



Mr Paolo Gentiloni

European Commissioner for
Economy
European Commission
Rue de La Loi 200
1049 Brussels

12 June 2020

Dear Commissioner,

I would like to start by thanking you for your and your administration's continued support in protecting the European economy during the COVID19-crisis. For example, your proposal to defer the reporting deadline for the Directive on Administrative Cooperation in the field of taxation (DAC6), if agreed by member states, should allow both tax administrations and companies to focus on the most immediate challenges of today.

As lockdown restrictions are gradually easing, we must continue to work to ensure that Member States and companies have all the tools at hand in order to protect jobs and growth in the European Union. In this light, we are concerned that the current application of the interest limitation rule in the anti-tax avoidance directive (ATAD, article IV) may act as a brake on the economic recovery. This rule limits the tax deductibility of corporates' exceeding borrowing costs (e.g. interests, financial expenses related to derivatives, etc) up to €3 million or, if higher, to 30% of the taxpayer's taxable earnings before interest, tax, depreciation and amortisation – the EBITDA.

BusinessEurope continues to support the European Commission's fight against tax fraud and evasion, and the goals of the ATAD. We also do not oppose interest limitation rules, as supported by Action 4 of the OECD's Base Erosion and Profit-Shifting (BEPS) project. During the current economic downturn however, these rules are likely to impose a significantly greater restriction on businesses' ability to deduct borrowing costs than was envisaged when the rules were agreed. In particular, not only may deductions of the interest on already existing debt be limited by the significantly lower or even negative EBITDA companies face this year, companies may also be hampered when they start increasing their indebtedness as a result of the COVID19-crisis by taking out new bank loans or by looking for support in capital markets in order to protect output and limit job losses.

The Commission services' own analysis, published in the paper 'Identifying Europe's Recovery Needs', notes that the economic crisis is expected to reduce companies' equity by between €720bn and €1.2trn, suggesting that such capital shortfalls 'may lead to a prolonged period of lower investment and higher unemployment'. Without an urgent reassessment of both the €3 million and 30% deductibility cap, and keeping the forecasted deep recession in mind with likely lower EBITDAs for businesses in the coming years, the EU's interest limitation rule risks placing unnecessary and unforeseen pressure on firms' balance sheets, possibly causing more bankruptcies and job losses, and will thus act as an obstacle to the economic recovery.



We should not forget that e.g. the United States of America, through the recent Coronavirus Aid, Relief, and Economic Security (CARES) Act, have provided more flexibility to their interest limitation rule by raising their interest limitation cap from 30% to 50% for both tax years 2019 and 2020. Without a comparable EU-response, EU-companies may run the risk of a competitive disadvantage in their recovery, vis-à-vis their non-EU counterparts, heightening the risk of an uneven global recovery.

Given the exceptional circumstances the economy is facing, we call on the European Commission to urgently consider a temporary suspension or more flexibility to the interest limitation rule in order to give Member States and companies more efficient tools to support the recovery. Any proposed change to the ATAD's interest limitation rule should be temporary, and run no longer than necessary.

My staff and I remain at your disposal to discuss any aspects of this issue in more detail.

Yours sincerely,

Markus J. Beyrer