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CONTRIBUTION

From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	Omnibus XI (Taxation): Comments from delegations

Following the call for comments launched after the meeting of the Antici Group (Simplification) on 13 July 2026, delegations will find attached comments from: BE, CZ, DK, DE, FR, HR, IT, LV, LU, HU, NL, AT, PL, PT, RO, SL, SK, FI.

Omnibus XI -Taxation -Directive amending directives on the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU

–MS comments –

DDL 24/07/26 COB, MS comments AGS 13/07/ 2026

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BELGIUM

BELGIQUE/BELGIË

Belgian Questions on Omnibus XI

A) General Anti-Avoidance Rule – The Exclusion of 'ex ante' measures versus anti-abuse measures

1. **Principle: removal of ex ante verification while preserving anti-abuse rules**

Recital 12 explains that Member States should no longer require prior authorisation or administrative procedures to verify entitlement to the exemption under the IRD and PSD before payment is made. Instead, eligibility should be self-assessed by the taxpayer. However, at the end, said recital 12 includes an important addition, stating "*This should not affect the powers of Member States to carry out ex post controls and to apply national anti-abuse rules, including rules on beneficial ownership.*" This wording doesn't clarify that such anti-abuse rules could be applied beyond ex post controls.

In principle, the ending of recital 12 acknowledges that anti-abuse rules remain fully applicable. However, the provisions of the TOD are not consistent in that regard:

- article 1, paragraph 2 (d) of the proposal (relating to the IRD) states that "For the purposes of paragraph 1, Member States shall not require any prior authorisation or administrative procedure verifying the fulfilment of the requirements laid down in this Article or in Article 3 at the time of payment", without further reference to the possibility of applying (domestic or bilateral) anti-abuse measures, whilst
- article 3 paragraph 6 still refers to the national anti-abuse measures, equivalent to the wording of recital 12.

This inconsistent wording may give rise to a divergent application of the exception for anti-abuse measures.

Moreover, the wording at present, says nothing about situations where the tax administration already possesses objective evidence of abuse **before** payment takes place. **As the current wording of the Commission's proposal does not clarify whether anti-abuse rules may be applied exclusively in the context of ex post controls or whether they may also be invoked at other stages of the procedure, in particular at the time of payment, we'd welcome a written elaboration by the Commission on that point.**

From an interpretative perspective, this omission is significant. EU directives are interpreted primarily on the basis of their operative provisions. Recitals assist interpretation but cannot create substantive powers that are absent from the operative articles.

Consequently, a national court could conclude that prior administrative procedures are prohibited and only ex post controls remain available, as no legal basis exists for refusing the exemption before payment solely because the tax administration has already identified abusive circumstances.

Such an interpretation would considerably weaken the practical effectiveness of national GAARs, beneficial ownership doctrines, the PPT in DTA's and the anti-abuse principles developed by the Court in the Danmark-cases.

One point that still seems unclear based on the Commission's proposal concerns the interaction between that proposal and the anti-abuse clauses contained in Article 5 of the IRD and Article 1(4) of the PSD. These provisions expressly state that the Directives shall not prevent the application of domestic or agreement-based provisions required for the prevention of fraud, tax evasion or abuse. **Is our understanding of these provisions correct that a Member State may refuse to grant the benefits of the Directive, including the withholding tax exemption, where it concludes that an abusive arrangement is in place? Should, in such a situation, the Directive no longer apply, meaning that the Member State would not be required to grant the withholding tax exemption automatically and should be able to verify, before granting that exemption, whether the relevant conditions are actually met?**

However, the assessment of fraud or abuse arises precisely because the transaction falls within the scope of the Directive. If the proposed system only allows for ex post controls and excludes any prior verification, the analysis under Article 5 of the IRD and Article 1(4) of the PSD could only take place after the exemption has already been granted. **How does the Commission's proposal prevent a significant reduction of the practical effectiveness of these domestic anti-abuse provisions, as they would no longer justify a refusal of the benefit at the outset, but merely allow the exemption to be challenged retrospectively?** This approach appears counterproductive. The more ex ante controls are restricted in the name of simplifying withholding tax procedures, the greater the importance of ex post controls and anti-abuse tools becomes.

