BUSINESSEUROPE

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CALL FOR EVIDENCE – SIMPLIFYING EU RULES ON DIRECT TAXATION (TAX OMNIBUS)

BusinessEurope is Europe's largest business organisation and a leading advocate for growth and competitiveness at the EU level. Representing 42 national business federations from 36 countries in Europe, we stand up for companies of all sizes across the continent and campaign on the issues that influence their performance most.

KEY MESSAGES

1. **Seize the opportunity to deliver ambitious and meaningful simplification**
   The Tax Omnibus must contribute to the EU's objective of reducing regulatory burdens by 25% for all companies, and by 35% to all SMEs. This is particularly important in an increasingly complex tax framework, further intensified by the EU's early implementation of Pillar Two. The credibility of this exercise will ultimately be judged not by the number of provisions revisited, but by whether businesses experience a tangible reduction in complexity when operating across the Single Market.

2. **Ensure coherence between existing EU rules and Pillar Two**
   The interaction between existing anti-avoidance rules and Pillar Two must be clarified. In particular, Controlled Foreign Company (CFC) rules should not apply to companies already subject to Pillar Two rules to avoid overlapping taxation and duplicative compliance obligations.

3. **Improve the functioning of key anti-avoidance rules affecting investment**
   Targeted adjustments to rules such as the Interest Limitation Rule and Hybrid Mismatch provisions are needed to ensure they remain proportionate, reduce unnecessary complexity and better reflect economic realities, while maintaining their anti-abuse objectives.

4. **Improve access to tax relief and strengthen dispute resolution mechanisms**
   Divergent national procedures, restrictive interpretations and withholding tax practices continue to limit the effectiveness of the Parent-Subsidiary Directive and the Interest and Royalties Directive. Simplification must address these structural barriers, including through more effective relief at source and more efficient dispute resolution mechanisms, and ensure that the directives operate as intended in modern cross-border group structures.

BUSINESSEUROPE a.i.s.b.l.
AVENUE DE CORTENBERGH 168 – BE 1000 BRUSSELS – BELGIUM
WWW.BUSINESSEUROPE.EU E-MAIL main@businesseurope.eu TEL +32 (0)2 237 65 11
EU Transparency register 3978240953-79

INTRODUCTORY REMARKS

BusinessEurope strongly supports the Commission's objective of simplifying the EU framework for direct taxation. Over the past decade, the EU tax acquis has expanded significantly as successive initiatives were introduced to address aggressive tax practices, improve transparency and align with evolving global standards.

The Draghi Report identified regulatory complexity as a key obstacle to European growth and investment. The Commission's Competitiveness Compass has established an ambitious simplification agenda, including a commitment to reducing administrative burdens by at least 25% for all companies and by 35% for SMEs. The ECOFIN Council conclusions of March 2025 have called for an operational, pragmatic and ambitious tax simplification action plan. The Tax Omnibus must deliver on these commitments, and these must be firmly embedded in the broader EU competitiveness agenda.

The early implementation of the OECD/G20 Inclusive Framework's Global Minimum Tax rules (Pillar Two) in the EU has added a further, highly complex layer to an already extensive legislative framework. As a result, companies operating in the Single Market must now navigate a particularly dense regulatory environment in which multiple layers of EU legislation and global standards interact.

At a time when major economies are actively reforming their tax systems to attract investment, the EU cannot afford a fragmented and overly complex tax framework. **Simplification is not a concession. It is a precondition for maintaining Europe's attractiveness as a place to invest and do business.**

The Tax Omnibus initiative therefore arrives at a timely moment. With Pillar Two now in place and the EU anti-avoidance framework largely established, there is a clear opportunity to review the acquis and ensure that its different elements operate in a coherent, proportionate and workable manner.

Against this background, BusinessEurope urges the Commission to bring forward the most ambitious proposal possible. In light of the unanimity requirement that applies to tax legislation under Articles 113 and 115 TFEU, a strong and well-calibrated Commission proposal is essential to ensure that the final outcome delivers meaningful results. **Half-measures will not meet the expectations of European businesses or match the scale of the competitiveness challenge.**

BusinessEurope previously provided detailed comments on the functioning of the Anti-Tax Avoidance Directive in response to the Commission's evaluation of ATAD of September

2024. The observations presented in this submission complement those earlier recommendations and highlight additional areas where targeted adjustments could significantly improve the coherence and practical functioning of the EU direct tax framework.

The following sections set out the areas where European businesses consider that targeted adjustments would deliver meaningful simplification and improve the functioning of the EU direct tax rules in practice:

1. THE ANTI-TAX AVOIDANCE DIRECTIVE (ATAD)

1.1. Controlled Foreign Company (CFC) rules and Pillar Two

The interaction between CFC rules and Pillar Two requires clarification.

