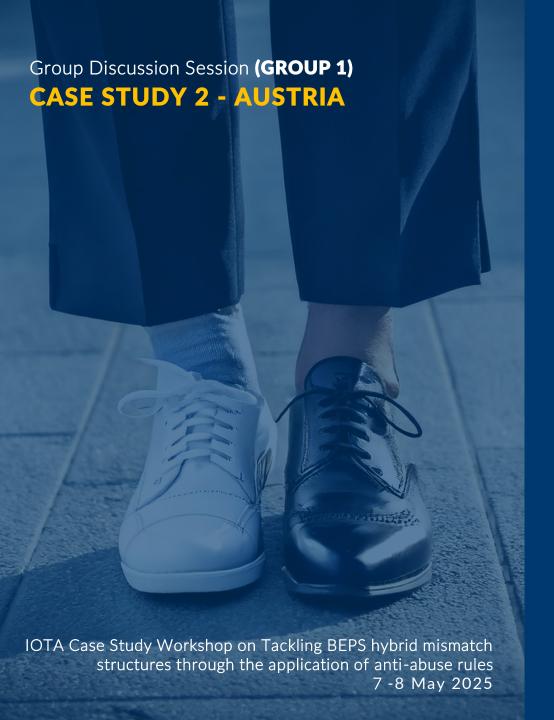


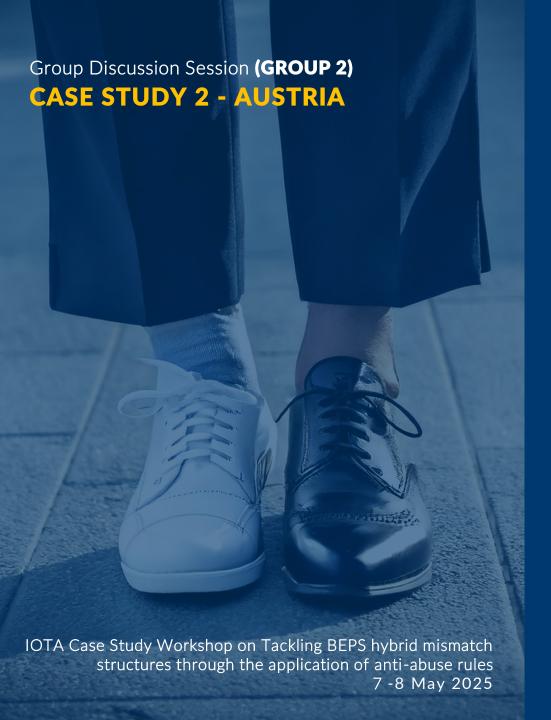


Group Discussion Session CASE STUDY 2 - AUSTRIA

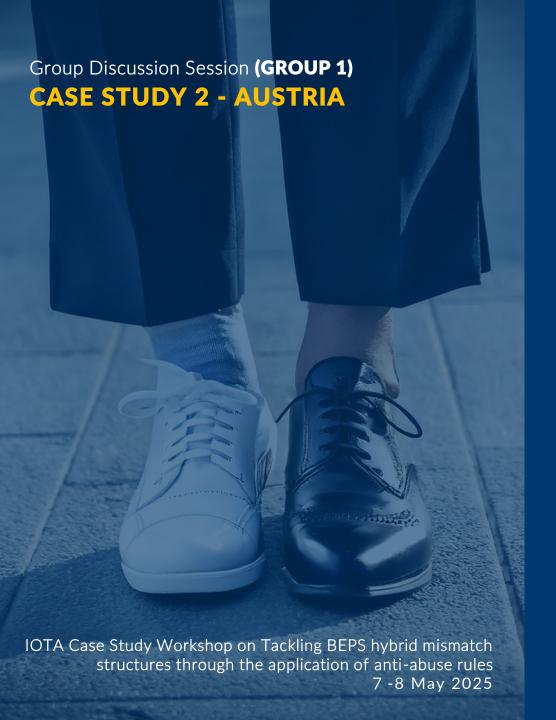
IOTA Case Study Workshop on Tackling BEPS hybrid mismatch structures through the application of anti-abuse rules 7 -8 May 2025