2. Prohibition of ex ante procedures versus PPT's

Both article 1(2)(d) and 3(6) provide that Member States shall not require prior authorisation or any other administrative procedure as a condition for granting the tax exemption. The exemption is intended to operate automatically, subject only to subsequent verification. Accordingly, the proposal deliberately replaces administrative pre-clearance, with taxpayer self-assessment.
This procedural architecture sits uneasily with the operation of a **Principal Purpose Test (PPT).** Whether under Article 29 OECD Model Convention, the Multilateral Instrument, national GAARs, or the general EU principle prohibiting abuse (cfr. Danmark cases), a PPT necessarily requires the tax administration to determine whether obtaining the treaty or directive benefit was one of the principal purposes of the arrangement or the arrangement lacks genuine economic justification and thus, granting the benefit would defeat the object and purpose of the relevant provisions. The application of the PPT is inherently based on an assessment of factual circumstances and therefore relies heavily on the availability of adequate documentation. In a system based solely on ex post controls, which may take place several years after the relevant transaction, there is a risk that important information may no longer be available, particularly since taxpayers are not generally subject to any specific obligation to document the transaction. For example, employees involved in the transaction may have left the company by the time the audit takes place. **In that context, it would be crucial to know if a domestic documentation obligation would be considered compatible with the Commission's proposal?**

Furthermore, limiting the application of the PPT to ex post controls also raises practical questions regarding the recovery of withholding tax where the tax authorities subsequently conclude that the PPT applies. In such cases, the source State may already have relinquished its taxing rights at the time of payment (based on the Commission's proposal), making the effective collection of the withholding tax more complex**. How could Member States mitigate that risk according to the Commission and still be in full compliance with the Commission's proposal?**

3. The Danmark judgments

The Court's judgments in Joined Cases C-116/16 and C-117/16 (T Danmark and Y Denmark) proceeded on exactly this basis. The Danish Cases demonstrate that withholding tax exemptions are not automatic. The CJEU accepted that tax authorities may examine whether the conditions for benefiting from the Directive are met, including whether the arrangement is abusive and whether the recipient can genuinely be regarded as the beneficial owner of the income. In fact, the tax authorities examined (before granting the exemption) beneficial ownership, conduit structures, economic substance, control, etc. Only after performing that assessment did they refuse the directive benefits.

Nothing in the Court's reasoning suggests that Member States should first grant the exemption and only afterwards investigate abuse. On the contrary, the Court accepted that Member States may refuse directive benefits where objective factors demonstrate abusive arrangements. The CJEU held that EU law contains a general principle prohibiting abusive practices. As a consequence, even in the absence of a specific domestic anti-abuse provision, a Member State may refuse the benefits of the IRD or the PSD where an arrangement is found to be abusive.

This gives rise to the same question regarding the interaction between that general anti-abuse principle and the Commission's proposal as the one that was raised before in relation to Article 5 of the IRD and Article 1(4) of the PSD. **If the proposed system is understood as limiting anti-abuse assessments to ex post controls, can the Commission please explain how that principle can effectively operate where a Member State considers, at the time of payment, that there are objective indications of an abusive arrangement?**

4. Procedural asymmetry

The proposal appears to preserve the substantive anti-abuse powers while significantly restricting the procedural tools through which those powers can be exercised. In practice the tax administration may still invoke a GAAR or beneficial ownership doctrine, but it is no longer allowed to require the taxpayer to demonstrate entitlement before payment.

This creates an obvious practical question that we'd like to address to the Commission:

How can a Member State effectively apply a Principal Purpose Test before granting the exemption if the Directive simultaneously prohibits any prior administrative verification?

B) Dispute Resolution Mechanism

Does the Commission base its decision to grant preference to the procedure in the DRM Directive over the procedure included in article 25 of DTA's (or the equivalent thereof) only on the low numbers of usage of said procedure in the DRM Directive, or have taxpayers expressed concerns about the procedure in article 25 of DTA's (or the equivalent thereof)? If applicable, could the Commission share these concerns with the Member States?
Given the fact that it is the taxpayer who choses to employ a certain legal basis to launch the DRM, what is the added value for the taxpayer to restrict the possibility to use various legal bases for the launch of a MAP-request?

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CZECHIA

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Comments of the Czech Republic on the Omnibus XI (Taxation) proposal
The Czech Republic is currently finalising its internal assessment of the proposal. The comments below are submitted as preliminary technical observations intended to contribute constructively to the ongoing discussion of the proposal.

A) Preliminary technical comments on the proposed removal of minimum shareholding thresholds under PSD and IRD

General remarks:

The Czech Republic supports the overall EU simplification agenda and acknowledges the Commission's objective of reducing administrative burdens and facilitating cross-border investment within the internal market. The Taxation Omnibus proposal comprehensively revises the entire scope of EU regulations in the area of corporate taxation, and some of these changes have the potential to bring about genuine simplification if properly designed. However, some of the proposals go significantly beyond the scope of the Simplification project and introduce major parametric changes.