CFC rules allow Member States to tax certain profits of foreign subsidiaries under defined conditions. However, under Pillar Two, similar income may already be subject to top-up taxation through the Income Inclusion Rule (IIR) or other mechanisms. As a result, the same income may be captured under both systems.

This creates a clear risk of overlapping taxation and duplicative compliance obligations, undermining the coherence of the EU tax framework without providing meaningful additional protection against base erosion.

BusinessEurope therefore supports measures to ensure a clear hierarchy between the two regimes. In particular:

- **CFC rules should not apply where profits are already subject to minimum effective taxation under Pillar Two;**
- **groups within the scope of Pillar Two should be able to benefit from the disapplication or deactivation of CFC rules;**
- **clear interaction rules should be introduced to prevent economic double taxation.**

More broadly, where all entities of a multinational group fall within the scope of Pillar Two, the continued application of overlapping ATAD provisions may result in unnecessary administrative burdens. While crediting mechanisms may mitigate the tax impact, they do not reduce the significant compliance burden associated with calculating both tax bases. In such cases, the Commission should limit the application of these rules where a minimum level of taxation is already ensured.

Finally, it is essential to reaffirm that CFC provisions should operate as targeted anti-abuse rules. In practice, some taxpayers are required to collect and report extensive information annually to demonstrate the absence of non-genuine arrangements. This can result in disproportionate compliance burdens with limited relevance for identifying abusive structures.

As such, the framework should ensure that taxpayers are able to rely on effective escape clauses where they can demonstrate that they carry out genuine economic activities supported by adequate substance.

1.2. General Anti-Abuse Rule (GAAR) and Pillar Two

The interaction between the GAAR in ATAD and the application of Pillar Two also raises practical questions.

Because Pillar Two relies on the calculation of top-up taxes across multiple jurisdictions, intra-group transactions may fall within the scope of domestic GAAR provisions when determining the amount of tax due in an EU Member State. This can create additional uncertainty and complexity for companies already subject to extensive Pillar Two reporting obligations.

Clarification of the interaction between GAAR provisions and Pillar Two would therefore help ensure legal certainty and avoid duplication of anti-abuse analyses.

1.3. Interest Limitation Rule (ILR)

The Interest Limitation Rule (ILR) plays an important role in protecting the tax base against excessive interest deductions. However, its application has revealed a number of areas where the rule could be improved to better reflect economic realities while maintaining its anti-abuse objective.

In the current economic environment of higher interest rates and inflation, the EBITDA-based limitation can have unintended pro-cyclical effects. During periods of economic downturn or reduced earnings, companies may face restrictions on interest deductions precisely when access to financing becomes most critical.

In addition, the current design of the rule may constrain companies' ability to finance investment and growth, particularly in capital-intensive sectors and in the context of the EU's broader policy objectives, including the green and digital transitions.

Ensuring that the rule supports investment while maintaining its anti-abuse objective should therefore be a key consideration in the Omnibus review. Targeted adjustments are needed to improve its proportionality and economic neutrality in the context of elevated interest rates and significant investment needs across Europe.

In particular, the Omnibus should:

- **Exclude third-party debt:** arm's-length third-party borrowing generally presents a materially lower risk of base erosion. A well-calibrated exclusion would help protect genuine investment without undermining the integrity of the rule.

- **Ensure the availability of key safeguards across Member States:** to improve consistency and legal certainty across the Single Market, certain provisions should be made mandatory, including the group escape clause, the exemption for long-term public infrastructure projects, the exemption for standalone entities, and the carry-forward and carry-back mechanisms for unused interest capacity. These safeguards are particularly important for capital-intensive sectors and companies experiencing volatility in earnings.

- **Address pro-cyclicality:** an economic safeguard mechanism allowing temporary adjustments to the EBITDA limitation in clearly defined stress scenarios would help prevent the rule from constraining investment during downturns.

- **Update outdated thresholds**: de minimis thresholds, such as the EUR 3 million safe harbour, should be periodically reviewed or indexed. In addition, the current exclusion of exempt income from the EBITDA calculation may underestimate a company's real debt-servicing capacity and further restrict interest deductibility. Aligning the definition more closely with economic reality would improve the proportionality of the rule.

Taken together, these adjustments would improve the functioning of the ILR while preserving its core objective of preventing excessive interest deductions.

1.4. Other ATAD issues

Beyond the elements discussed above, businesses have identified opportunities to simplify other ATAD provisions.

In particular, the current exit tax rules may require tax payments in situations where no cash-generating transaction has occurred. Allowing a deferral of taxation until the actual realization of gains would better align the rules with economic reality.

