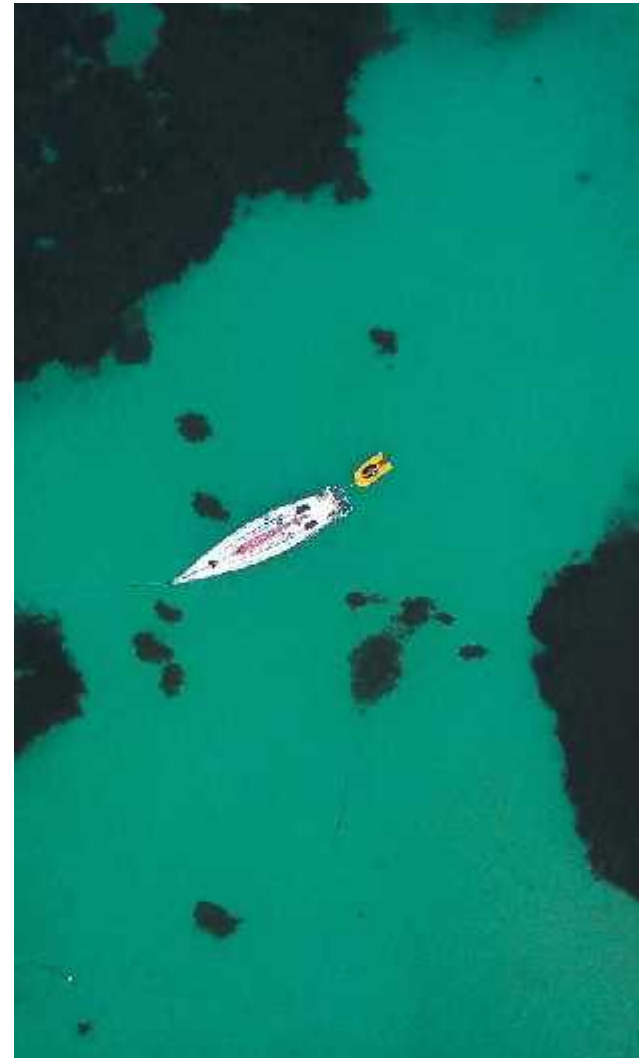


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# Navigating the #NewNormal: the view from tax

DAC 6 and ATAD 2: What you need to know

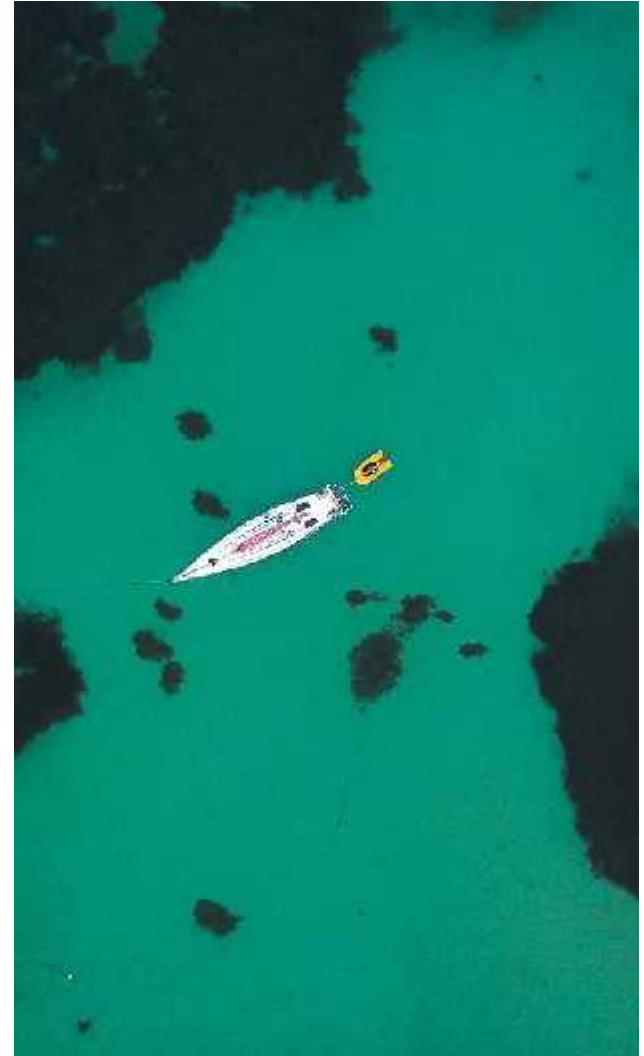
DaVinci virtual client workshop  
Monday, 21 September 2020





