



# ATAD2 Analysis Memo

Hybrid Mismatch Documentation under Wet Vpb 1969

## Kanaal Industrie BV

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Fiscal year 2025 (year-end 2025-12-31)

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# 1. Executive Summary

*This summary states the position and quantifies the impact; sections 2 to 7 substantiate it.*

## 1.1 Conclusion

**Art. 12aa lid 1 sub a Wet Vpb 1969 applies.** The Netherlands denies deduction of EUR 2,500,000 of the FY2025 profit-participating coupon paid by Kanaal Industrie BV to Kanaal Lux SARL. The mismatch is caused by the hybrid financial instrument (debt in the Netherlands, equity in Luxembourg), not by any entity-classification difference.<sup>1</sup>

## 1.2 Key findings

- Association is established: Kanaal Lux SARL holds 100% of the Company, exceeding the 25% threshold of Art. 12ac Wet Vpb 1969.
- The profit-participating loan is a hybrid financial instrument: the Netherlands treats the coupon as deductible interest; Luxembourg treats it as an exempt participation distribution.
- The operative branch is sub a (financial-instrument D/NI), not sub b (hybrid-entity D/NI). Both entities are opaque in both jurisdictions; there is no entity-classification asymmetry.
- No exception or relief (dual inclusion income, timing window, cost-plus decree) applies to cure the mismatch.
- The disallowed amount equals the full FY2025 coupon of EUR 2,500,000, resulting in indicative additional CIT of approximately EUR 645,000 at the 25.8% top bracket.

### **Position: deduction denied under Art. 12aa lid 1 sub a, EUR 2,500,000 disallowed (indicative additional CIT EUR 645,000)**

FY2025 deduction denial under the financial-instrument branch. The coupon is deductible in NL but exempt in Luxembourg under the participation exemption. See section 4.1 for the full per-element analysis.

## 1.3 CIT return implications

Kanaal Industrie BV must add back EUR 2,500,000 to its FY2025 taxable profit as a non-deductible item under Art. 12aa lid 1 sub a Wet Vpb 1969. The adjustment should be reflected in the CIT return (aangifte vennootschapsbelasting) as a correction to the fiscal profit, with a reference to Art. 12aa in the supplementary notes.

## 1.4 Limitations

- This analysis is based solely on the information provided by the Company as described in Section 2.3.

<sup>1</sup>Art. 12aa, eerste lid, onderdeel a, Wet op de vennootschapsbelasting 1969 (Wet Vpb 1969), as introduced by the Wet implementatie ATAD2 (Stb. 2019, 508), effective 1 January 2020.

- No independent verification of the Luxembourg tax treatment has been performed; the analysis relies on the Company's representation that Luxembourg applies the participation exemption to the coupon.
- This document is generated by an automated tool and does not constitute tax advice. No advisor relationship is created.

## 2. Scope and Methodology

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*This section defines what is in scope and which authorities and inputs the analysis relies on.*

### 2.1 Entities in scope

The analysis covers Kanaal Industrie BV (the Company, Dutch CIT taxpayer) and its sole shareholder Kanaal Lux SARL (Luxembourg). These are the only two entities in the group structure relevant to the cross-border arrangement under review.

### 2.2 Fiscal year

The fiscal year under review is 1 January 2025 to 31 December 2025.

### 2.3 Data sources

- Client intake questionnaire (structured JSON payload, received May 2026).
- Instrument terms as described by the Company: subordinated profit-participating loan, EUR 50,000,000 principal, results-dependent coupon, 10-year maturity.
- Company's representation of the Dutch and Luxembourg tax treatment of the coupon.

### 2.4 Analytical framework

Each cross-border arrangement is tested against the five ATAD2 mismatch categories: (i) D/NI (Art. 12aa primary, Art. 12ab secondary), (ii) DD (Art. 12aa lid 1 sub g), (iii) imported mismatches (Art. 12ad), (iv) reverse hybrids (Art. 12ae), and (v) PE mismatches (Art. 12aa lid 1 sub c to f). Exceptions and reliefs are tested in Section 5.

