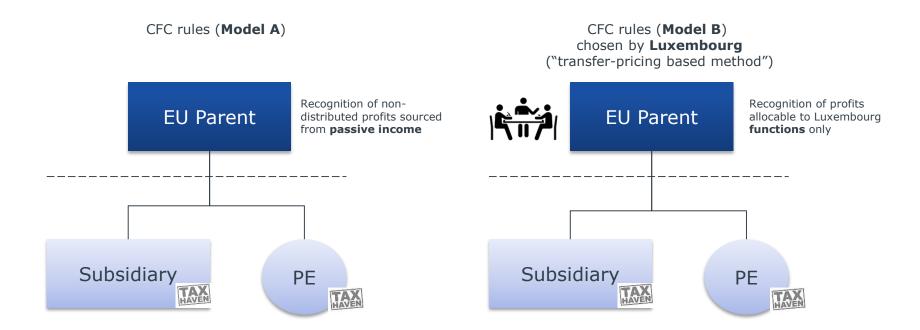
ATAD implementation in **Luxembourg**

Controlled Foreign Company taxation and its impact in Luxembourg

GEORGES SIMON

25 OCTOBER 2018

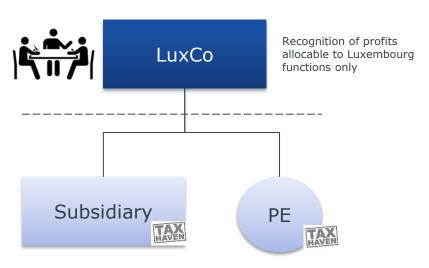
CFC rules MODEL A VS MODEL B





CFC rules DEFINITION OF A CFC

CFC rules (Model B)



Two cumulative conditions have to be fulfilled by an entity or a permanent establishment to be considered as CFC:

 Control Test: an entity is a CFC if the taxpayer by itself, or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights or capital, or is entitled to receive more than 50% of the profits, of that entity

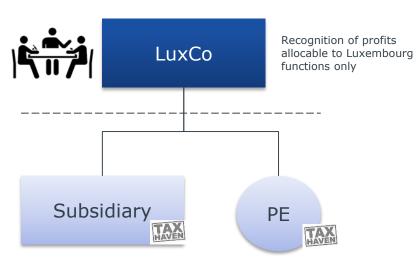
Associated enterprise is:

- Any entity (including a partnership), resident or not, in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 25% or more, or is entitled to receive 25% or more of the profits of that entity; and/or
- An individual, or any entity (including a partnership), resident or not, which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 25% or more, or is entitled to receive 25% or more of the profits of the taxpayer
- 2. Effective Tax Rate Test: if the actual corporate income tax paid ("établi et payé") by the entity or permanent establishment on its profits is lower than 50% of the corporate income tax charge which would have been payable in Luxembourg under Luxembourg domestic tax rules, had the entity or permanent establishment been resident or established in Luxembourg



CFC rules SCOPE OF APPLICATION

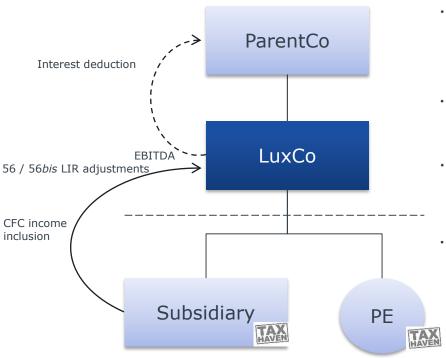
CFC rules (Model B)



- If the Control Test and the Effective Tax Rate Test are met:
 - The taxpayer must include in its taxable basis the <u>non-distributed</u> <u>income</u> of the entity or permanent establishment; but only
 - To the extent arising from non-genuine arrangements that have been put in place for the essential purpose of obtaining a tax advantage
- An arrangement or series of arrangements shall be regarded as non-genuine to the extent that the CFC would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant (people) functions linked to those assets and risks, are carried out and play an essential role in generating the controlled company's income
- Two exceptions:
 - CFC with accounting profits ≤ €750k
 - CFC with accounting profits ≤ 10% of its operating costs
- A Luxembourg taxpayer having a CFC with income arising from a nongenuine arrangement will have to include in its taxable basis the nondistributed income of the CFC, up to the amount of such income that is generated through assets and risks which are linked to "significant (people) functions" carried out by the taxpayer