In addition, certain hybrid mismatch provisions, particularly those relating to imported mismatches, require taxpayers to trace complex cross-border payment chains, resulting in disproportionate compliance burdens.

More broadly, the rigid application of anti-hybrid rules may in some cases lead to legal or economic double taxation. It should be clarified that these rules must not result in unintended double taxation to help ensure that they remain proportionate and aligned with their original objective of preventing mismatches. In this context, certain technical definitions should be reviewed, including those relating to *"double inclusion"* and *"deduction without inclusion"*.

2. THE PARENT-SUBSIDIARY DIRECTIVE (PSD) AND THE INTEREST AND ROYALTIES DIRECTIVE (IRD)

2.1. Practical Barriers to Accessing Directive Benefits

The Parent-Subsidiary Directive (PSD) and the Interest and Royalties Directive (IRD) play a central role in eliminating double taxation within the EU and facilitating cross-border investment within the Single Market.

In practice, however, businesses continue to face significant obstacles when seeking to benefit from these directives. These challenges stem primarily from divergent national implementation and administrative practices across Member States.

Companies frequently face:

- differing interpretations of anti-abuse concepts;
- inconsistent documentation and substance requirements;
- complex and lengthy procedures for demonstrating eligibility;
- withholding tax refund systems that create substantial cash flow and administrative burdens.

Moreover, the current design and application of these directives does not always reflect the structure of modern multinational groups. Whereas the directives were originally conceived for relatively simple ownership structures, many companies operate today through multi-tier group structures across several Member States. This can lead to the denial of directive

benefits where intermediate holding companies are present, creating unwarranted tax frictions and inconsistent outcomes within the Single Market.

Businesses also increasingly report that the practical application of these directives places a disproportionate verification burden on taxpayers. In some cases, companies are required to collect and provide extensive information on the status, substance and decision-making capacity of entities established in other Member States. This can result in situations where tax authorities effectively carry out a detailed assessment of non-resident entities based on information provided by the taxpayer, rather than relying on administrative cooperation between Member States.

Such approaches create significant compliance costs, legal uncertainty and, in certain cases, exposure to liability risks for companies, which is disproportionate to the objective of verifying entitlement to directive benefits.

In addition, in several Member States, companies must first withhold and pay tax before applying for a refund, resulting in delays and uncertainty.

Simplification should therefore focus on improving the substantive rules and on ensuring that directive benefits are accessible in practice.

In particular, the application of the directives should reflect the full ownership chain, so that benefits are not denied where a direct distribution would otherwise qualify. The enhanced transparency provided by Pillar Two reporting frameworks should also be taken into account when assessing the need for extensive verification requirements.

Simplification should also promote greater reliance on administrative cooperation between tax authorities and reduce the need for taxpayers to demonstrate compliance through extensive and repetitive documentation.

2.2. Withholding tax procedures

Withholding taxes continue to represent a structural barrier to cross-border investment within the Single Market. Addressing these barriers remains essential for ensuring the effective functioning of the Single Market.

Simplifying the application of withholding tax exemptions for intra-EU payments would significantly reduce administrative burdens and eliminate residual obstacles to cross-border investment. **In particular, greater use of relief at source should be encouraged, rather than relying on lengthy refund processes.**

Where full removal of withholding taxes is not achievable, simplification mechanisms, such as safe harbour approaches should be introduced. These should ensure that directive benefits are not denied solely due to the presence of intermediate entities within the ownership chain, while preserving safeguards against abuse.

Finally, where the availability of exemptions depends on the tax status of the recipient, **concepts such as *"low-tax jurisdiction"* should be clearly defined and aligned** with existing international standards in order to provide legal certainty.

2.3. Beneficial Ownership

The concept of beneficial ownership continues to create practical difficulties for businesses and is interpreted inconsistently across Member States.

Demonstrating beneficial ownership often requires extensive documentation and can involve lengthy administrative procedures before tax authorities confirm eligibility for directive benefits. In some cases, obtaining confirmation can take several months after submission.

Further clarification at EU level is needed to promote a more consistent interpretation of the concept and reduce the administrative burden associated with applying withholding tax exemptions.

2.4. The participation exemption in the PSD

Businesses have identified practical concerns regarding the application of the 5% management expense limitation associated with participation exemptions in some Member States.

This fixed limitation often exceeds the actual management costs incurred in relation to dividend income and may therefore result in unjustified taxation.

As such, the following improvements are needed:

- allowing companies to demonstrate that their actual management expenses are lower than the fixed percentage;
- removing or significantly reducing the limitation for dividends distributed within a tax consolidation group.

Where companies form part of a tax consolidation regime, intra-group dividends do not represent new economic income but rather the internal allocation of profits within the group. Applying a deemed expense limitation in these situations may therefore lead to unnecessary taxation.

