



## Anti-Reverse – Hybrid Rules

In this update we consider the new measures included in section 30 of the [Finance Bill 2021](#) (the “**Bill**”), amending part 35C of the Taxes Consolidation Act, 1997 (the “**TCA**”) which is due to be enacted by the Finance Act 2021 on 25 December 2021. These new measures complete the transposition of the EU Anti-Tax Avoidance Directives (the “**ATAD**”) through the introduction of Anti-Reverse-Hybrid Rules into the TCA.

### Anti-Hybrid Rules: Background

The Bill includes a number of technical amendments to the anti-hybrid rules contained in part 35 of the TCA, which were first introduced by Finance Act 2019. Predominantly these technical amendments make changes to the definitions contained in part 35, to ensure consistency with the requirements of the ATAD or other provisions of part 35.

### Technical Amendments to Section 35

The Bill introduces the following technical amendments to part 35C of the TCA:

- i. the definition of “*entity*” contained in section 35 is brought in line with the requirements of the ATAD. An “*entity*” under the anti-hybrid rules now includes “*any other legal arrangement of whatever nature or form, that owns or manages assets, that is subject to any of the taxes*” covered by the anti-hybrid provisions. This is an expansion of the scope of the rules to solidify their nature as anti-avoidance measures;
- ii. the Bill amends a technical error in the definition of “*associated enterprises*;”
- iii. the Bill extends the provisions of section 835AB of part 35C, the provisions relating to the worldwide system of taxation, to have application to individual taxpayers in certain circumstances where there is no economic hybrid-mismatch. The purpose of such an extension is to ensure that the rules only operate to neutralise actual economic hybrid mismatches and not technical hybrid mismatches;
- iv. section 835AJ of part 35C is amended to ensure that the application of provisions regarding financial institutions are consistent with other aspects of part 35C; and
- v. section 835AL of part 35C is amended to provide for the application of the “reasonable to consider” test to determinations of instances where a payment has been made to a hybrid entity. This test was previously intended, and so this amendment is not a significant change, though rather brings the statute in line with the original intention.

### Reverse-Hybrid Rules: Background

The Irish tax regime provides for a number of structures and corporate forms that are tax transparent, providing significant benefits to companies and groups of companies. By being considered tax transparent the entity itself is not subject to corporation tax, but rather the liabilities to corporation tax falls to its members, such as the Limited Partners of an Investment Limited Partnership.

The new rules will tax income in Ireland that would otherwise go untaxed because the relevant Irish entity (such as the Investment Limited Partnership) is regarded as tax transparent in Ireland, but tax opaque in the territory of a participator, known as "reverse-hybrid mismatches". In this context, the Bill proposes that certain entities which would be viewed as tax transparent in Ireland are brought within the scope of Irish tax.

### Entities within Scope of Irish Tax

The rules to govern reverse-hybrid mismatches are contained in a new chapter 10A of the TCA, inserted by section 30 of the Bill. The provisions will address tax mismatches that arise where an entity is a reverse hybrid entity, by ensuring that income in Ireland that would otherwise go untaxed, due to the tax transparent nature of the entity in Ireland, is subject to Irish tax, as the entity does not benefit from the same transparency in a territory of a relevant participator. As a result some or all of the profits or gains of a reverse hybrid entity are not subject to Irish tax or foreign tax.

The entities that are viewed as tax transparent in Ireland which are to be brought within the scope of Irish tax are those where:

- i. the entity is 50% or more owned or controlled by entities that are resident in a jurisdiction that regard it as tax opaque; and
- ii. as a result of this tax treatment, a mismatch occurs.

By introducing these rules the mismatch is neutralised by imposing a charge to Irish corporation tax on the reverse hybrid entity in respect of the profits and gains which previously went untaxed.

The purpose of the rules are to ensure that reverse-hybrid entities that should have been subject to tax, are subject to corporation tax in an EU State. Therefore the Bill provides that a reverse hybrid mismatch outcome should not arise in respect of any profits or gains of a reverse hybrid entity that are attributable to a relevant participator that is:

- i. exempt from tax in the territory in which it is established;
  - ii. established in a territory that does not impose tax; or
  - iii. established in a territory that does not impose tax on income or profits derived from abroad.
- Finally, the rules incorporate certain exclusions facilitated under ATAD. In particular, there is an exemption for "collective investment schemes", which includes regulated Irish investment funds. In order for a collective investment scheme to fall within the scope of the exemption, it must be:
- i. widely held; and
  - ii. hold a diversified portfolio of assets.

### November 2021

#### For further information, please contact:



**Alan Connell**  
*Managing Partner and  
Head of Tax*

**T:** +353 1 6644 217  
AlanConnell@  
eversheds-sutherland.ie



**Tim Kiely**  
*Partner, Tax and Commercial*

**T:** +353 1 6644 290  
TimKiely@  
eversheds-sutherland.ie

#### Disclaimer

The information is for guidance purposes only and should not be regarded as a substitute for taking legal advice. Please refer to the full terms and conditions on our website.

#### Data protection and privacy statement

Your information will be held by Eversheds Sutherland. For details on how we use your personal information, please see our Data Protection and Privacy Policy.