# DAC 6

Reporting of cross-border arrangements





## Contents

1. General overview on DAC 6
2. Deadline extensions highlighting country specifics
3. DAC 6 examination scheme
4. Covered tax types detailing country specifics
5. Coordination with several intermediaries



## DAC 6

# General overview on DAC 6



What?	Why?	Who?	When?	Which information?
Cross-border tax planning arrangements between more than one European Union Member State, or between an European Union Member State and a third country.	Combat against aggressive tax planning structures / cross-border tax avoidance, based on an automatic exchange of information.	Intermediaries who design, implement reportable arrangements or help with reportable activity (tax consultants, accountants, lawyers etc.).  No intermediary involved? Taxpayer himself.	<ul style="list-style-type: none"><li>• 30 day-deadline for arrangements on or after 1 July 2020.</li><li>• 31 August 2020 for arrangements between 25 June 2018 and 30 June 2020.</li><li>• <b>However:</b> extensions granted due to Covid-19.</li></ul>	<ul style="list-style-type: none"><li>• Information taxpayer / intermediary.</li><li>• Details of relevant hallmarks.</li><li>• Summary tax structure.</li><li>• Date of first step of implementation.</li><li>• Value of arrangement.</li><li>• Member states involved and relevant provisions.</li></ul>



**DAC 6**

## Deadline extensions due to Covid-19 highlighting country specifics



3 months + additional 3 months

- 30-day period for reporting cross-border arrangements would start on 1 January 2021 (instead of 1 July 2020)
- Arrangements between 25 June 2018 and 1 July 2020 reportable by 28 February 2021 (instead of 31 August 2020)

SPECIAL  
RULES

AUSTRIA

- No penalties for late filing until 31 October 2020

POLAND

- Retroactive reporting: 31 December 2020 for promoters (intermediaries), 14 February 2021 for beneficiaries and 28 February 2021 for service providers