### 2.5 Legal authorities

- Art. 12aa to 12ag Wet Vpb 1969.
- Kamerstukken II 2018/19, 35241, nr. 3 (memorie van toelichting).
- Directive (EU) 2017/952 (ATAD2).
- Art. 166 Luxembourg income tax law (participation exemption).
- Besluit hybridemismatches van 31 oktober 2022, nr. 2022-23956 (cost-plus / dual inclusion income decree).

### 2.6 Pillar 2 / Minimum Tax Act 2024 scope check

The Wet minimumbelasting 2024 applies to groups with consolidated revenue of EUR 750 million or more. Based on the information provided, the Kanaal group does not meet this threshold. The ATAD2 and Pillar 2 regimes operate independently; even if the group were in scope for Pillar 2, the Art. 12aa deduction denial would apply on its own terms. No further Pillar 2 analysis is required.

### 2.7 Legal framework at a glance

The arrangement analysis in section 4 applies the hybrid mismatch rules of Afdeling 2.2a Wet Vpb 1969 (Art. 12aa to 12ag), implementing Directive (EU) 2017/952 (ATAD2). The framework below summarises each provision as applied in this memo.

**Art. 12aa Wet Vpb 1969 (primary rule).** Denies the deduction of payments that produce a deduction without inclusion or a double deduction through a hybrid element. The operative sub-paragraph of lid 1 must be named in every affirmative finding: sub a covers financial-instrument mismatches (debt versus equity asymmetry on the instrument itself, as in this memo); sub b covers payments to hybrid entities (treated as opaque in one state and transparent or disregarded in the other); sub c, d and f cover the permanent-establishment branches; sub e covers payments by a hybrid entity that are disregarded in the recipient state; sub g covers double deductions.

**Art. 12ab Wet Vpb 1969 (secondary rule).** Where the payer state does not neutralise the mismatch, the Netherlands as recipient state includes the payment in taxable income. It acts as a backstop to the primary rule.

**Art. 12ac Wet Vpb 1969 (definitions and timing).** Defines the key terms, including the associated-enterprise test (25 percent of capital, voting rights or profit rights, traced through indirect interests) and dual inclusion income. Inclusion by the recipient is timely if the recipient's tax period commences within 12 months of the end of the payer's tax period in which the deduction is claimed.

**Art. 12ad Wet Vpb 1969 (imported mismatches).** Denies the deduction of payments that directly or indirectly fund a hybrid mismatch elsewhere in the group, unless another jurisdiction has already neutralised it.

**Art. 12ae Wet Vpb 1969 (reverse hybrids).** Entities that are transparent for Dutch purposes but opaque in the jurisdiction of a 50 percent participant become Dutch CIT taxpayers. The qualification test sits in Art. 2 lid 12 Wet Vpb 1969; Art. 12ae contains the flanking rules. A reverse hybrid qualifying as a diversified collective investment vehicle is excluded (KG:211:2024:9).

**Art. 12af Wet Vpb 1969 (dual inclusion income relief).** Deductions denied under the double-deduction rule revive to the extent dual inclusion income arises. Under the Besluit hybridemismatches van 31 oktober 2022, nr. 2022-23956 (Stcrt. 2022, 29035), cost-plus remuneration can qualify as dual inclusion income, with retroactive effect to fiscal years starting on or after 1 January 2020.

**Art. 12ag Wet Vpb 1969 (documentation obligation).** Every Dutch CIT taxpayer must keep records substantiating whether and how the hybrid mismatch rules apply. Inadequate documentation lets the inspector shift the burden of proof to the taxpayer. Records must be producible within a reasonable period upon request; the parliamentary history (Kamerstukken II 2018/19, 35241, nr. 3) indicates at least six weeks.

**Rates and thresholds applied.** Dutch CIT for FY2025: 19 percent up to EUR 200,000 of taxable profit and 25.8 percent above. Association thresholds: 25 percent for the general rules, 50 percent for reverse hybrids.

### 3. Group Structure Analysis

The structure analysis fixes the entities, classifications, and ownership chain that the rest of the memo relies upon.