The Czech Republic further notes that the proposed measures may have significant implications for national tax bases, tax revenues, and public budgets. Given their substantive nature and potential fiscal consequences, such initiatives should be subject to detailed examination within the appropriate Council preparatory bodies dealing with direct tax policy matters.
The Czech Republic is not convinced that the proposed removal of the minimum shareholding requirements under the Parent-Subsidiary Directive (PSD) and the Interest and Royalties Directive (IRD) is either necessary or sufficiently substantiated in light of the problems identified by the Commission.

In the view of the Czech Republic, the proposal goes significantly beyond simplification and instead represents a fundamental change to the conditions under which Member States are required to relinquish source-state taxation under PSD and IRD. **By removing the minimum shareholding requirements, the proposal substantially broadens the situations in which source jurisdictions must refrain from exercising taxing rights which would otherwise remain available under domestic law.**

Specific remarks:

1. Removal of minimum shareholding thresholds is not a mere simplification measure

The current minimum shareholding thresholds constitute a core element of both Directives. They reflect the long-standing principle that exemption from withholding taxation is justified only where there is a sufficiently close economic relationship between the payer and the recipient. The thresholds were not introduced merely as administrative filters. Rather, they form part of the original design of PSD and IRD and serve to identify situations involving a sufficient degree of economic integration between companies, in respect of which Member States agreed to waive source-state taxation.
The proposal would extend the scope of PSD and IRD to situations involving portfolio investments and would thereby move the Directives beyond their traditional focus on economically integrated corporate structures. Such a reform should not be characterised as a procedural simplification but

rather as a substantive modification of the conditions under which source jurisdictions are required to relinquish source-state taxation.
The Czech Republic considers that the Commission has not sufficiently demonstrated why the identified administrative problems necessarily require the complete abolition of these thresholds.

2. Insufficient demonstration of a link between the identified problem and the proposed solution

The Impact Assessment identifies compliance costs, withholding tax procedures, and legal complexity as problems for businesses operating cross-border. However, the Czech Republic considers that the Impact Assessment does not sufficiently demonstrate that these problems are caused by the existence of minimum shareholding thresholds themselves.
In the view of the Czech Republic, the Commission identifies primarily procedural and administrative burdens, while proposing a measure that fundamentally changes the substantive scope of both Directives. The relationship between the identified problem and the chosen solution is therefore not sufficiently demonstrated.
The Czech Republic notes that less intrusive alternatives appear available, including:

- further simplification of relief-at-source procedures,
- alignment of existing participation thresholds,
- harmonisation of administrative requirements.

The Impact Assessment does not sufficiently explain why these alternatives would not be capable of addressing the identified problems.
This concern is consistent with the observations of the Regulatory Scrutiny Board, which noted weaknesses in the intervention logic and in the connection between identified problems and certain proposed measures.
Several of the concerns identified by the Commission appear to relate primarily to fragmented administrative procedures rather than to the existence of minimum shareholding thresholds themselves.

3. Lack of analysis of distributional effects between Member states

The economic assessment is largely based on aggregated effects at EU level, including projected compliance cost savings, investment growth, and GDP effects.
However, the proposal lacks a sufficiently granular assessment of:

- the distribution of costs and benefits among individual Member States,
- impacts on net capital-importing and net capital-exporting Member States,
- consequences for source-country taxation,
- fiscal impacts on national budgets.

The Impact Assessment does not quantify the effects on individual Member States alhtough the proposal would substantially broaden the circumstances in which source jurisdictions are required to waive withholding taxation, including situations that are currently outside the scope of PSD and IRD due to the absence of a qualifying level of economic participation.
The Czech Republic considers that such analysis is indispensable before any decision is taken on a measure that would significantly broaden the situations in which source jurisdictions are required to waive withholding taxation.
Moreover, the proposal also extends the exemption for dividends in the country of the beneficial owner of the income. Therefore, similar analysis must be made from the perspective of each individual Member State in the position of a state where the beneficial owners of the income concerned are residents. There is no doubt that the negative impact on state revenue concerns these situations as well
The Czech Republic notes that the Regulatory Scrutiny Board also specifically requested a stronger assessment of distributional impacts and public finance implications.

The importance of this issue was also reflected during discussions among Member States, where several delegations requested country-specific assessments of fiscal and distributional effects before any decision can be taken on a reform of this magnitude.
The proposal may affect Member States asymmetrically depending on whether they are primarily capital-importing or capital-exporting economies. The Impact Assessment does not sufficiently analyse these differences despite their relevance for the allocation of tax revenues within the Union.