NO  
EXTENSION

GERMANY

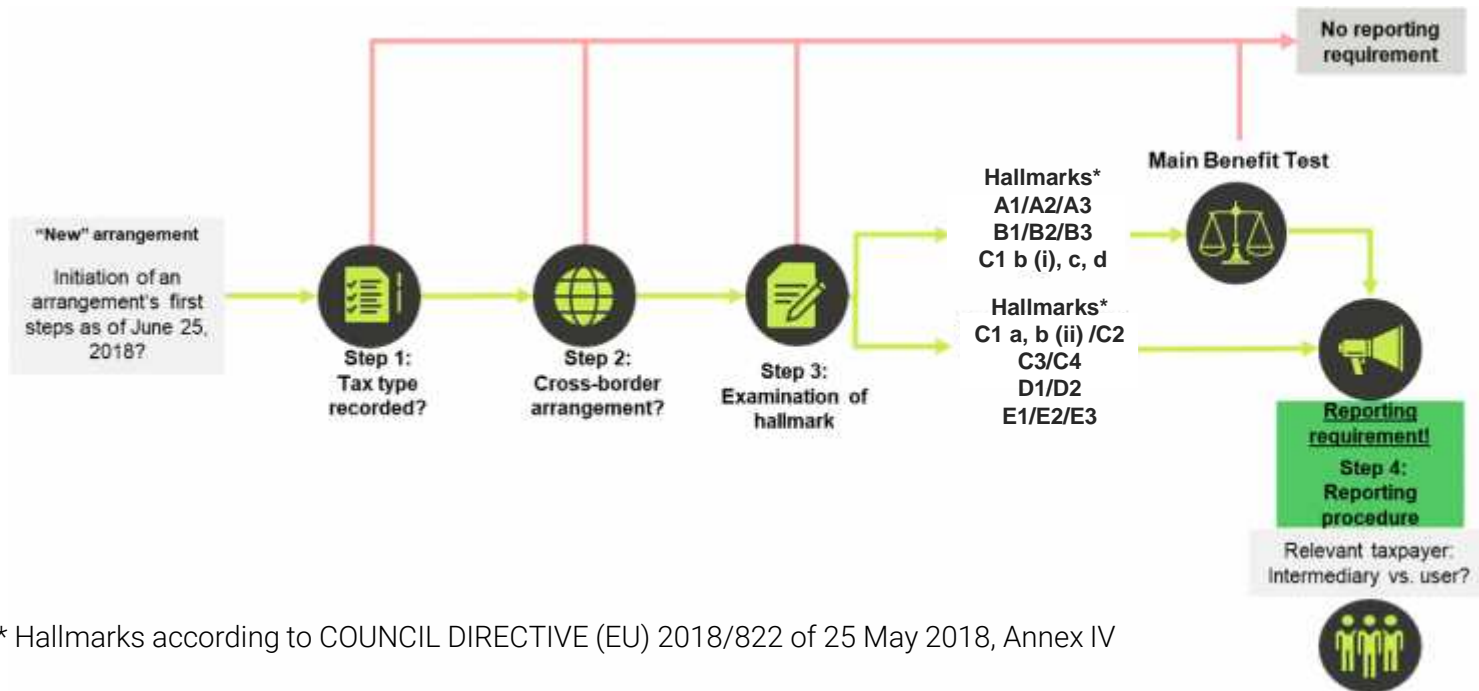
- Decision pending

FINLAND

- Arrangements between 25 June 2018 and 1 July 2020 reportable by 31 August 2020

**DAC 6**

**DAC 6 examination scheme**

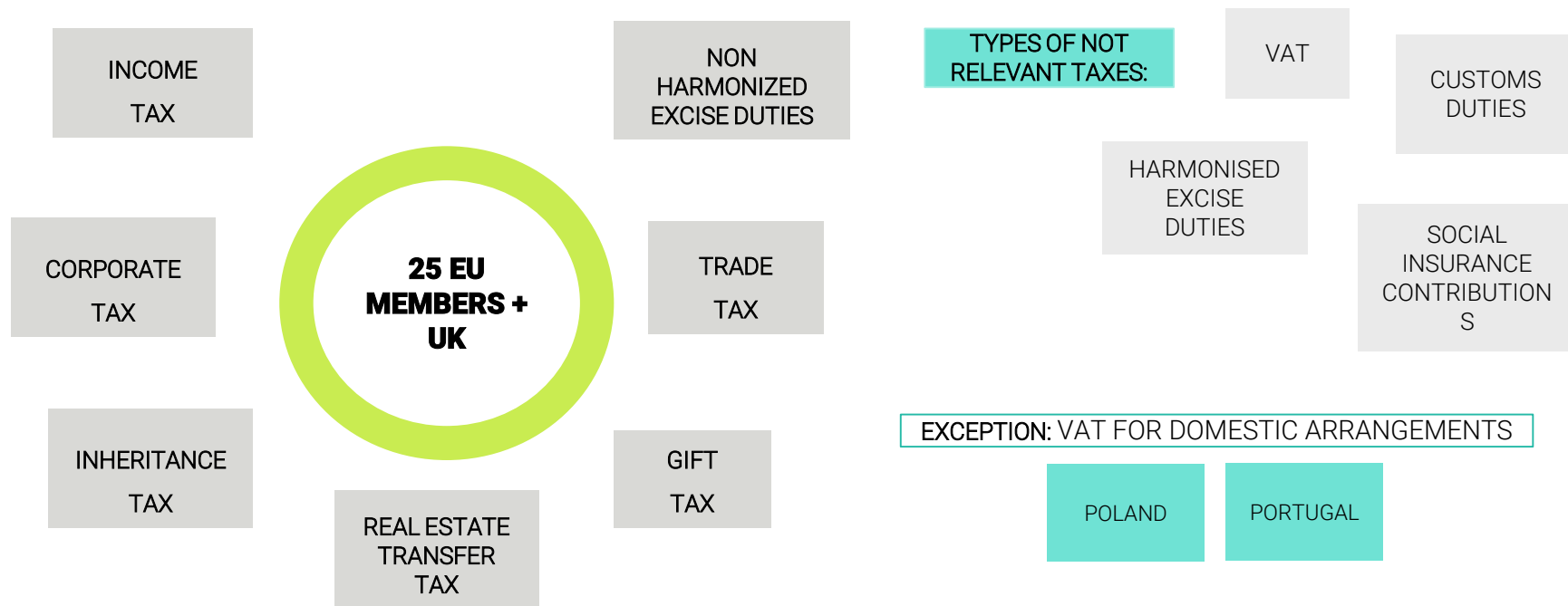


\* Hallmarks according to COUNCIL DIRECTIVE (EU) 2018/822 of 25 May 2018, Annex IV



