ACCOUNTANCY EUROPE.

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Director-General for Taxation and Customs Union
European Commission
DG TAXUD
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**Subject: Call for Evidence Simplifying EU rules on direct taxation – Omnibus**

Dear Mr Thomas,

We strongly support the work of the European Commission in seeking to simplify and streamline the European direct tax legislation. We have previously expressed our views on how to improve European tax systems in our paper, The Accountancy profession's recommendations to streamline the EU tax system.[1]

We agree with the Commission that the provisions of the Anti-Tax Avoidance Directive should be reviewed to deal with overlaps and mismatches with other legislation and to ensure that the measures are still appropriate for current financial circumstances.

We also agree that navigating a fragmented EU landscape and Member States' divergent rules and varying interpretations increases administrative costs and reduces certainty - in all areas of taxation in the EU. Where possible, Member State options should be eliminated and where this is not possible, binding guidance should be agreed to reduce inconsistent interpretation and application and thereby increase business certainty.

In accordance with the 'Think Small First' principle, small and medium-sized entities should be excluded from the scope of the Anti-Tax Avoidance Directive (EU) 2016/1164 (ATAD). Only a limited proportion of such businesses engage in cross-border activities, and those that do present a significantly lower risk of eroding Member States' tax bases than multinational enterprises.

We set out our detailed comments below:

## Anti-Tax Avoidance Directive

We believe the EC should review several rules under the ATAD.

[1] 250911-Tax-shttps://accountancyeurope.eu/wp-content/uploads/2025/09/250911-Tax-simplifications-recommendations.pdf?v1implifications-recommendations.pdf

### The Interest Limitation Rule (ILR)

Our members believe that the current interest limitation rule is not fit for purpose. It can lead to double taxation in situations where the interest relief is denied under the ATAD provisions, but the interest income remains taxable in the hands of the recipient.

Furthermore, the limits were set in an era of historically low interest rates. More businesses will now be impacted by this rule solely due to increases in interest rates with no fundamental changes to their business model.

The rule is also not necessary for those entities in the scope of Pillar Two. Pillar Two was agreed on the basis that 15% is an acceptable minimum rate of taxation for the group so compliance with Pillar Two negates the need for many additional anti-avoidance measures. Additionally, Pillar Two contains its own anti-abuse rules that further reduce the need for additional anti-abuse measures for in scope companies. We recommend that the EC excludes groups that are in the scope of Pillar Two from the ILR.

We also recommend that the EC:

- increase the €3-million limit on interest relief and develop an automatic mechanism that flexes the limit on interest relief in line with movements in interest rates (or, as the next-best option, implement a mechanism that requires an adjustment every three years)
- remove the interest limitation rule for:
    - loans from banks that are unconnected with the borrower and on arm's length terms
    - other genuine arm's length financing arrangements, such as publicly issued bonds or financing from third-party institutional investors.
- define 'interest expense' at European level to avoid different interpretations by Member States
- make it mandatory that all Member States permit companies to carry forward and carry back excess interest capacity
- make it mandatory that all Member States adopt the group escape clause
- exclude long-term debt that finances public infrastructure from the ILR. Part of the review process should also lead to a harmonised definition of 'infrastructure' that not only includes real estate projects but also covers other projects, such as electricity, defence and telecommunications infrastructures
- introduce a grace period so that the ILR does not apply to start-ups for up to 5 years
- extend the definition of EBITDA to include exempt income, the current exclusion of which causes real problems for the holding companies of groups. The expanded definition of EBITDA would better represent the economic reality of multi-national entities and remove distortions between Member States that employ the exemption method and those Member States that employ credit methods

### The Hybrid Mismatch Rule

The ATAD II introduced additional rules covering potential hybrid-mismatch situations that are proving to be difficult to implement and operationalise. ATAD II allows a hybrid mismatch to be imported into a Member State via an offset with a hybrid instrument in another jurisdiction. Whilst this concept has some merit, it is very difficult to administer.

The requirement that, for the purpose of the hybrid-mismatch rules, the participation of people unrelated but acting together shall be treated as holding the complete participation is difficult to apply in practice. The definition of acting together is loosely defined and leads to considerable uncertainty and differences in interpretation. The definition, for example, could include pooled investment vehicles where individual investors do not act in concert with others and have insignificant individual influence.

We recommend that the EC:

- limit importation rules to back-to-back structures and ensure the anti-hybrid legislation is solely dealt with by that Member State. Where the non-hybrid instrument is in another Member State, enforcement should remain with that state. Importation rules should only apply to structures where the hybrid instrument abroad is implemented for the purposes of covering the tax effect on the first level non-hybrid structure (back-to-back).
- clarify and narrow the definition of 'acting together' in line with the policy objectives of the provision.

### CFC Rules

We recommend that the EC fundamentally reform the CFC rules as the administrative burden (particularly regarding the Member State options relating to Models A and B) is disproportionate to the impacts they have on profit-shifting. The CFC rules should be switched off for those businesses subject to Pillar Two.

### Interactions with Pillar Two Rules

We recommend that the EC thoroughly assess ATAD for overlap with the Pillar Two rules. Entities subject to Pillar Two should be exempt from compliance with ATAD rules when the objectives are already met under Pillar Two. For example:

- the Pillar Two Income Inclusion rule effectively duplicates the ATAD's CFC rules
- the ATAD's Interest Limitation rule is unnecessary for entities covered by Pillar Two
- the ATAD's Exit Taxation and Anti-Hybrid rules are redundant for entities subject to Pillar Two rules, which no longer permit gaps in taxation.