4. Relationship with Double Tax Treaties has not been properly assessed

The proposal departs from a principle that is widely reflected in Member States' treaty networks. The Czech Republic notes that minimum participation thresholds are not unique to PSD and IRD. Similar ownership thresholds are commonly found in bilateral tax treaties based on internationally recognised treaty practice, reflecting the view that reduced source taxation is generally justified only where a sufficiently close economic relationship exists between the parties.
The Czech Republic considers that the Impact Assessment does not adequately assess whether differing treatment of investments within the EU and investments involving third countries could influence investment structures and business decisions.

Specific issues/questions (IRD):

The Czech Republic has serious concerns about the coexistence of the newly proposed amendments to the IRD, namely Article 1(5) of the Omnibus Directive, and the double taxation conventions (DTCs). This particular provision definitely introduces additional complexity and does not add to the declared simplification.
The title of the IRD still contains "between companies of different Member States". However, this does not correspond to the content of the newly proposed Article 5(3) of the IRD (Article 1(5) of the Omnibus Directive), which deals with relations towards third countries. The relationship between the scope of the Directive and this new provision is therefore not clear.
In ur view the proposed measures in (a) and (b) could not be applied and enforced in certain situations:

(a) Levying of a withholding tax on the payment

It is not the possible to levy WHT on interest and royalties (leaving aside the possible different definition of these terms for IRD and DTC purposes) if the DTC does not allow source taxation of this type of income. Did the Commission consider how this rule should work towards jurisdictions applying territorial tax systems?

(b) Denial of deductibility, for tax purposes, of the corresponding payment for the payer

It is important to keep in mind the non-discrimination provisions of DTCs. Such a denial would be possible only in a situation where the same rule is applicable on purely domestic or intra-EU payments.
The Czech Republic further notes that the fact that a certain jurisdiction does not levy corporate income tax does not automatically mean the existence of an abusive situation. In other words, the proposed rule can hardly be regarded as anti-abusive. Is it possible that both CFC rules and the denial of deductibility will apply with respect to the same payment/income?
What will be the consequence if a DTC with a third country will not allow for any of these two rules to apply?
The proposed provision provides two situations when the above mentioned (a) and (b) measures will not apply. It relates to the application of either QDMTT or GloBE rules. Is it really possible to verify the fulfilment of these two conditions already at the time of the interest or royalty payment becomes due?

5. Internal market Considerations do not automatically justify full elimination of source taxation

The Czech Republic fully supports the objective of strengthening the Single Market.
However, the existence of the Single Market does not automatically imply that all cross-border income streams within the EU should be exempt from source taxation regardless of the nature of the investment.
The current framework of PSD and IRD already reflects a balance between facilitating intra-EU investment and preserving an appropriate degree of source-state taxation where the conditions for relief are not met.
While the Internal Market aims to remove barriers to the free movement of capital and investment, it does not constitute a single tax jurisdiction. Direct taxation remains primarily a competence of Member States and therefore the existence of the Internal Market cannot, in itself, justify extending withholding tax exemptions to situations that do not involve the degree of economic integration traditionally required under PSD and IRD.
The free movement of capital does not automatically imply the elimination of source taxation; it primarily requires the removal of discriminatory or disproportionate restrictions. While the current PSD and IRD framework already facilitates cross-border investment within the Union, the Commission has not sufficiently demonstrated why the identified objectives cannot be achieved through less intrusive measures, or why they require a substantially broader obligation for source jurisdictions to refrain from exercising source-state taxation.

6. Comparisons with Federal States require caution

During the discussions, reference was made to the absence of withholding taxation in certain non-EU jurisdictions and to the fact that other large integrated markets, such as the United States or China, do not apply comparable withholding taxes to domestic cross-border payments.
The Czech Republic considers that such comparisons should be approached with caution. Federal states and unified tax jurisdictions operate within a single fiscal, constitutional and budgetary framework, whereas the European Union consists of sovereign Member States retaining primary competence in the field of direct taxation.
Differences in institutional design, tax sovereignty, budgetary structures and treaty networks significantly limit the relevance of direct comparisons when assessing the appropriate allocation of taxing rights within the Union.

Conclusion

The Czech Republic remains unconvinced that the Commission has sufficiently demonstrated:

- the necessity of abolishing minimum shareholding thresholds,
- the proportionality of the proposed measure,
- the absence of less intrusive alternatives,
- the distributional and fiscal consequences for Member States,
- the interaction with Member States’ treaty networks.