**DAC 6**

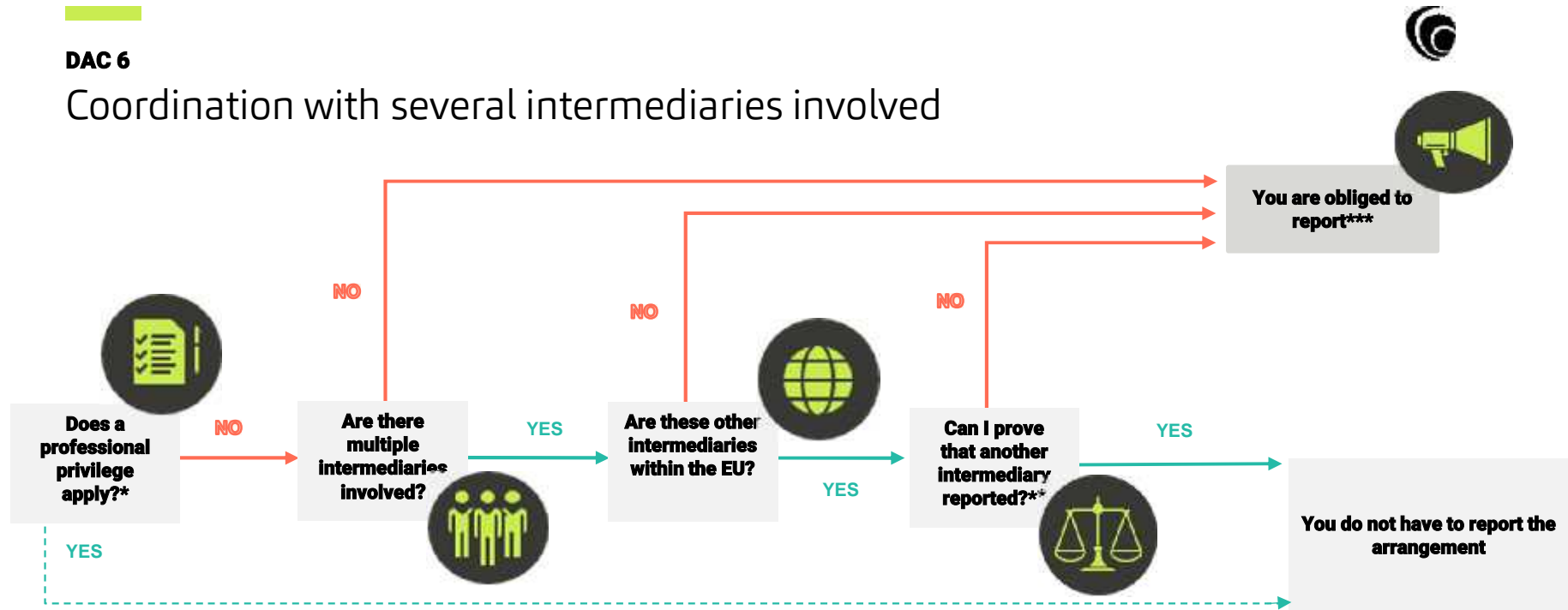
Covered tax types detailing country specifics\*



\* Taxes that fall within the scope of the EU Mutual Assistance Directive

## DAC 6

### Coordination with several intermediaries involved



\* The intermediary still has to report all other data that is not subject to confidentiality and provide the client with the corresponding registration number and the disclosure number, so that the client can complete missing personal data.

