



# HYBRID MISMATCHES IN INTERNATIONAL TRANSACTIONS

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## Aim of the Study

To identify and analyze problems related to unresolved double taxation and double non-taxation in international transactions *de lege lata*.

## Hybrid Mismatch

Caused by disparities between the tax classification methods of different countries and the autonomous applications of those methods of other countries (i.e. without taking the classification method of the other state into consideration).

CURRENT REGULATIONS  
OUTCOMES

Single Taxation



Unresolved Double Taxation



Double Non-Taxation



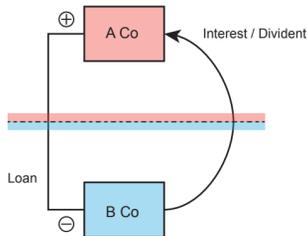
Mainly dealt with through double tax-treaties

- i) Hybrid mismatch rule in Article 9 ATAD
- ii) Hybrid loan rule in Article 4 PSD
- iii) Double tax treaties: method articles and new focus on prevention of tax evasion and tax avoidance in OECD MC from 2017

## Current rules: Addressing the symptoms / Being implemented in EU MS

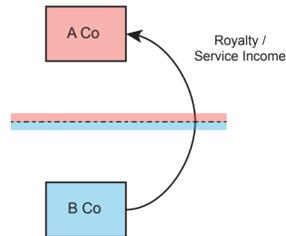
PROBLEMATIZATION

### Example I



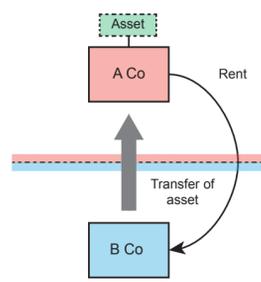
- i) A Co (a company with tax residency in Country A) lends money to B Co (a company with tax residency in country B).
- ii) The loan is treated as a debt instrument according to the laws of country B but as equity in Country A. The interest payments on the loan are treated as deductible costs in country B but as tax exempt dividends in country A.
- iii) The result is double non-taxation of the transactions.

### Example II



- i) B Co (a company with tax residency in Country B)) pays royalty to A Co (a company with tax residency in Country A).
- ii) Country B classifies the transaction as a contract on assignment, where the payments are treated as deductible royalty payments. Country A classifies the transactions as payments from a service agreement, where the payments are treated as taxable income of service performed Country B.
- iii) The result is double taxation of the transactions.

### Example III



- i) A Co (a company with tax residency in country A) enters into a leasing agreement with B Co (a company with tax residency in country B). B Co is the lessor and A Co is the lessee.
- ii) Country B treats the leasing agreement as a financial lease. The agreement is seen as a loan, where the payments under the lease are treated as interest payments and principal on the loan. Country A treats the arrangement in accordance with its form, where the payments on the lease are considered deductible payments of rent.
- iii) As a result, a certain part of the payment give rise to a double non-taxation outcome, as they are deductible in Country B and only partially included in the income for the purposes in Country A.

## Are the mismatches effectively neutralized?



## Possible Outcomes

- i) Clarification of the scope of application of the hybrid mismatch rules in ATAD and PSD, as well as the application of the OECD MC Method articles in relation to hybrid mismatches.
- ii) Outline which principles that should be taken into account when designing hybrid rules to effectively neutralize hybrid mismatches
- iii) Fill the "gap" in Swedish tax literature on how the hybrid mismatch rules can function so they fulfill the purpose of the ATAD and PSD and also are in line with Swedish national tax principles.
- iv) Suggestions on improving Swedish implementation of hybrid rules and evaluate whether any additional rules should be introduced.