#### 3.1 Group structure and entity classification

Entity	Jurisdiction	Legal form	NL classification	Local classification
Kanaal Lux SARL	Luxembourg	SARL	Opaque	Opaque
Kanaal Industrie BV	Netherlands	BV	Opaque (CIT taxpayer)	N/A (domestic)

#### 3.2 Ownership and association analysis

**Kanaal Lux SARL holds 100% of the shares in Kanaal Industrie BV.** This exceeds the 25% association threshold of Art. 12ac Wet Vpb 1969 on all three measurement bases (share capital, voting rights, profit rights). The entities are associated enterprises for purposes of Art. 12aa to 12ad.<sup>2</sup>

#### 3.3 Entity-classification consistency

Both entities are classified as opaque (non-transparent) in both the Netherlands and Luxembourg. There is no entity-classification asymmetry. This rules out Art. 12aa lid 1 sub b (hybrid-entity D/NI) and Art. 12ae (reverse hybrids) at the structural level.

<sup>2</sup>Kamerstukken II 2018/19, 35241, nr. 3 (memorie van toelichting, Wet implementatie ATAD2), p. 18-22 (hybrid financial instruments).

## 4. Arrangement Analysis

Each material cross-border arrangement is tested below against the five ATAD2 mismatch categories in turn.

### 4.1 Arrangement PPL-2025-02: Intra-group profit-participating loan

#### 4.1.1 Description and terms

Kanaal Lux SARL advanced a subordinated profit-participating loan of EUR 50,000,000 to Kanaal Industrie BV. The loan has a 10-year maturity and a results-dependent coupon. For FY2025, the coupon amounts to EUR 2,500,000.

- Principal: EUR 50,000,000.
- Coupon FY2025: EUR 2,500,000 (results-dependent).
- Maturity: 10 years (fixed).
- Subordination: subordinated to senior creditors.
- Payer: Kanaal Industrie BV (NL).
- Recipient: Kanaal Lux SARL (Luxembourg).

#### 4.1.2 Evidence inventory

Document	Date	What it proves
Profit-participating loan agreement	2025-01-01	Loan terms: principal EUR 50m, results-dependent coupon, 10-year maturity, subordination
Dutch tax treatment memo / CIT return workpaper	2025-12-31	NL treats the instrument as debt; coupon deducted as interest
Luxembourg participation exemption analysis	2025-12-31	Luxembourg treats the return as an exempt distribution under Art. 166 LIR
Group structure chart	2025-01-01	100% ownership by Kanaal Lux SARL

#### 4.1.3 Hybrid characteristics

**The instrument is a hybrid financial instrument.** The Netherlands treats the profit-participating loan as a debt instrument; the coupon is deductible interest for Dutch CIT purposes. Luxembourg treats the same return as a distribution on equity, exempt under the participation exemption (Art. 166 LIR).<sup>3</sup> The mismatch is driven by the instrument itself (debt-versus-equity asymmetry), not by any entity-classification difference. Both entities are opaque in both jurisdictions.

The operative branch is therefore Art. 12aa lid 1 sub a (financial-instrument D/NI). Sub b (hybrid-entity D/NI) does not apply because there is no entity-classification asymmetry.

#### 4.1.4 D/NI test (Art. 12aa primary, Art. 12ab secondary)

<sup>3</sup>Art. 12ac Wet Vpb 1969 (definitions); the association threshold is 25% direct or indirect interest in share capital, voting rights, or profit rights.

**Art. 12aa lid 1 sub a applies as the primary rule.** The three conditions are met:<sup>4</sup>

- (i) Deduction in the Netherlands: the coupon of EUR 2,500,000 is deducted as interest expense in the Company's FY2025 CIT return.
- (ii) No inclusion in Luxembourg: Kanaal Lux SARL applies the participation exemption to the receipt, resulting in no inclusion in Luxembourg taxable income.
- (iii) Hybrid characteristic: the mismatch results from the different characterisation of the financial instrument across jurisdictions (debt in NL, equity in LU).

Because the Netherlands is the payer jurisdiction, the primary rule of Art. 12aa applies: the deduction is denied. The secondary rule of Art. 12ab (income inclusion in the recipient state) is not relevant because the primary rule resolves the mismatch.

**Timing window check:** Under Art. 12ac in conjunction with Directive (EU) 2017/952 art. 2(9), inclusion is timely if the recipient's tax period commences within 12 months of the end of the payer's tax period.<sup>5</sup> Luxembourg's participation exemption is a permanent exemption, not a timing difference. The coupon will never be included in Kanaal Lux SARL's taxable income. The timing window does not cure the mismatch.