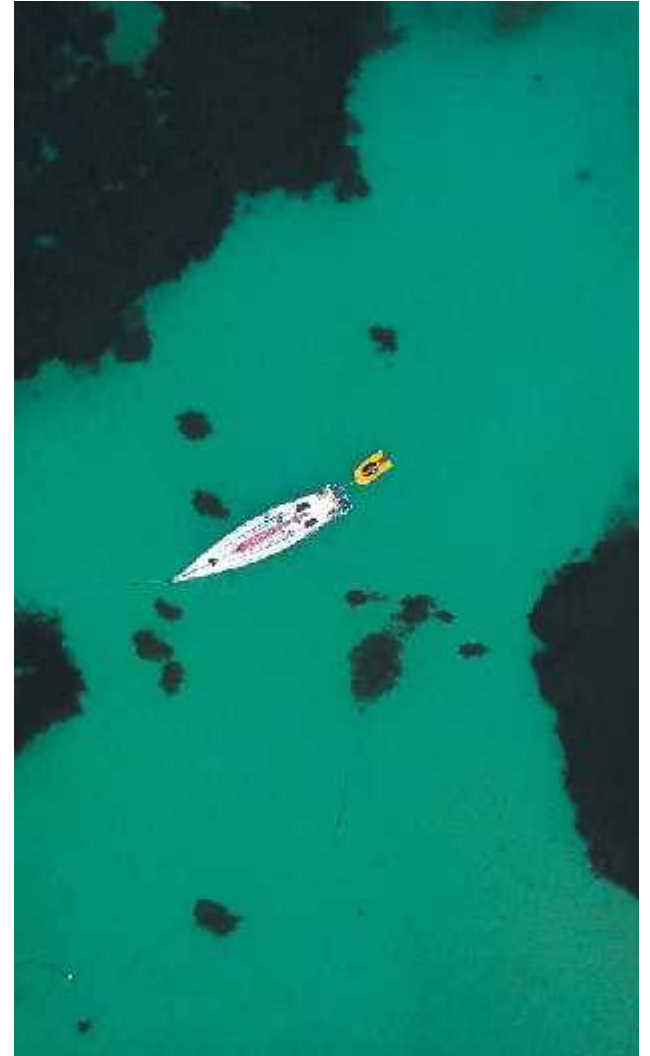
\*\* It is sufficient as proof if the intermediary holds the registration number and a disclosure number and can show it if requested. However, important is that the reporting intermediary names all other intermediaries in his report.

\*\*\* The other intermediaries have to be provided with the received registration number.





# Highlights on ATAD2





# Contents

1. Introduction
2. Examples
3. ATAD 2 web-app





## **ATAD2**

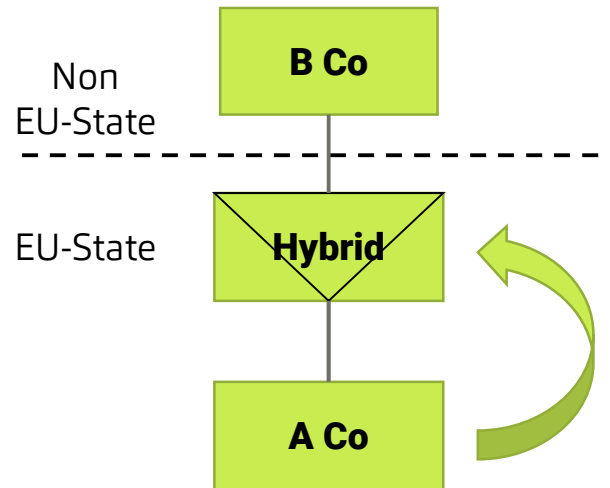
### Introduction

- OECD: BEPS action report 2:
  - ‘Neutralizing the Effects of Hybrid Mismatch Arrangements’ (2015)
  
- EU: Anti Tax Avoidance Directive (2)
  - May 2017
  - To be implemented per January 1 2020
  
- ATAD2
  - Hybrid mismatches will remain, but the effects are neutralized
  - Complex rules
  - Dependent on fiscal qualification by other States



**ATAD2 – Example 1**

Deduction without inclusion, payment to hybrid entity (1)

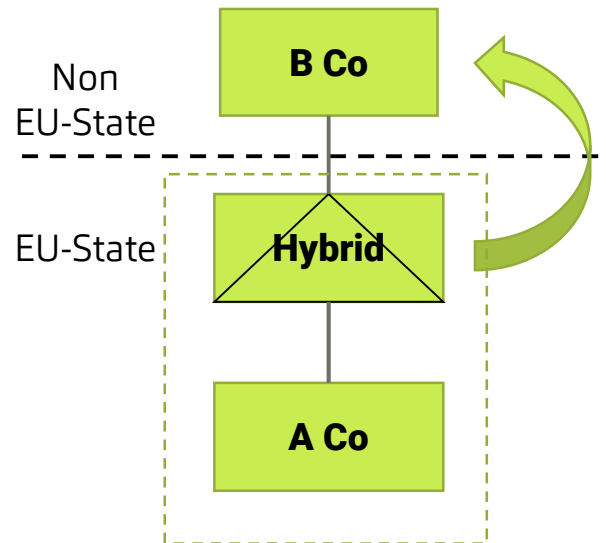


- The payment from A Co to Hybrid would, without ATAD2 be deductible at the level of A Co
- As Hybrid is not regarded to be a taxable entity by EU-State, income is not included
- B Co regards Hybrid as a taxable entity at the non-EU State
- This leads to deduction without inclusion
- Deduction will be denied at the level of A Co (primary rule)