For these reasons, the Czech Republic considers that the proposed removal of minimum shareholding requirements under PSD and IRD has not been sufficiently justified and should therefore not be pursued in its current form. Further technical analysis and evidence would be required before such a fundamental expansion of the situations in which source-state taxation must be relinquished within the Union could be considered. In the view of the Czech Republic, the proposal goes significantly beyond simplification and instead represents a fundamental change to the conditions under which Member States are required to relinquish source-state taxation under PSD and IRD.

Preliminary technical comments on Research and Development (R&D) expenditure

General remarks:

The Czech Republic recognises the importance of promoting research and development activities as a key driver of innovation, economic growth, and the long-term competitiveness of the European Union. The Czech Republic supports efforts aimed at creating a business environment that encourages investment in research and innovation and contributes to strengthening the EU's position in the global economy.
However, the Czech Republic is not convinced that the Commission has sufficiently demonstrated the necessity of introducing a harmonised EU framework for the tax treatment of R&D expenditure. While presented as part of a simplification package, the proposed measure appears to go significantly beyond the stated objective of reducing administrative burdens and introduces a new substantive tax policy initiative at EU level. The Czech Republic therefore considers that this proposal requires a particularly robust justification with regard to necessity, proportionality, and compliance with the principle of subsidiarity.
The Czech Republic does not consider the simplification context, by itself, sufficient to justify the introduction of a new harmonised tax incentive at EU level. While the proposal is designed as a minimum standard and allows Member States to maintain more favourable regimes, the Impact Assessment does not sufficiently demonstrate why EU intervention is necessary in the first place or what specific market failure cannot be adequately addressed through existing national R&D support measures.
The Czech Republic further notes that the Regulatory Scrutiny Board identified significant shortcomings in the intervention logic of the proposal and specifically requested a stronger justification of the proposed R&D measure.

Specific remarks:

1. The proposal goes beyond the scope of a simplification initiative

The proposed immediate expensing regime for R&D assets does not simplify an existing EU tax instrument. Instead, it introduces a new harmonised framework within the Anti-Tax Avoidance Directive (ATAD) and thereby establishes a new substantive tax measure at EU level.
The Czech Republic notes that the Regulatory Scrutiny Board explicitly requested that the Impact Assessment clarify that the proposed R&D expensing regime constitutes a new initiative rather than a modification of existing EU rules.
The Czech Republic therefore questions whether the proposal can appropriately be characterised as a simplification measure.

2. Insufficient demonstration of the need for EU harmonisation

The Commission argues that divergent national approaches to R&D tax incentives create fragmentation within the internal market and undermine EU competitiveness. However, the Czech Republic considers that the Impact Assessment does not sufficiently demonstrate that existing national regimes constitute a genuine obstacle to the functioning of the internal market requiring harmonisation at EU level.
While the Impact Assessment refers to differences in eligibility criteria, deductibility rules and incentive structures, it does not provide sufficient evidence demonstrating that these differences materially distort investment decisions or prevent cross-border R&D activities.
This concern is also reflected in the opinion of the Regulatory Scrutiny Board, which specifically requested a more detailed analysis of divergent national rules on R&D expensing and a stronger explanation of the intervention logic, including a clearer justification of how those divergences give rise to the identified problem and why they warrant EU legislative intervention.

The Czech Republic further notes that the Commission itself identified the core problem primarily as a lack of private investment in R&D and a competitiveness gap vis-à-vis major international partners. However, the Impact Assessment does not sufficiently demonstrate that this problem is caused by divergent national tax treatment of R&D expenditure or that further harmonisation at EU level would constitute the most effective response.
The Czech Republic further notes that the proposal itself allows Member States to maintain or introduce more favourable R&D tax regimes. The possibility of retaining national measures that provide a higher level of support raises questions as to the necessity of introducing a harmonised minimum regime at EU level. The Impact Assessment does not sufficiently explain why a new EU framework is required if Member States remain free to pursue their own R&D policies through more generous national measures. Nor does it adequately demonstrate what specific market failure cannot be addressed under the existing framework of national R&D incentives.

3. Insufficient demonstration of a link between the identified problem and the proposed solution

The Impact Assessment identifies a broader innovation and competitiveness gap between the European Union and major international partners. However, the Czech Republic considers that the Commission has not sufficiently demonstrated why immediate expensing of tangible R&D assets constitutes an appropriate or effective response to this challenge.
The proposed measure is limited to tangible assets used for R&D purposes, while modern R&D activity is increasingly driven by highly skilled labour, software, data, intellectual property and other intangible assets. The Impact Assessment does not sufficiently explain why the treatment of tangible assets represents a major driver of the identified competitiveness gap.
The Czech Republic therefore considers that the relationship between the identified problem and the proposed solution has not been sufficiently demonstrated.