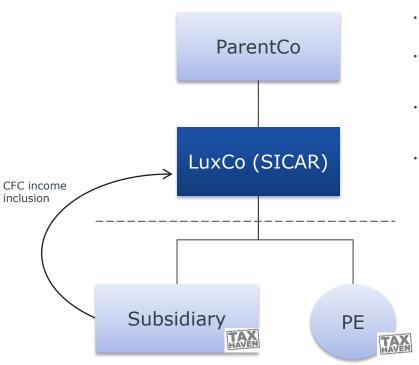
CFC rules INTERACTION WITH OTHER PROVISIONS



- Interaction with article 168bis LIR: a symmetric approach should be applied (same tax treatment as if the CFC income had been realised directly by the Luxembourg taxpayer):
 - Parallelism of income characteristics (CFC interest income to be considered as interest income for the purposes of the new article 168bis LIR)
 - CFC income to be taken into account for the EBITDA rule
- Interaction with articles 56 and 56bis LIR:
 - Non-application of article 164ter LIR in case of previous application of articles 56 and / or 56bis LIR; or
 - · Application of imputation mechanism
- Interaction with provisions allowing an exemption /reduction: CFC income to be exempt / benefit from a tax reduction / relief pursuant to:
 - The Luxembourg domestic participation exemption regime;
 - · A special tax regime; or
 - An applicable double tax treaty
- Interaction with double tax treaties: how will the notion of "non-distributed income of the entity or of income of permanent establishment" be applied in light of an applicable double tax treaty provision?



CFC rules ADDITIONAL COMMENTS

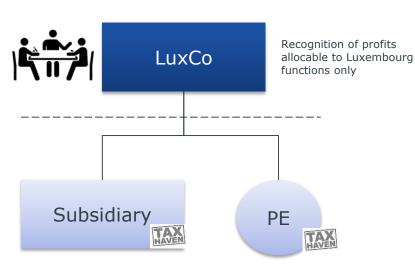


- Effective Tax Rate Test: What if LuxCo is subject to a special tax regime (e.g. SICAR)?
- Losses of the CFC may be carried forward and used to offset future positive income
 of the CFC. Only the negative net income of the CFC generated after the entry into
 force of article 164ter LIR is deductible
- **Timing**: CFC income must be included in the tax period of the taxpayer in which the tax year of the CFC ends ("impôt réel"..."établi et payé") relevant for the Effective Tax Rate Test and the use of CFC tax credits
- Other:
 - CFC of CFC: double taxation?
 - Foreign currency conversion for the purposes of the Effective Tax Rate Test
 - Significant (people) functions should be further defined (guidance available in other countries such as the UK)
 - · The scope of "non-distributed income" should be clearly defined



CFC rules conclusion on expected impact

CFC rules (Model B)



- Applicable for corporate income tax only, but not for municipal business tax purposes
- CFC rules and substance: to the extent that a Luxembourg company does not avail of significant (people) functions related to the CFC's activities, there should not be an adverse tax impact in Luxembourg
- Scope and application of the notion of non-genuine arrangements
- "Significant (people) functions" and adjustments pursuant to articles
 56 and 56bis LIR



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ALLEN & OVERY



UNI Luxembourg – Workshop ATAD

Jean Schaffner 25 October 2018

1. Current situation (1/1)

Domestic law is well-equipped

- article 56 : arm's length principle between associated undertakings (corresponds to article 9 OECD MC)
- article 56bis : TP rules
- article 164: hidden profit distributions (domestic and cross-border): advantages to interested parties (case law)



Group financing:

application of arm's length standard (circular letter 56/1 – 56 bis/1 of 27 December 2016)



Thin capitalisation for ordinary activities:

- 85/15 thin cap ratio for holding of participations
- excess interest is non deductible and requalified as a dividend
- possible to evidence that there is no excessive indebtedness
- confirmed by case law: CA 16 October 2007, n°23053C [capitalisation of 30%]



85/15 is a fixed ratio:

- but contrary evidence possible
- provides fiscal safety
- not adapted to various business sectors

1. Current situation (2/2)





OECD BEPS action 4 criticises fixed ratios, which do not take into account facts and circumstances





Deduction in view of EBITDA:

- also fixed ratio
- no contrary evidence possible
- based on turnover rather than on equity
- targets are commercial and industrial undertakings;
 multinational groups