## ATAD2 – Example 2

### Deduction without inclusion, payment from hybrid entity (1)

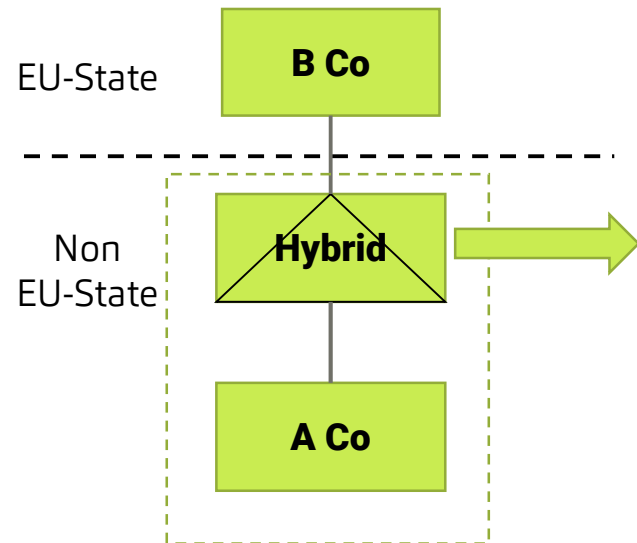


- The payment from Hybrid is, without ATAD2, deductible at the level of Hybrid
- As Hybrid is regarded opaque by Non-EU State, B Co does not account for a payment and income in taxable income
- This leads to deduction without inclusion
- Deduction will be denied at the level of the Hybrid (primary rule)



### ATAD2 – Example 3

## Double deduction, primary rule

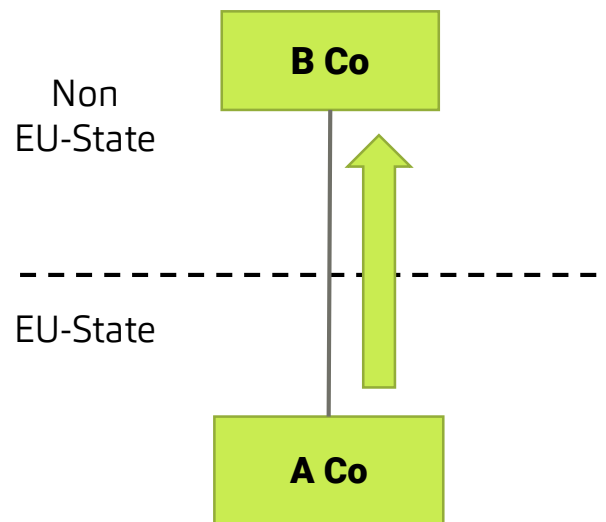


- Hybrid pays to a third independent party
- As Hybrid is regarded transparent by EU State, B Co also deducts this payment
- This leads to a double deduction
- EU-State is the investor jurisdiction
- Deduction will be denied at the level of B Co (primary rule)



## ATAD2 – Example 4

### Hybrid Financial Instruments (primary rule)



- A Co makes a payment to B Co
- In EU-state this payment is considered to be an interest payment on a loan (deductible)
- In Non-EU State it is considered to be dividend on capital (tax free)
- The instrument is characterized differently (hybrid financial instrument)
- The deduction is denied by EU-State, unless:
  - The Non-EU State has a tax rule comparable to the Parent Subsidiary Directive art. 4-1a.  
(The parent taxes the dividend because the payment is deductible at the level of the subsidiary); or
  - the corresponding income (the dividend) is taxed at Non-EU State within reasonable amount of time after the deduction has taken place.

The image shows a title slide for a web application. The background is a composite of two textures: a light brown, marbled surface on the left and a dark blue, textured surface on the right. A black rectangular box is centered on the slide, containing the text "ATAD2 web-app" in white. A small yellow horizontal bar is positioned at the top center of the black box.