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The closest authority on this point is **Kamerstukken II 2018/19, 35241, nr. 3, p. 18-22**, which A results-dependent loan that is treated as debt in the payer state and as equity in the recipient state is a hybrid financial instrument within the meaning of Art. 12aa lid 1 sub a.. The present arrangement is **aligned** because The Kanaal profit-participating loan has the same characteristics: results-dependent coupon, deductible in NL, exempt as a distribution in Luxembourg..

#### 4.1.5 DD test (Art. 12aa lid 1 sub g)

**Double deduction does not apply.** There is only one deduction (in the Netherlands). Luxembourg does not deduct the coupon; it exempts the receipt. The DD branch of Art. 12aa lid 1 sub g is not engaged.

#### 4.1.6 Imported mismatch test (Art. 12ad)

**Art. 12ad does not apply.** The mismatch arises directly between the payer (NL) and the recipient (LU). There is no third-jurisdiction funding chain that would import a mismatch into the Netherlands. The primary rule (Art. 12aa) resolves the mismatch at source.

#### 4.1.7 Reverse hybrid test (Art. 12ae)

**Art. 12ae does not apply.** Both entities are opaque in all relevant jurisdictions. There is no entity that is transparent in the Netherlands but opaque to a foreign participant. The reverse hybrid rule is structurally inapplicable.

#### 4.1.8 PE mismatch test (Art. 12aa lid 1 sub c to f)

**No PE mismatch applies.** Neither entity operates through a permanent establishment relevant to this arrangement. There is no PE-recipient (sub c), no disregarded PE (sub d), no payment by a hybrid entity through a PE (sub e), and no deemed head-office/PE payment (sub f).

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<sup>4</sup>Directive (EU) 2017/952 of 29 May 2017 (ATAD2), Art. 2(9) (definition of hybrid mismatch and timing window).

<sup>5</sup>Art. 166 Loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu (Luxembourg participation exemption); distributions from qualifying participations are exempt from Luxembourg CIT.

#### 4.1.9 Arrangement conclusion

**Arrangement PPL-2025-02 produces a D/NI hybrid mismatch of EUR 2,500,000 under Art. 12aa lid 1 sub a Wet Vpb 1969.** The deduction of the FY2025 coupon is denied in full. No other mismatch category is engaged.<sup>6</sup>

#### Monitoring points for next year

- Confirm annually that Luxembourg continues to apply the participation exemption to the coupon. If Luxembourg were to tax the receipt (e.g., due to a change in the participation exemption conditions), the D/NI mismatch would cease and the deduction would be restored.
- Monitor any amendment to the loan terms (e.g., conversion to a fixed coupon) that could remove the hybrid characteristic.
- If the group refinances the instrument as plain senior debt with a fixed coupon that Luxembourg treats as interest income, the mismatch would be eliminated prospectively.
- Track Dutch legislative developments: any change to the deelnemerschapslening doctrine or the ATAD2 implementing rules could affect the analysis.

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<sup>6</sup>Art. 12ag Wet Vpb 1969 (documentation obligation). Non-compliance reverses the burden of proof to the taxpayer.

## 5. Exception and Relief Analysis

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Where a primary mismatch is identified, this section tests every relief mechanism in Afdeling 2.2a before settling on the disallowance amount.

### 5.1 Dual inclusion income (Art. 12af)

**Art. 12af does not apply.** The dual inclusion income relief is available only for double deduction (DD) mismatches under Art. 12aa lid 1 sub g. The present mismatch is a D/NI mismatch under sub a. Art. 12af is structurally inapplicable.<sup>7</sup>

### 5.2 Cost-plus decree (Besluit hybridemismatches 31 oktober 2022)

**The cost-plus decree does not apply.** The decree clarifies that cost-plus remuneration can qualify as dual inclusion income for DD mismatches. It does not provide relief for D/NI mismatches. Moreover, the arrangement is a profit-participating loan, not a cost-plus service arrangement.<sup>8</sup>

### 5.3 Timing window

As analysed in Section 4.1.4, the Luxembourg participation exemption is a permanent exemption. The coupon will not be included in Luxembourg taxable income in any future period. The timing window of Art. 12ac (recipient's tax period commencing within 12 months of the end of the payer's tax period) does not cure the mismatch because the non-inclusion is permanent, not temporal.