2. The new rules (1/2)

- Excessive borrowing costs are deductible only up to the higher of
 - EUR 3 mio
 - 30% of EBITDA
- Definition of EBITDA: taxable income increased by excessive borrowing costs, deductible depreciation, minus exempt income and expenses related to such exempt income (cf. Luxembourg participation exemption)
- Example
 - Interest income 1,000
 - Other income 3,000
 - Interest expenses :
 - √ 990 flow-through financing
 - ✓ 2,000 other interest
 - Depreciation 100
 - Flow-through income of 10 ignored
 - EBITDA: 30% of 3,000 = 900
 - 1,100 non deductible

2. The new rules (2/2)

- Excessive borrowing costs :
 - borrowing costs of a taxpayer which exceed taxable interest income and other economically equivalent taxable revenue;
 - broad definition of borrowing costs: all costs economically equivalent to interest and expenses and expenses borne in relation to financings
 - reference to domestic law
 - list of examples of borrowing costs: payments under profit participating loans, imputed interest on instruments such as convertible bonds and zero coupon bonds, amounts under alternative financing arrangements, such as Islamic finance, the finance cost element of finance lease payments, capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules where applicable, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangements fees and similar costs related to the borrowing of funds.

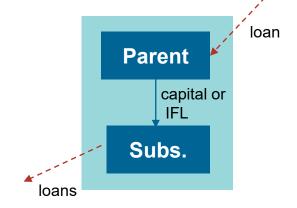
- What are economically equivalent revenues :
- important for securitisation companies (e.g. SV acquires distressed debt for 40% of value and gets repaid 70% of nominal value)
- symetrical approach
- economic approach : distressed amount is equivalent to a higher interest on a refinancing
- objective of new rules
- practical considerations; order of allocation of cash
- SV financed with equity
- securitisation fund
- exclusion of income from offshore holdings, hedge funds?

- The new rules do not apply for :
 - financial undertakings : banks, insurance companies, AIF, UCITS, securitisation vehicles covered by EU regulation 2017/2402
 - grand-fathered loans (granted before 17 June 2016)
 - financing of public long term infrastructure projects
 - stand alone entities, which are not part of a consolidated group and have no associated entity outside of Luxembourg :
 - ✓ orphan entities used as SVs
 - ✓ reference to commercial enterprise (*Unternehmen*)
 - ✓ reference to the concept of "control"
 - ✓ SV held by a Luxembourg fiduciary holder
- Consolidated entities : possible to calculate EBITDA at group level

- Possible to carry forward for 5 years excess interest capacity which remains unused in a given period
- Possible to deduct in a given year excess borrowing costs which are not deductible in view of current year borrowing capacity, if the taxpayer has past unused interest capacity of the last 5 years
- Possible to carry forward non deducted borrowing costs without time limit

– Fiscal unities :

- ATAD 1 enables exclusion
- but Luxembourg legislator has not used this option (apparently as our fiscal unity is not a true tax consolidation, but each entity stays a separate taxpayer)
- problematic if



- interest income of subsidiary can not offset interest changes of parent
 - solutions : former fiscal unity regime (subsidiary was assimilated to a PE) or notional interest

3. - Practical assessment of new rules

- notional regime, fixed ratio => violates TP principles
- unfair results
- current interest rates are low, will the 30% threshold be increased if rates go up?
- not adapted to certain business sectors which require a lot of financing
- combination with old rules ?
 - √ 85/15, based on equity not on income
 - ✓ articles 56 + 56 bis : arm's length capital needed
 - ✓ if EBITDA rules are met, possible to charge excessive interest?
- interaction with recapture if interest is in relation to a participation, but cannot be deducted because of EBITDA rules? How does this work if taxpayer has several sources of financing? [recapture is anyhow outdated under the new 17 years time limit for loss carry forward?]

Debt bias vs. notional interest deduction (CCCTB proposal)

Questions?

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ATAD Implementation in Luxembourg – A Critical Assessment

Anti-hybrid rules now and in the future

Jan Neugebauer
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Agenda

- Implementation of anti-hybrid measures in Luxembourg
- 2. Anti-hybrid rules the structures impacted by ATAD I
- 3. Anti-hybrid rules in ATAD II

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1. Focus on

Implementation of antihybrid measures in Luxembourg



1. Existing implementation of anti-hybrid measures in Luxembourg

Action 2 BEPS Changes to EU Parent Subsidiary Directive Changes to EU Luxembourg domestic law

- Directive 2014/86/EU modified the European Union Parent Subsidiary Directive (2011/96/EU) and introduced an anti-hybrid principle.
- Luxembourg Law dated 18 December 2015 transposed the anti-hybrid principle into domestic legislation (Art. 166 (2bis) LIR):

Where a parent company, by virtue of the association of the parent company with its subsidiary, receives distributed profits, the Member State of the parent company

the Member State of the parent company shall either

refrain from taxing such profits to the extent that such profits are not deductible by the subsidiary, and tax such profits to the extent that such profits are deductible by the subsidiary.