ATAD2 web-app





## ATAD2 Web-app

Where to locate the app: <https://atad2bakertilly.nl/>

The screenshot shows the ATAD2 Webapp interface with the following content:

- Header:** bakertilly logo on the left, "ATAD2 Webapp" in the center, and an information icon on the right.
- Question 1:** "Is the taxpayer a legal entity which is a tax resident of the Netherlands or a legal entity incorporated under Dutch law (e.g. BV, NV, Cooperative) that is subject to Dutch corporate income taxation as a Dutch domestic taxpayer?" with "Yes" and "No" options.
- Question 2:** "Is the Dutch domestic taxpayer part of an international structure?" with "Yes" and "No" options.
- Question 3 (highlighted):** "Do(es) (one of) the shareholder(s)/participant(s) regard the Dutch domestic taxpayer as transparent for tax purposes based on their local tax law?" with "Yes" and "No" options.
- Bottom Bar:** A "Restart" button (with a refresh icon and "Clear answers" text) and a "Confirm" button (with a checkmark icon and "Continue to report" text).



**ATAD2-report  
Holland Tax BV**

ATAD2 element	Question no.	Description of the recognised ATAD2 risks for your company	Consequences for the administration obligation for your company (art. 12ag)
Deduction in the Netherlands without inclusion or double Deduction because the Dutch tax paying entity is considered transparent. Art. 12aa-1e and art. 12aa-1g	4	Holland Tax BV is considered fiscally transparent by the State in which the shareholder/participant is resident. This creates an ATAD2 risk that expenses (such as interest paid to the bank, or for example amortisation charges) are deductible both in the Netherlands and in the State of the shareholder/participant. In such a case, the Netherlands will in principle deny the deduction. In the case of remunerations or payments to the shareholder/participant, there is a risk that these expenses are not deductible in the Netherlands as a result of ATAD2, as the corresponding income is not taxed in the State of the recipient (this transaction is non-existent for tax purposes in the State of the recipient). Both risks described above may potentially be mitigated if there is dual inclusion of the income (art. 12aa-3); in such cases, the expenses may be (partially) deductible. Double inclusion of income means that the income is taken into account in both the Netherlands and the State in which the shareholder/participant is subject to taxation.	Insofar as there is double inclusion of income, the deduction in the Netherlands remains possible (art. 12aa-3). If you hold the view that there is dual inclusion of income, the ATAD2 administration must include information supporting this position (e.g. a foreign corporate income tax return or an advice or legal opinion from a foreign tax advisor).

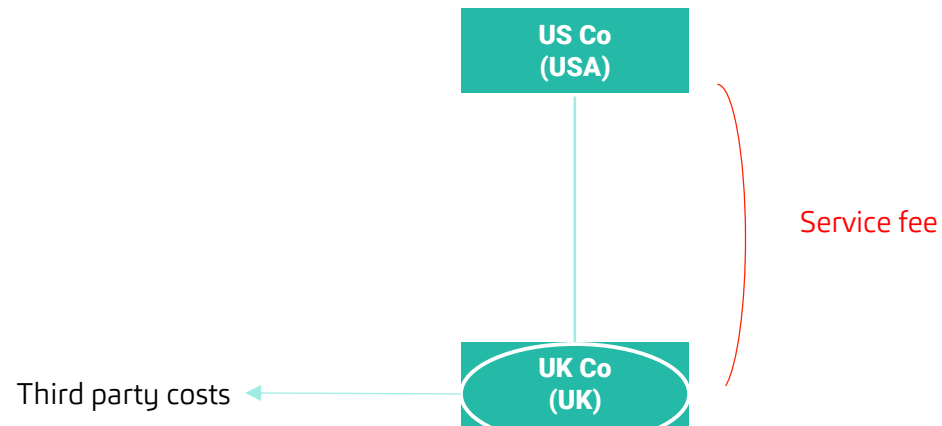
The image shows a microscopic view of tissue, likely a histological section, with a black rectangular text box overlaid in the center. The text box contains the title "Practical case ATAD2 and DAC6". The background image is a composite of two textures: a light brown, speckled, and fibrous texture on the left side, and a dark blue, textured background on the right side. A small yellow horizontal bar is located at the top center of the black text box.

Practical case ATAD2  
and DAC6

**Practical cases**

## Example 1: US groups

- UK Co is a hybrid entity.
- US Co pays service fee to UK.
- Third party costs deductible in UK and US (double deduction).
- There is no dual inclusion income.
- Therefore no deduction for third party costs in UK against intercompany recharge.
- Possible exception if costs incurred are a direct consequence of payment made to the US co.