Equivalent treatment should be extended to cross-border EU groups where entities would have qualified for tax consolidation had they been located in the same Member State. This would help ensure neutrality between domestic and cross-border structures.

2.5. Interest and Royalties Directive (IRD)

The functioning of the IRD could also benefit from targeted clarification and greater alignment with other EU tax directives.

Differences in minimum holding thresholds between the PSD and the IRD create unnecessary complexity for businesses. Under the PSD, a participation may qualify for exemption where the parent company holds at least 10% of the subsidiary, whether directly or indirectly. By contrast, the IRD requires a minimum direct holding of 25% for interest and royalty payments to qualify for exemption.

This inconsistency requires companies to apply different participation thresholds depending on the directive involved, creating avoidable complexity and potential confusion. **The minimum holding requirements of the two directives should be aligned to contribute to a more coherent framework.**

In addition, **the definition of *"associated company"* should clearly cover situations involving indirect shareholdings,** ensuring that common corporate structures are fully accommodated.

More broadly, consideration could be given to moving towards a general exemption for interest and royalty payments between EU-resident companies. Similar approaches already exist in several national systems and could further reduce administrative burdens within the Single Market.

2.6. The Annex lists

The Annex lists specifying the type of entities covered by the PSD and the IRD need to be regularly updated to allow newly created or reformed company forms to be incorporated without repeated legislative amendments.

3. THE TAX MERGER DIRECTIVE

The Tax Merger Directive remains an important instrument for facilitating cross-border restructurings within the EU. The Omnibus initiative could examine whether procedural simplifications or clarifications would further support its effective application.

4. THE TAX DISPUTE RESOLUTION MECHANISMS DIRECTIVE

The Tax Dispute Resolution Mechanisms Directive represented an important step towards improving the framework for resolving tax disputes within the EU. By introducing clearer procedures and arbitration mechanisms, it has strengthened the formal architecture for addressing cases of double taxation.

However, experience since its adoption indicates that important practical challenges remain. Dispute resolution procedures can still take several years to conclude, with delays often arising at the admission stage when tax authorities assess whether a case qualifies.

Businesses also face significant procedural complexity. Resolving cross-border disputes typically requires coordination between multiple tax authorities with differing practices, while uncertainty may arise as to whether cases should be pursued under the Directive or through a Mutual Agreement Procedure (MAP) under a double tax treaty.

In addition, taxpayers may encounter obstacles that limit effective access to dispute resolution mechanisms. For example, cases may be rejected where administrative penalties have been imposed, even where the underlying issue concerns the allocation of taxing rights between Member States. Such practices can undermine the effectiveness of the framework and limit access to relief from double taxation.

Furthermore, the increasing complexity of the EU tax framework, in particular following the implementation of Pillar Two, is likely to give rise to a higher volume of cross-border tax disputes in the coming years. The detailed calculations required under Pillar Two, combined with differing national interpretations, create new areas of uncertainty that may lead to disputes between tax authorities. This further underlines the importance of ensuring efficient and accessible dispute resolution mechanisms that can handle a growing caseload.

Improving the functioning of the Directive should therefore focus in particular on:

- ensuring consistent interpretation of admission criteria across Member States;

- strengthening safeguards to guarantee effective access to dispute resolution mechanisms;
- clarifying the interaction between the Directive and MAP procedures;
- improving coordination and procedural consistency between tax authorities;
- reinforcing adherence to timelines to ensure more predictable outcomes;
- extending the scope of the Directive to cover disputes arising from the application of Pillar Two;
- greater use of arbitration mechanisms in the context of Advance Pricing Agreements (APAs) to enhance certainty and prevent disputes.

Prolonged uncertainty in dispute resolution creates significant financial and operational burdens for businesses, including delays in obtaining relief and increased compliance costs. Ensuring that mechanisms operate efficiently and predictably is therefore essential to maintaining confidence in the EU tax framework.

Efficient dispute resolution is also an important factor in maintaining the attractiveness of the Single Market for cross-border investment.

CONCLUDING REMARKS

The Tax Omnibus is the most significant opportunity in years to strengthen the competitiveness and coherence of the EU direct tax framework.

BusinessEurope calls on the Commission to match the scale of its proposal to the scale of the challenge. European businesses need a tax framework that supports investment and cross-border activity rather than one that penalises them with unnecessary complexity and fragmentation.

Delivering tangible reductions in administrative burdens, improved legal certainty and genuine coordination across Member States will represent a major step towards a tax framework that is fit for a competitive Europe.

BusinessEurope stands ready to engage constructively with the Commission, Council and European Parliament to ensure that this initiative delivers meaningful simplification and a more effective EU tax framework.