

Mr. Paolo Gentiloni  
European Commissioner for  
economy and taxation  
European Commission  
Rue de la Loi 200, 1049 Brussels,  
Belgium

Submitted online

Brussels, 24 January 2024

**Subject: Accountancy Europe's feedback on Transfer Pricing proposal**

Dear Commissioner,

Accountancy Europe is pleased to provide its views on the [proposal](#) for a Council Directive on transfer pricing.

We strongly support the European Commission's initiative to help improve the coherence and consistency of transfer pricing principles applied by the Member States across the EU. The current lack of harmonisation is a major source of burdens and costs for MNE's and tax authorities when dealing with cross-border intra-group transactions within the EU.

In particular, we welcome the following proposals:

1. Rules to promote a common application of the arm's length principle across the EU.
2. A clear definition of 'associated enterprise' (Article 5).
3. An obligation for Member States to make a corresponding adjustment equivalent to the primary adjustment made in another Member State or in a third country with a relevant double tax treaty (when certain criteria are met).
4. That there should be a "fast-track" procedure with a maximum time limit of 180 days from the submission of a taxpayer's request for a corresponding adjustment to be made where double taxation has arisen.
5. That there is a clear indication that the EU's rules for transfer pricing should be consistent with the OECD Transfer Pricing Guidelines, including the possible future requirement for Member States to use of OECD document templates.

The desire to align EU rules with the internationally accepted OECD Guidelines is further demonstrated in Article 9 (1) that mandates the use of transfer pricing methods set out in the Guidelines, unless it can be demonstrated that an alternative method provides a more appropriate transfer pricing method. However, our members have indicated that that this is no guarantee of a common approach being applied by individual Member States.

For example, there have been examples where Member States cannot agree on the calculation of the cost-plus method, and this has resulted in cases being referred to Mutual Agreement Processes (MAP). One of the aims of this proposal is to have corresponding adjustments processed without the need for a MAP. Disagreements between tax authorities about how transfer pricing methods are applied run counter to this aim.

The proposed Directive does not contain any significant new requirements requiring tax authorities to reach agreement on transfer pricing issues, apart from imposing a 180-day limit in cases where double taxation can be proven. Equally, there are no proposals for a process by which agreement can be reached between tax authorities. This could reduce the ultimate effectiveness of this proposal. We have seen that, as with discontinued VAT cross border ruling pilot project, purely voluntary dispute resolution mechanisms are not always successful.

Consequently, we suggest that the Commission could analyse the reasons behind the open MAP cases involving EU Member States to ascertain the main causes of disputes that led to the MAP being started. It could then consider whether there is a necessity to look at additional guidance on certain issues, whether additional legislative action was required to expedite agreement on contentious matters, or whether a faster form of arbitration could be developed.

The compensatory adjustments mandated under Article 7 could impact transactional taxes, particularly VAT. Taxpayers face the risk of indirect tax queries or audits in respect of compensatory adjustments and having a harmonised clear and coherent procedure for dealing with such adjustments would be very beneficial.

We also call on the Commission to make every effort to ensure that other international developments on transfer pricing are consistent with the transfer pricing principles set out in this draft Directive – for example, with the work that will be undertaken on transfer pricing at the UN Tax Committee.

Article 20 states that the provisions of the proposed Directive will apply from 1 January 2026. However, as transfer pricing tax audits can often cover earlier years or multi-year periods, it would be very useful if the Directive were to provide specific guidance if financial years prior to 1 January 2026 can be affected by the Directive, and if so, the procedures to be followed (especially in the case of adjustments under Articles 6 *Corresponding Adjustment* and 7 *Compensating Adjustment*).

We also call on Member States to ensure that their national transposition of this Directive does not go further than the agreed proposal. As this proposal seeks to introduce a common framework for a very complex process that can involve judgement, additional national rules would run counter to the objective of the proposed Directive.

Sincerely,



Mark Vaessen  
President



Olivier Boutellis-Taft  
Chief Executive

#### **About Accountancy Europe**

Accountancy Europe unites 50 professional organisations from 35 countries that represent close to 1 million professional accountants, auditors and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

Accountancy Europe is in the EU Transparency Register (No 4713568401-18).