1. Implementation of anti-hybrid measures in Luxembourg

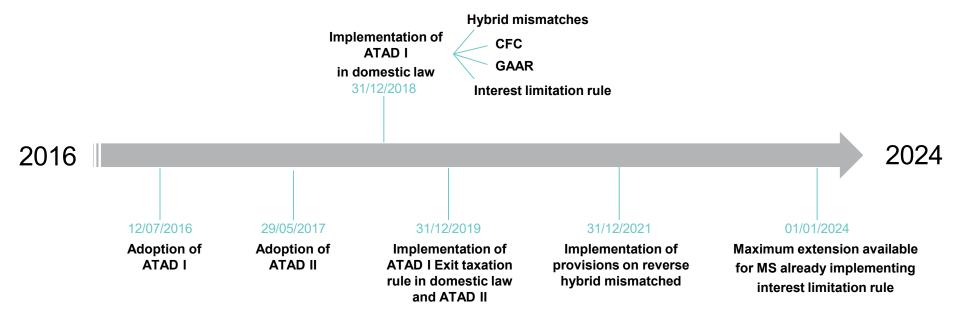
Luxembourg bill of law implementing ATAD I

- Bill of law No. 7138 ("ATAD I Bill") approved by the Luxembourg government on 15 June 2018 and submitted to the Luxembourg parliament on 19 June 2018.
- Anti-hybrid mismatch rules should be included in the future Art. 168ter LIR.
 The legislator closely followed Art. 9 of ATAD I.
 - Question: Do the EU member states even have to implement Art 9 of ATAD I by 31 December 2018?

1. Implementation of anti-hybrid measures in Luxembourg



ATAD I and ATAD II: timeline of implementation



From 01.01.2019 Application of ATAD I (except Exit taxation rule)

From 01.01.2020 Application of Exit taxation rule (under ATAD I); and

Application of ATAD II (except reverse hybrid mismatches provision)

From 01.01.2022 Application of reverse hybrid mismatches provision (under ATAD II)



2. Focus on

Anti-hybrid rules – Structures impacted by ATAD I



2. Implementation of anti-hybrid measures in Luxembourg

	Implementation in Luxembourg
Purpose	 Eliminate double non-taxation in structured arrangement resulting from differences in the legal characterisation of hybrid entities and hybrid financial instruments.
Scope	 Intra-EU situations involving hybrid entities and hybrid financial instruments Hybrid mismatches with non-EU countries which are within the scope of ATAD II will be included in a separate bill of law (entry into force as from 1st January 2020 and 1st January 2020 for reverse hybrids)
Definition of an hybrid mismatch	Differences in the legal characterisation of (i) a financial instrument or (ii) entity, in an arrangement structured (a) between a Luxembourg taxpayer and an associated enterprise in another MS or (b) when the commercial or financial relations between a Luxembourg taxpayer and an associated enterprise in another MS, give rise to a double deduction ("DD") or to a deduction without inclusion ("D/NI")
Associated enterprise	 In case of hybrid payment: 25% or more of voting rights or capital or entitlement to 25% or more of profits In case of hybrid entity: 50% or more of voting rights or capital or entitlement to 50% or more of profits
Tax consequences	 To the extent a hybrid mismatch results in a DD: the deduction shall be given only in the MS of the payer To the extent a hybrid mismatch results in a D/NI: the MS of the payer shall deny the deduction
Evidence	 Upon request of the Luxembourg tax authorities, the Luxembourg taxpayer has to be able to demonstrate the tax treatment in the other MS
Entry into force	FY starting on or after 1 January 2019



Example 1: Hybrid entity mismatch

Facts:

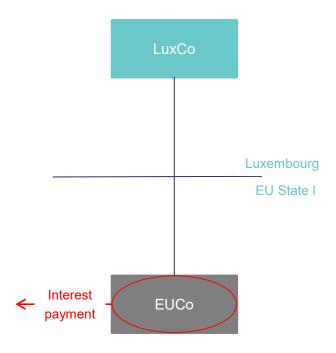
- EUCo and LuxCo are associated enterprises
- EUCo borrows money from a third party resident in EU State II
- Under the laws of EU State I: EUCo is treated as non-tax transparent, the loan is treated as a debt instrument and payments on the loan are thus treated as an interest deductible expense for EUCo
- In Luxembourg: EUCo is treated as tax transparent, the loan is treated as a debt instrument and payments on the loan are thus treated as an interest deductible expense for LuxCo

Outcome: D/D

Hybrid mismatch? Yes

ATAD implication:

The deduction shall be denied at LuxCo level





Example 2: Interest income from commercial partnerships

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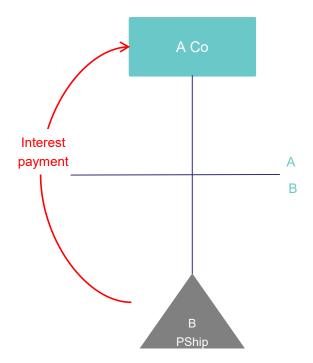
- A Co and B Co are associated enterprises
- A Co lends money to B PShip bearing an interest rate
- B Pship is a PE for purposes of the relevant tax treaty between A and B
- Under the laws of EU State: the loan is treated as a debt instrument and B PShip is allowed to claim a deduction for tax purposes as if it had paid interest on the loan at a market rate
- Under the laws of B: the interest income is not treated as interest income but as commercial income attributable to the PE and there is no corresponding adjustment in A Co

Outcome: D/NI

Hybrid mismatch? Yes (?)

ATAD implication:

The deduction shall be denied at B PShip level





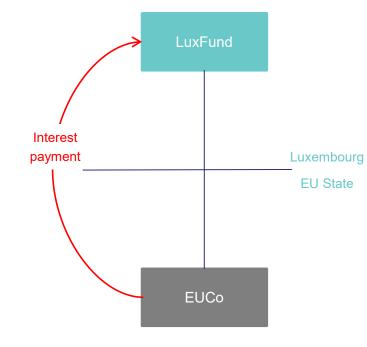
Example 3: Interest payment to an exempt person?

Facts:

- LuxFund is a fund and is exempt from tax on all income
- LuxFund and EUCo are associated enterprises
- LuxFund lends money to EUCo at market interest rate
- Under the laws of EU State: the loan is treated as a debt instrument and payments on the loan are thus treated as an interest deductible expense for EUCo
- Under the laws of Luxembourg: the loan is treated as a debt instrument but payments on the loan are not included in LuxFund due to its tax exempt nature

Outcome: D/NI

Hybrid mismatch? No. The mismatch is only attributable to LuxFund status and not to the terms of the financial instrument.



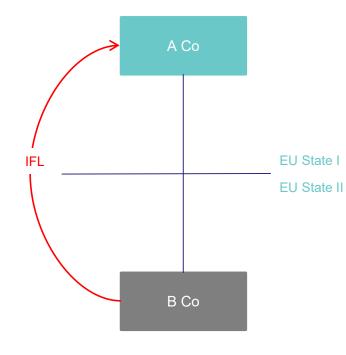


Example 4: Deemed interest on interest-free loan?

Facts:

- A Co and B Co are associated enterprises
- A Co lends money to B Co bearing no interest rate
- Under the laws of EU State II: the loan is treated as a debt instrument and B Co is allowed to claim a deduction for tax purposes as if it had paid interest on the loan at a market rate
- Under the laws of EU State I: the loan is treated either as a debt instrument or as an equity instrument and there is no corresponding adjustment in A Co

Outcome: no D/NI as there is no payment under the loan





3. Focus on

Anti-hybrid rules under ATAD II

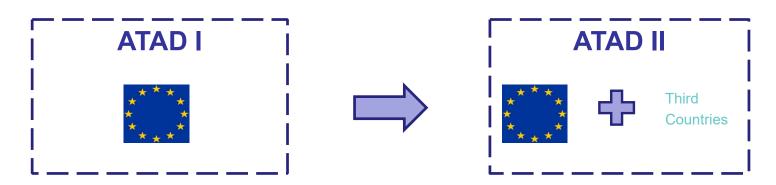


3. ATAD II – Introduction

On 21 February 2017, the Economic and Financial Affairs Council of the EU agreed on a new proposal for a Council Directive (ATAD II) amending the ATAD I.

