

# Abstract

This thesis deals with the rules for hybrid mismatches, which were developed as part of the OECD *Inclusive Framework on Base Erosion and Profit Shifting* and their implementation into the Czech legal system.

First of all, attention is paid to the international context of the fight against aggressive tax planning and the various ways to deal with it. At the same time, some of the shortcomings of these methods are identified.

The rules for hybrid mismatches are first described as they were proposed by the final OECD report *Neutralising the Effects of Hybrid Mismatch Arrangements* completed in 2015. Individually addressed are the general conditions of application of the rules, and then the categories of hybrid financial instruments and hybrid entities. The last section is devoted to a critique of the rules relating both to the chosen concept of linking rules, which many authors consider to be less than ideal, and to the process of developing the recommendations, in which some shortcomings have been identified, particularly in relation to the participation of less developed states.

The next chapter is devoted to the implementation of the rules at the European Union level, which took place within the framework of the adoption of the new *Council Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market* (ATAD) and its 2017 amendment. This chapter focuses mainly on the ATAD drafting process, where the adoption of the hybrid mismatch rules took place in several phases, with very different proposals. As the resulting hybrid mismatch rules are very similar to the original OECD proposal, they are not described separately in this thesis.

The last chapter focuses on the Czech transposition of the rules into Section 23h of the Czech Income Tax Act. Here, the Czech Republic's approach to implementation is described, primarily by analysing the explanatory memorandum to *Act No. 80/2019 Coll. amending certain tax acts and certain other acts*, through which the rules for hybrid mismatches were introduced. Then, the individual rules for dealing with the *consequences of different legal*

*qualification* under Section 23h of the ITA are presented and their content is examined in connection with the original meaning of the OECD Recommendation. The last section is devoted to the theoretical implications of the legislation for taxpayers and the tax administration.

**Keywords:**

**Hybrid mismatches, ATAD, consequences of different legal qualification, BEPS, aggressive tax planning**