### The General Anti-Abuse Rule (GAAR)

We recommend that one unified GAAR should be introduced at EU level to replace those in existing legislation and thereby reduce inconsistencies and improve certainty. For companies subject to Pillar Two, the provisions relating to the GAAR should be suspended for at least three years in order to reduce the prevalence of non-specific challenges raised in respect of Pillar Two returns.

### Exit Taxation

We recommend that where disposal takes place after 5 years alternative mechanisms, such as guarantees that remain in place until the relevant asset is disposed of, should replace exit taxation. This is to avoid situations where taxation is raised that exceeds the financial capacity of the entity to pay it.

## Pillar Two Directive

Although mentioned in the Call for Evidence only in respect of its interaction with the ATAD, we believe that elements of the Council Directive (EU) 2022/2523, which implements the OECD's Pillar Two rules, are extremely burdensome and should be included in the Omnibus review process.

Whilst the largest of businesses in scope have made good progress in implementing the necessary systems to report under Pillar Two, smaller in-scope entities are struggling to make the necessary adjustments to their procedures and systems. Additionally, several EU Member States still struggle with implementation, potentially leading to uneven enforcement and compliance burden.

### Recommendations

We urge the European Commission to closely monitor international developments, including further OECD work, and assess whether a deferral of reporting under Pillar Two is needed and to assess whether:

- there will be widescale international adoption of these provisions
- there is a need to significantly revise the EU Directive, and
- businesses and Member States require more time to adapt.

Additionally, we would encourage the European Commission to consider whether compliance with Pillar 2 reporting requirements should be 'rewarded' by removing the requirements of other EU tax Directives for all companies belonging to the same group that has an EU resident Ultimate Parent Entity.

This approach could result in making the adoption of Pillar Two in Europe a real competitive advantage. It would also reduce the impact of implementation decisions made by individual Member States, which currently make application of these Directives complicated in real world situations. An example of this is Member States' specific beneficial ownership requirements - for example, as introduced by Poland.

In the meantime, the EC should fine-tune the current Pillar Two Directive and:

- introduce a Permanent Safe Harbour provision based on the current transitional safe harbour but with a simplified Effective Tax Rate test (which would also apply to the denominator of the Routine Profit Test). The Permanent Safe Harbour provision should also apply to the Global Minimum Tax and Qualified Domestic Minimum Top-up tax rules
- simplify the treatment of investment entities
- remove non-essential and complex elements, such as the investment blending circle

- supplement preamble (7) of the Directive to facilitate the assessment of non-profit organisation status, as the current criteria are very strict compared with the statement in para. 94 of the OECD 2020 Blueprint (which clarifies that the GloBE rules would not operate to reverse a domestic tax exemption)

- introduce an EU whitelist of jurisdictions.

## The Parent-Subsidiary Directive (PSD) and the Interest and Royalties Directive (IRD)

The differing minimum participation thresholds for the PSD and IRD cause unnecessary complexity for groups operating in the EU. Ideally, there would be full exemption for all members of the group without requiring the need to be directly controlled by the same entity (particularly relevant for withholding tax on intergroup dividends) but, as a bare minimum, we believe that the participation thresholds for both directives should be harmonised to a 5% minimum participation. This would improve EU competitiveness by simplifying the acquisition of small holdings and the formation of joint ventures and other collaborative structures.

We also believe that it is unnecessary to restrict the scope of these Directives to the list of qualifying companies contained in the Annexes. The Annexes have not been updated and fail to take into account new forms of business entities. It is notable that the proposed Regulation on the 28th Regime includes a company type not included in the Annexes and which promotes greater flexibility in company law, company governance and company capital structure as a means to promote European competitiveness.

## The Parent-Subsidiary Directive (PSD)

Article 4(3) of the PSD, relating to the deductible costs of holding company activities and the flat rate cap on management costs also create complexities and costs for EU resident groups. The application of this article is not consistently applied across Europe, with some Member States using it as a means of raising revenue rather than representing the true costs of holding company activities – which are normally far lower than the 5% flat rate cap.

In respect of Article 4(3), we would recommend that the flat rate cap of 5% be eliminated. At the bare minimum, it should be reduced to 1%, which is a more realistic estimate of holding company costs. Another alternative would be to require Member States to accept a taxpayer election to provide the actual costs of holding company activities – this option could be provided even were the cap to be reduced to 1% as holding company activities often cost less than 1% of distributable profits.

In respect of Article 4(1), we recommend that the option for Member States to choose the credit method for eliminating double taxation on qualifying distributions be removed – requiring that the exemption method is used. Credit relief measures introduce considerable complexity, increase businesses' compliance costs and increase the risk of disputes between Member States' tax authorities.

## The Dispute Resolution Mechanism (DRM)

It should be made mandatory that Member States' tax authorities permit the taxpayer to actively participate in all of the key stages of the DRM, with rights to engage in dialogue, to receive updates at

all stages of the procedure and to provide evidence and views throughout the Mutual Agreement and arbitrations phases. This will:

- improve taxpayer trust in the process
- improve fact-finding as taxpayers would be able to present information about the commercial context at an early stage, and
- reduce the overall time that the process takes.

Joint tax audits should be a mandatory requirement before the DRM commences. The taxpayer should be able to request the specific tax authorities that take part and there should be a binding commitment to common assessments – only if consensus fails than there would be a formal escalation to the DRM process.

Sincerely,

Jens Poll

President

Eelco van der Enden

Chief Executive

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