4. The proposal may not deliver genuine simplification

The Commission presents the proposed measure as a simplification initiative. However, the Czech Republic is not convinced that the proposal would necessarily reduce complexity for taxpayers. Given that Member States would remain free to maintain and develop their own R&D incentive systems, businesses may ultimately need to operate within both national and EU frameworks simultaneously. The Impact Assessment does not sufficiently analyse this possibility or the resulting compliance implications.

5. National R&D incentives reflect national economic priorities

The Czech Republic notes that R&D tax incentives constitute an important industrial and innovation policy instrument.
Member States currently design such incentives with regard to their specific economic structure, industrial composition, innovation ecosystem, budgetary priorities and fiscal capacity. The Commission itself acknowledges the existence of a broad range of national approaches in this area. The Czech Republic is therefore concerned that the introduction of a harmonised EU framework may unnecessarily reduce Member States' flexibility to design innovation policies tailored to their individual economic needs.
The Czech Republic therefore considers that the current diversity of approaches should not automatically be regarded as fragmentation requiring harmonisation. Rather, it may reflect legitimate national policy choices and provide Member States with the flexibility to design innovation policies tailored to their economic needs and to test different forms of R&D support.
The Czech Republic also notes that the Commission intends the proposed framework to coexist with existing national R&D support measures and allows Member States to maintain more

favourable regimes. However, neither the proposal nor the Impact Assessment sufficiently analyse how the new EU framework would interact with existing national incentives in practice or whether such coexistence could create additional complexity rather than simplification.

6. Unclear relationship with ATAD

The Czech Republic is not convinced that the Commission has sufficiently justified the inclusion of the proposed R&D incentive regime within the framework of ATAD.
The Czech Republic acknowledges the Commission's explanation regarding the link between the proposed measure and the functioning of the Interest Limitation Rule. Nevertheless, the Impact Assessment does not sufficiently explain why an EU-wide R&D incentive pursuing competitiveness and investment objectives should be incorporated into the ATAD framework rather than assessed separately as a standalone policy initiative.
While the interaction with the Interest Limitation Rule may explain the choice of legislative vehicle, it does not, in itself, demonstrate the necessity of establishing a new harmonised EU framework for the tax treatment of R&D expenditure. The Impact Assessment does not sufficiently explain why the identified interaction with the Interest Limitation Rule cannot be addressed within existing national R&D regimes or through less intrusive alternatives.
The fact that the proposal simultaneously amends other provisions of ATAD does not, in itself, demonstrate a substantive connection between anti-avoidance rules and a new R&D support regime.

7. Interaction with Pillar Two has not been sufficiently assessed

The Commission argues that accelerated depreciation and immediate expensing schemes for tangible assets remain effective in a Pillar Two environment and are not adversely affected by the global minimum tax framework.
In particular, the Impact Assessment does not adequately assess:

- the impact of the measure on effective taxation under Pillar Two;
- the effects on multinational groups within the scope of Pillar Two;
- the interaction with other Pillar Two mechanisms;
- the practical extent to which the measure would improve the competitive position of the EU compared to third-country jurisdictions.

While the Commission argues that accelerated depreciation and immediate expensing schemes remain effective in a Pillar Two environment, the Impact Assessment provides only limited quantitative evidence supporting this conclusion and does not sufficiently assess the practical effects on taxpayers within the scope of Pillar Two. A more detailed assessment of these interactions is therefore required.

8. Impact assessment remains insufficiently substantiated

The Czech Republic notes that the estimated compliance cost savings and economic benefits rely to a significant extent on assumptions that are not sufficiently supported by empirical evidence.
The Impact Assessment itself acknowledges important limitations regarding the availability of relevant data.
In this regard, the Regulatory Scrutiny Board explicitly concluded that the report does not sufficiently substantiate the analysis of costs and benefits, does not sufficiently support the assumptions used, and should provide more robust evidence for its conclusions. The Board also specifically requested stronger justification of assumptions relating to R&D compliance cost reductions.
The Czech Republic therefore considers that the evidentiary basis for the proposal remains insufficient.

9. Insufficient assessment of fiscal and distributional effects

The Czech Republic notes that the proposal may have significant fiscal implications for Member States.

Although the Commission expects long-term macroeconomic benefits to offset reductions in corporate tax revenues, the Impact Assessment does not provide sufficient information on the distribution of costs and benefits among individual Member States. Nor does it sufficiently assess consequences for national budgets and fiscal planning.