The main changes consist in the extension of the scope of the provisions on hybrid mismatches from EU Member States (MS) to third countries in order to align the ATAD with the rules recommended by the OECD in the 2015 final report on Action 2 of the BEPS Project.

EU MS would need to adopt the provisions of the Directive by 31/12/2019, with the provisions becoming applicable from 1 January 2020.





3. ATAD II – Extension of the hybrid mismatch's scope

The ATAD II contains anti-abuse rules in respect of hybrid mismatch arrangements involving third countries. The ATAD II also deals with:

- Permanent establishments (PE) mismatches
- Imported mismatches
- Hybrid transfers mismatches
- Dual resident mismatches
- Reverse hybrids

The outcomes have also been extended to cover:

- Non-taxation without inclusion (NT/NI): which may occur where a permanent establishment is disregarded under the law of the branch jurisdiction which leads to a non-taxation of the income and a non-inclusion in the other jurisdiction.
- **Double tax relief at source** (DTR): which may occur where an instrument or a payment has a different characterization in the two jurisdictions. However the ATAD II provides that a payment under a financial instrument should fall under this outcome qualification to the extent the tax relief is solely due to the tax status of the payee or the instrument is subject to a special regime.

Introduces the concept of **structured arrangement** with the aim of addressing (i) arrangements where the mismatch is priced into the terms or (i) arrangements that have been designed to produce a hybrid mismatch outcome. However, this does not include situations where (a) the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the mismatch and (b) did not share in the value of the resulting tax benefit.



3. ATAD II – Imported mismatches

Deny the deduction to the extent the payment gives rise to an indirect D/NI outcome

The payer jurisdiction should apply a rule that denies a deduction for any imported mismatch payment to the extent the payee treats that payment as set-off against a hybrid deduction in the payee jurisdiction.

Imported mismatch payment

An imported mismatch payment is a deductible payment made to a payee that is not subject to hybrid mismatch rules.

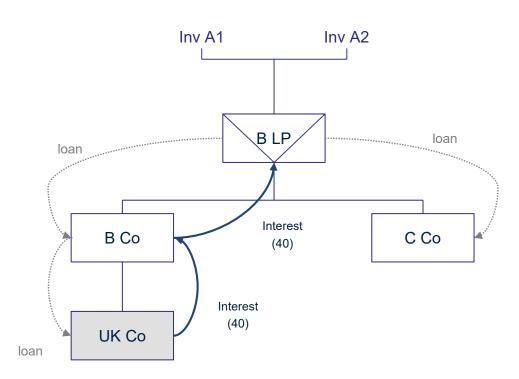
Scope of the rule

The rule applies if the taxpayer is in the same control group as the parties to the imported mismatch arrangement or where the payment is made under a structured arrangement and the taxpayer is party to that structured arrangement.

That is to say any arrangements under which the deduction resulted from a hybrid mismatch arrangement that was produced in a different jurisdiction, is imported to a third jurisdiction and set off the income in that third jurisdiction.



3. ATAD II – Imported mismatches example



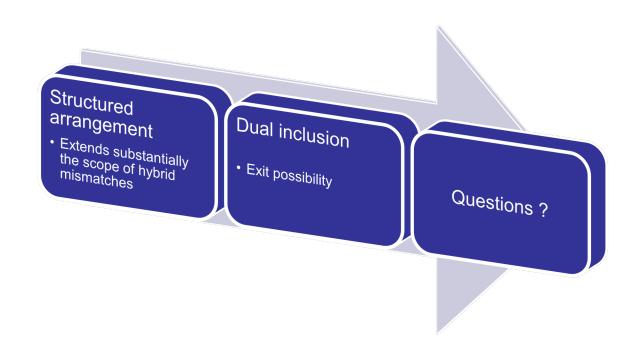
Example: structured imported mismatch rule.

<u>Facts</u>: Inv A1 and Inv A2 (both resident in Country A) are investors of the ABUK Fund. B LP is a reverse hybrid entity, meaning that it is treated as transparent in Country B but as separate entity in Country A. B LP lends money to B Co and C Co (resident in Country B and C respectively). B Co on-lends money to UK Co (a whollyowned subsidiary of B Co resident in the UK).

Outcome: UK Co's imported mismatch payment and the payment under the hybrid financial instrument gives rise to a hybrid deduction. UK should (does?), therefore, deny the full amount of the interest deduction under the imported mismatch rule.

3. ATAD II – Focus points







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