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

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- 1. Conceptually speaking, do you see a hybrid mismatch for an internal dealing (debt instrument), recognized by the head office, but disregarded by the permanent establishment?
- Yes, we see a potential hybrid mismatch for an internal dealing between the LuxCo and the Irish branch.
- The expense of a cash pool is possibly deducted in LuxCo and not picked up in the Irish branch.
- So the 1.8m is deducted in BelCo and in LuxCo.

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- 1. Conceptually speaking, do you see a hybrid mismatch for an internal dealing (debt instrument), recognized by the head office, but disregarded by the permanent establishment?
- The deemed branch payment mismatch could be assessed only for the fiscal year 2019 due to the fact that Belgium transposed ATAD Directive as of January 1, 2019, in combination with the fact that Ireland had not introduced the AOA approach until 2020;
- Possible double deduction is more likely than deduction no inclusion;

#### QUESTIONS/ISSUES FOR GROUP DISCUSSION

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- 2. Based on the limited facts you have access to, do you see this risk in the case at hand?
- See answer to question 1

#### QUESTIONS/ISSUES FOR GROUP DISCUSSION

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- 2. Based on the limited facts you have access to, do you see this risk in the case at hand?
- Refer to answer 1;

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- 3. Assuming that the carried forward losses stem from a hybrid mismatch in 2016, 2017 or 2018, does the use of the losses in 2019 or 2020 qualify as a hybrid mismatch deduction, targeted by BEPS ACTION 2?
- Yes according to the BEPS report there is a potential hybrid mismatch situation because the interest income of 5.8m is netted against losses which were created due to an historic hybrid mismatch situation.
- It may not be mentioned in the ATAD directive (or domestic legislation) but there is a reference to the BEPS report in the preamble of the ATAD directive. Question is if this is sufficient?

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- 3. Assuming that the carried forward losses stem from a hybrid mismatch in 2016, 2017 or 2018, does the use of the losses in 2019 or 2020 qualify as a hybrid mismatch deduction, targeted by BEPS ACTION 2?
- Starting from 2017 tax losses generated are relevant to imported mismatch rule;
- Starting from 2019 tax losses are not relevant;

#### QUESTIONS/ISSUES FOR GROUP DISCUSSION

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- 4. How to calculate the adjustment? Is this adjustment different in the knowledge that 13 there is no clear link between the hybrid mismatch at the level of LuxCo 2, and the bond held by LuxCo 1?

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QUESTIONS/ISSUES FOR GROUP DISCUSSION

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- 4. How to calculate the adjustment? Is this adjustment different in the knowledge that 13 there is no clear link between the hybrid mismatch at the level of LuxCo 2, and the bond held by LuxCo 1?
- Adjustment should be determined in relation to the amount of losses, compensated with the interest included;
- No, due to the tax consolidation;