### 5.4 Business rationale / structured arrangement

The structured-arrangement rule (Art. 12ac) extends ATAD2 to non-associated parties where an arrangement is designed to produce a mismatch. Here, the parties are associated (100% ownership), so the structured-arrangement extension is not needed for applicability. No business-rationale safe harbour exists under Dutch ATAD2 implementation that would override the primary rule.

### 5.5 Conclusion on exceptions

**No exception or relief reduces the disallowed amount.** The full EUR 2,500,000 coupon remains non-deductible under Art. 12aa lid 1 sub a Wet Vpb 1969.

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<sup>7</sup>Art. 12af Wet Vpb 1969 (dual inclusion income relief for double deduction mismatches).

<sup>8</sup>Besluit van 1 november 2022, nr. 2022-26193 (Staatscourant 2022, 29035) (cost-plus decree, dual inclusion income).

## 6. 2025 Entity Classification Impact

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*This section isolates the effect of the Wet fiscaal kwalificatiebeleid rechtsvormen on the analysis above.*

**The 1 January 2025 entity classification reform does not affect this structure.** Under the Wet fiscaal kwalificatiebeleid rechtsvormen, the Netherlands applies a symmetric method to classify foreign entities.<sup>9</sup> A Luxembourg SARL is comparable to a Dutch BV (limited liability, separate legal personality, capital divided into shares). It remains opaque under the new rules, consistent with its pre-2025 classification.

Because both entities retain their opaque classification, the ATAD2 analysis is unaffected by the reform. No deemed transfer event occurred on 31 December 2024 in respect of these entities.

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<sup>9</sup>Wet fiscaal kwalificatiebeleid rechtsvormen (Stb. 2024, 387), effective 1 January 2025.

## 7. Overall Conclusion

This section consolidates the per-arrangement conclusions into a single return position and forward action list.

### 7.1 Consolidated findings

Arrangement	Mismatch type	Article	Amount (EUR)	Relief
PPL-2025-02	D/NI (financial instrument)	Art. 12aa lid 1 sub a	2,500,000	None

### 7.2 CIT return position

Kanaal Industrie BV adds back EUR 2,500,000 to its FY2025 taxable profit. The adjustment is reported as a non-deductible expense under Art. 12aa lid 1 sub a Wet Vpb 1969. Indicative additional CIT at the 25.8% top bracket: EUR 645,000.

### 7.3 Art. 12ag documentation obligation

This memo discharges the Art. 12ag documentation obligation for FY2025.<sup>10</sup> It substantiates the Company's ATAD2 position, explains why Art. 12aa lid 1 sub a applies, quantifies the adjustment, and documents the inapplicability of all other mismatch categories and reliefs. The memo must be retained for at least 5 years and produced within 6 weeks upon request by the Belastingdienst.

### 7.4 Forward recommendations

- Consider refinancing the profit-participating loan as a plain fixed-rate senior loan. If Luxembourg treats the coupon as taxable interest income (rather than an exempt distribution), the D/NI mismatch would be eliminated and the deduction restored.
- Alternatively, evaluate whether the instrument can be restructured so that Luxembourg no longer applies the participation exemption (e.g., by ensuring the instrument does not meet the conditions of Art. 166 LIR).
- Monitor Luxembourg legislative developments regarding the participation exemption scope.
- Perform an annual update of this memo for FY2026 and subsequent years, confirming that the facts and legal treatment remain unchanged.
- If the group's consolidated revenue approaches EUR 750 million, perform a Pillar 2 / Wet minimumbelasting 2024 interaction analysis.

## Disclaimer

<sup>10</sup>

This document was generated by an automated tool and does not constitute tax advice; it creates no advisor-client relationship. It is prepared as substantiation under the documentation obligation of Art. 12ag Wet Vpb 1969 and must be reviewed by the taxpayer before reliance or filing. Retain it in the CIT file for the statutory period (5 years general, 10 years fraud).