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.
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.