

Luxembourg State Council publishes opinion on draft law implementing EU ATAD 2 on hybrid mismatch arrangements

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On 10 December 2019, Luxembourg's State Council published its opinion on the draft law (Draft Law) implementing Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 (ATAD) as regards hybrid mismatches with third countries (ATAD 2). The State Council opinion is a required step in the legislative process in Luxembourg. See EY Global Tax Alert, [Luxembourg submits draft law implementing EU ATAD 2 to Parliament](#), dated 9 August 2019 for a detailed discussion on the various provisions of the Draft Law.

The State Council generally gave a positive opinion on the Draft Law and acknowledged the legislative choices taken by the Government. It nevertheless formally requested a linguistic amendment to be made with respect to the secondary measure in the case of deduction without inclusion (inclusion by the beneficiary if the payer jurisdiction allows the deduction of a payment), so as to express more clearly that this measure only applies if the hybrid mismatch is not already neutralized through the application of the anti-hybrid provision provided for by the European Union (EU) Parent-Subsidiary Directive (as codified in article 166 paragraph 2bis of the Luxembourg Income Tax Law). No other formal requests for amendments were made.

It is expected that the requested amendment will be made by the Government, so that the Draft Law should be voted on and adopted by the Luxembourg Parliament in the very near future and its provisions applicable as from 1 January 2020 (and 2022 for the provisions concerning reverse hybrid entity taxation).

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