

Hybrid Mismatch Integrity rule guidance

The ATO will soon release guidance on application of the Australian Government's new Hybrid Mismatch Integrity Rules that commenced on 1 January 2019.

These new rules may impact common intra-group financing arrangements into Australia that comes via interposed entities. It is expected however, this new guidance may not fully resolve taxpayers' concerns about applying these rules to their existing inbound structures, where the intra-group financing originates in the form of equity funding from entities in OECD/G20 countries such as China and the United States.

Background

Addressing Hybrid Mismatches is a key part of the OECD/G20 Base erosion and profit shifting (BEPS) package of reforms being implemented by Inclusive Framework countries, including Australia. Australia's new Hybrid Mismatch rules include a special **Integrity Rule** which impacts taxpayers who receive interest bearing intra-group loans from foreign interposed zero or low tax rate countries.

This targeted integrity rule was intended to prevent the hybrid mismatch rules from being compromised by multinational groups using interposed conduit type entities that pay effectively no tax to invest into Australia (thereby replicating a deduction/non-inclusion outcome), as an alternative to using hybrid instruments or entities which are covered by the existing Hybrid Mismatch rules.

The Government's concerns, first raised during the 2017-18 MYEFO when these new integrity rules were announced as an extension of the OECD hybrid mismatch measures, was that multinational groups could subvert these rules by entering into arrangements designed to circumvent the hybrid mismatch rules.

As taxpayers are required to self-assess whether these rules apply, the details of this new guidance should be reviewed to understand how it impacts your existing intra-group financing.



Expected ATO Guidance

The ATO is finalising further guidance on the Integrity Rule and its exemptions. This will likely be in the form of either a Law Compendium Guideline (LCG) or Practical Compliance Guideline (PCG).

We expect the ATO's guidance will provide further clarification for groups planning to rely upon the Principal Purpose Test (PPT) exemption.

This may include structures that:

- include finance companies
- have or plan to pay dividends from those interposed entities, or
- have third party borrowings that are on-lent to fund their operations in Australia.

While further guidance on the integrity rule is a welcome addition to the existing Explanatory Memorandum to the new laws, it is not expected that this will provide answers for all taxpayers potentially impacted by these rules.

Taxpayers may find that they will still need to seek Private Binding Rulings (PBRs) or prepare a Reasonably Arguable Position Paper (RAPP) to support these self-assessment in the absence of their facts and circumstance being adequately covered by the forthcoming guidance.



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How we can help

The updated guidance on the Integrity Rule is expected in the coming weeks. In the event that the new guidance does not adequately address your facts and circumstances, you should speak with your ShineWing advisor.

Our tax specialists can provide you with further insights on these rules and the potential options open to you. This could include:

1. Discussing the potential application of the various Hybrid Mismatch Integrity Rule exemptions
2. Obtaining a Private Binding Ruling from the ATO so as to confirm your exemption from these rules
3. Developing and documenting a Reasonably Arguable Position for your intra-group financing
4. Assisting you with further discussions with the ATO on your specific circumstances.

Key takeaways

As taxpayers are required to self-assess whether these rules apply, multinational groups that have intra-group financing from interposed entities need to review this guidance to confirm their position.

Should this guidance be insufficient, there are other options that remain open to groups to protect their local tax deductions.



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