- 1. Is the tax exempt transfer and amortization of capitalised royalties equal to a (imported) deduction/non inclusion situation of royalty payments?
- D/NI: yes
- But is it the result of a hybrid mismatch?
 - Green and orange country seem to treat the transfer in the same way, no hybrid instrument/entity/branch mismatch
 - Would be different if C has a branch in the green country (country B), and there is a mismatch green and orange country on allocation of income.
 - Hybrid transfer? Very specific (e.g. repotransactions), does not apply here

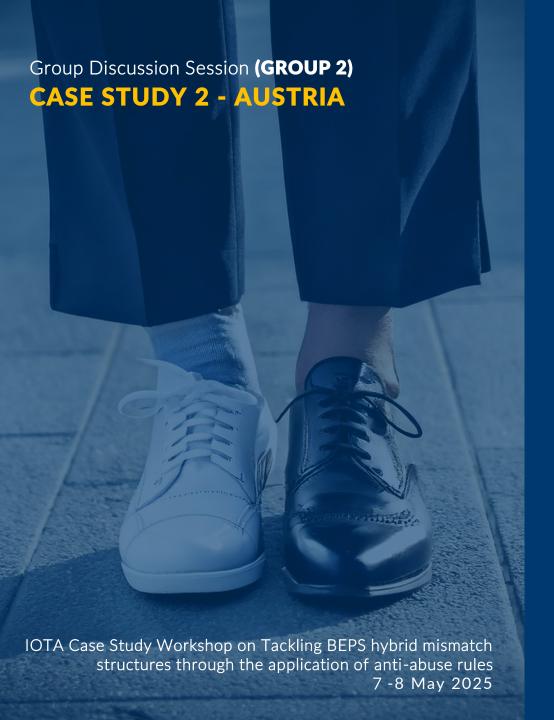


- 1. Is the tax exempt transfer and amortization of capitalised royalties equal to a (imported) deduction/non inclusion situation of royalty payments?
- Where is a deduction (royalties)?
- Is it necessary to define specific type of hybrid situation (transfer, entity, instrument)? It depends on the transposition of art. 9 ATAD in Austria;
- According to our best knowledge we have a situation equal to D/NI of royalty payments.



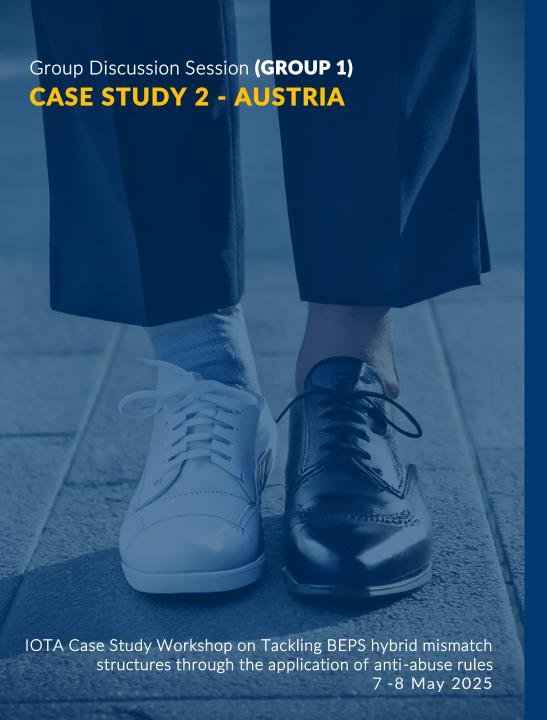
2. If yes, is there any limitation/cap of "non deductibility" in general and in terms of the Lee in Austria in this case?