Legend

 = Corporation for local tax purposes / disregarded entity for US tax purposes

**Practical cases**



**Example 1: US groups (continued)**

Assumptions		Check the box		Non check the box	
Third party income	200	<b>US</b>		<b>US</b>	
Third party costs	100	Income	200	Income	200
Cost plus	10%	Less costs	(100)	Less costs	(110)
UK tax rate	19%	Profit	100	Profit	90
US tax rate	21%	Tax at 21%	21	Tax at 21%	18.9
		Less DTR	(1.9)	Less DTR	0
		Total US tax	19.1	Total US tax	18.9
		<b>UK</b>		<b>UK</b>	
		Income	110	Income	110
		Less costs	(100)	Less costs	(100)
		Profit	10	Profit	10
		Tax at 19%	1.9	Tax at 19%	1.9
		Total UK tax	1.9	Total UK tax	1.9
		<b>Total overall tax</b>	<b>21.0</b>	<b>Total overall tax</b>	<b>20.8</b>

**Practical cases**

**Example 1: US groups (continued)**

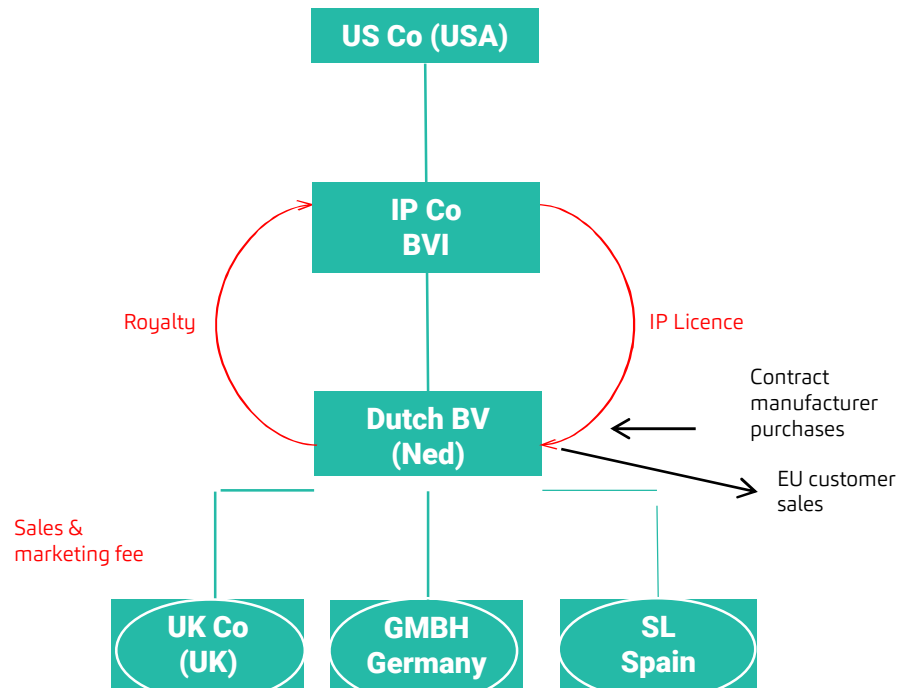


Check and hybrid adjustment (full DTR)			Check and hybrid adjustment (no DTR)		
<b>US</b>			<b>US</b>		
Income	200		Income	200	
Less costs	(100)		Less costs	(100)	
Profit	100		Profit	100	
Tax at 21%	21		Tax at 21%	21	
Less DTR	(20.9)		Less DTR	0	
Total US tax		0.1	Total US tax		21
<b>UK</b>			<b>UK</b>		
Income	110		Income	110	
Less costs	0		Less costs	0	
Profit	110		Profit	110	
Tax at 19%	20.9		Tax at 19%	20.9	
Total UK tax		20.9	Total UK tax		20.9
<b>Total overall tax</b>		<b>21.0</b>	<b>Total overall tax</b>		<b>41.9</b>

Practical cases



## Example 2: Large group scenario



- Local sales subs are hybrid entities
- Double deduction but dual inclusion income
- Deduction but non inclusion in BVI
- Imported mismatch therefore deduction disallowed
- Other issues to consider e.g. DPT, ORIP, DAC6



= Corporation for local tax purposes / disregarded entity for US tax purposes

An aerial photograph of a lake with several islands. The water is a deep blue-green color, and the islands are covered in dense, brownish-green vegetation. A large black rectangular box is centered over the image, containing the word "Questions?" in a bright green, sans-serif font. A small, horizontal yellow bar is positioned above the black box, centered horizontally.

Questions?





# Our next invitation

- What:** A virtual follow-up meeting
- When:** October 2020
- Why:** We will discuss the impact of the changes in legislation individually for your company depending on your needs

## Contact us



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Thank you



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