During the discussions, a number of Member States requested country-specific assessments of fiscal and distributional impacts and highlighted the possibility of asymmetric effects across Member States. Nevertheless, the Commission continues to rely primarily on EU-level aggregate estimates and explicitly indicated that its analysis focuses on EU-wide effects rather than Member State-specific consequences. The Czech Republic considers that such information is indispensable for assessing a proposal that may have material implications for national tax revenues and public finances.

The Czech Republic notes that the Regulatory Scrutiny Board also requested a stronger assessment of impacts on public administrations, public finances and distributional effects.

Conclusion

The Czech Republic remains unconvinced that the Commission has sufficiently demonstrated:

- the necessity of introducing a harmonised EU regime for immediate expensing of R&D assets;
- the proportionality of the proposed intervention;
- the existence of a clear link between the identified problem and the chosen solution;
- the appropriateness of including the measure within the ATAD framework;
- the interaction of the proposal with Pillar Two rules;
- the robustness of the economic and fiscal impact assessment;
- the added value of EU action compared with existing national R&D support systems.

For these reasons, the Czech Republic considers that the proposed R&D measure has not been sufficiently justified and should not be pursued in its current form. Further technical analysis and evidence would be required before such a significant intervention in the area of direct taxation could be considered. In the view of the Czech Republic, the proposed measure goes significantly beyond the stated objective of reducing administrative burdens and introduces a new substantive tax policy initiative at EU level.

B) Preliminary technical comments concerning the amendments to DRM and FASTER directives

General remarks:
The Czech Republic welcomes the opportunity to update Directive (EU) 2017/1852 (DRMD), particularly in the light of the negative practical experience gained from ongoing international dispute resolution proceedings conducted under the DRMD. Based on this negative practical experience, the Czech Republic has also identified a number of problematic areas and ambiguous provisions within the DRMD. Some of them are already solved by this proposal, some of them will be hopefully solved via *council implementing acts* or *soft-law guidance*. Concerning the respective *targeted legislative amendments* mentioned in the update of the DRMD, we have identified the two below mentioned issues.

The proposed amendments to the FASTER Directive are directly dependent on changes to the IRD and PSD, and the outcome of the negotiations regarding these two directives will determine whether any related amendment to the FASTER Directive is necessary.
The Czech Republic will not implement Chapter III of the FASTER Directive and is therefore not directly affected by the proposed amendments. Nevertheless, the Czech Republic would like to stress the need to ensure that the related provisions in the IRD and PSD proposals („For the purposes of this Article and by way of derogation from paragraphs …, Member States shall ensure that relief from withholding tax is granted in accordance with the procedures laid down in Council Directive (EU) 2025/50 for cases falling within the scope of that Directive.“) do not lead to the indirect creation of obligations for Member States that do not implement Chapter III of the FASTER Directive.

Specific issues/questions (DRMD):
1. In the context of the amendment mentioned in paragraph 4, it is from our point of view necessary to clearly clarify, with regard to the wording of newly added letter (e), its relationship to the simplified procedure set out in Article 17 of the DRMD. Article 17 of the DRMD allows for the simplified submission of complaints to the competent authority of only one Member State (the MS in which the affected person is resident). It is important to ensure that situations are not permitted where a concerned person submits a complaint under Article 17 of the DRMD, for example in Romania and only in Romanian language, but where it would not be possible to reject such a complaint. The Czech Republic has already encountered such cases in practice.
In other words, the affected person is not obliged to submit a complaint under Article 17 of the DRMD to all competent authorities of the Member States concerned. It is therefore essential to ensure that a complaint may also be rejected where it has been submitted to only one competent authority but does not contain a translated copy in a language accepted by the other competent authority.
In the light of the above mentioned, the solution could be to modify the respective letter (e) accordingly (context of the terminology already used in Article 3(1) of the DRMD):
“(e) the affected person did not ensure that each Member State concerned received the complaint in a required language set out in Article 3(1);”
2. In the context of the amendment mentioned in paragraph 8, it is apparent that the situation in which a complaint is rejected by at least one, but not all, competent authorities has not been addressed. Under the proposed wording, all other ongoing mutual agreement procedures would, in such a case, be suspended; however, the proposal does not address how or when such suspension would be terminated.
In the light of the above mentioned, last two sentences of this new provision could be modified as follows:
The suspension ends on the day when the complaint is rejected by all the competent authorities or the Advisory Commission or when the affected person decides to withdraw the complaint. The suspension ends also on the day when the period for making a request under Article 6(1)(a) elapsed and the affected person did not make such request. Where the complaint is accepted by all competent authorities of the Member States concerned or the Advisory Commission, those other proceedings shall be terminated with immediate effect.