N/A

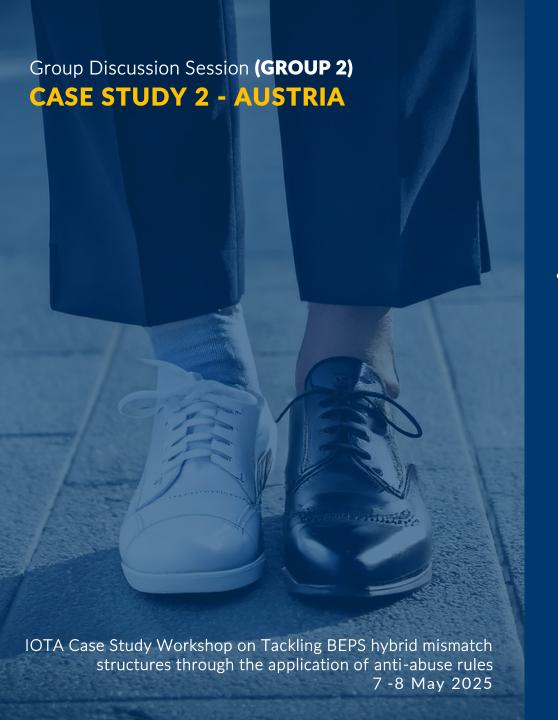


2. If yes, is there any limitation/cap of "non deductibility" in general and in terms of the Lee in Austria in this case?

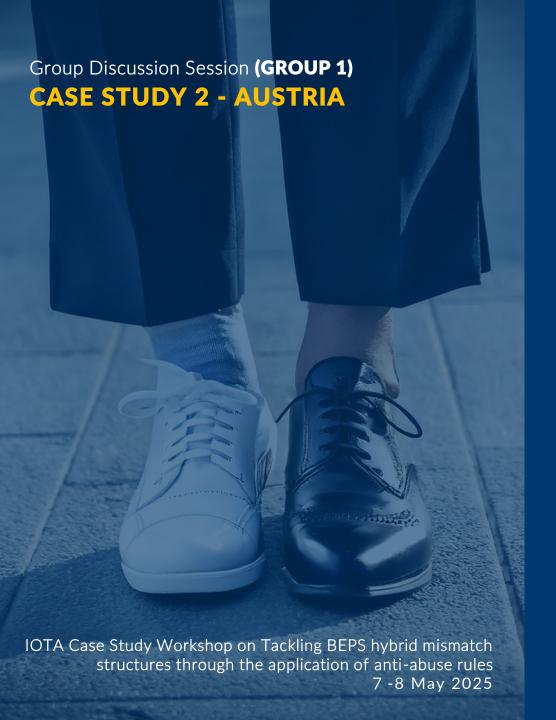
No cap (non deductibility) in Austria



- 3. When applying local GAAR provisions can they also be combined with hybrid mismatch rules? Which means setting aside the artificial combination of transactions and looking through at a hybrid mismatch situation as economic facts and circumstances?
- Quid timing? Art 5 ATAD foresees an exit tax...with entry into force as of 1 January 2020.
- Which countries are involved? Required to have a better understanding of the tax play. Did they therefor transfer just the receivables?
- Is company C a shell?
- Artificial transaction to create a tax advantage (i.e. a D/NI), but what would be the consequence?
- In general combination is not possible?
 - One is a SAAR which should be tried to be applied first.
 - Only if the SAAR doesn't work, you can try to apply GAAR.



- 3. When applying local GAAR provisions can they also be combined with hybrid mismatch rules? Which means setting aside the artificial combination of transactions and looking through at a hybrid mismatch situation as economic facts and circumstances?
- No, there is no need.



4. What difficulties are to be faced when establishing hybrid mismatch facts and what are your experiences with Eol?

- Overall: rather positive
- Certain countries outside EU is more difficult to obtain information?



4. What difficulties are to be faced when establishing hybrid mismatch facts and what are your experiences with Eol?

Exchange of information – it takes some time, it is difficult to gather all information (it depends on country), difficult to understand other tax systems, necessity to prove files are essential to assess a tax liabilty