- *Interpretative question:* Is the termination of the other proceedings as stipulated in the last sentence of newly proposed wording of Article 16(5) DRMD final? What happens if the affected person decides to withdraw the complaint (context of the end of the suspension) after the other proceedings have already been terminated? We assume that in such a situation the issue of the suspension (its possible end) is not relevant anymore.

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DENMARK

DANMARK

The Danish Government is generally in favour of simplification and is positive of the taxation omnibus proposal. Simplifying the EU direct tax rules could make it easier for business to invest across EU.

The Danish Government would appreciate if the Commission could provide answers to the technical questions below. The Danish Government continue to have a scrutiny and parliamentary reservation and could therefore have additional questions at a later stage.

Amendments to Council Directive 2003/46/EC (IRD)

1. In Denmark, there currently are no procedural requirements. The payor is however liable for any taxes that should have been paid, if the payee e.g. was not the beneficial owner of the payment. Can it be confirmed that such a rule would be in line with the amended Directive?

2. It is proposed that Member States shall levy withholding tax (or deny deductibility) if the recipient is established in a third country jurisdiction where no corporate tax is levied (or a zero rate is applied) to interest and royalty income.

Would the Commission agree that a similar risk of double non-taxation exist if the recipient is established in the same Member State as the payor and the recipient is not subject to tax, i.e. in a situation where there originally is an interest payment from a company in Member State A to a company in Member State B which is subject to tax on the interest payment, the interest is then paid to another company in Member State B which is not subject to tax on the interest payment (and therefore would not be covered by IRD, see EUCJ in C-115/16, para 146-153)? Would the Commission agree that the first recipient company in Member State B would not be the beneficial owner of the interest payment in such a scenario where the payment merely flows through this first recipient company in Member State B?

Amendments to Council Directive 2009/133/EC (TMD)

1. Can the Commission confirm that it is not possible to make cash payments as part of a 'division by separation'?

2. According to the new Article 14a (1)(a), there shall not be any taxation of capital gains if the company subject to a cross-border conversion remains a tax resident in the departure Member State. Will this also be the case if the company under the terms of a double tax treaty concluded between the departure Member State and the destination Member State is considered to be a resident of the destination Member State? In this situation, it seems that the departure Member State should be able to tax the capital gains unless the assets remain effectively connected to a Permanent Establishment as in Article 14a (1)(b).

Amendments to Council Directive 2011/96/EC (PSD)

1. In Denmark, there currently are no procedural requirements apart from a simple notification requirement, where the payor shall notify the tax authorities about e.g. the amounts paid and the identity of the recipient. The payor is however liable for the any taxes that should have been paid, if the payee e.g. was not the beneficial owner of the payment. Can it be confirmed that such rules would be in line with the amended Directive?

2. According to Article 4 of the Directive, the Member State of the receiving company and the Member State of its permanent establishment shall either (a) refrain from taxing the dividend (unless the dividend is deductible by the distributing company) or (b) give credit for taxes related to the distributed profits paid by the distribution company and any lower-tier distributing company (tax credit for underlying corporate taxes). Lower-tier distributing companies shall fall within the definitions laid down in Article 2 and meet the requirements provided for in Article 3. However, Article 3 which currently contains the minimum holding requirement of 10 % of the capital is proposed to be deleted.

Is the reference to Article 3 obsolete? There are similar references in Article 4 (2) and Article 5a.

How does the Commission envisage the credit for underlying taxes will be applied in practice if the receiving company only holds a small part of the distributing company (e.g. less than 1 %) and even less of the lower-tier distribution companies? How will the receiving company acquire the information on the tax payments and how will the tax authorities be able to audit this information?

Would the Commission agree that most Member States today exempt dividends from subsidiaries?

Would the Commission agree that if a Member State apply the same rule to distributions between domestic companies (e.g. between two Danish companies), then it could be obliged to apply the rule to distributions from third countries as the free movement of capital also applies to third countries?

3. Could the Commission explain the added value from the subparagraph in Article 4 (1) on national anti-abuse measures in light of the current Article 1 (4) which allows Member State to apply domestic provisions for the prevention of tax evasion, tax fraud or abuse?

4. A number of Danish pension institutions meet the conditions of Article 6, point (1) of Directive (EU) 2016/2341 but are supervised under Directive 2009/138/EC. We therefore would like to have confirmation that these institutions would be covered by the proposed definition (and are also exempt from the 100,000-euro threshold in the FASTER-Directive).

5. Many pension institutions invest through investment entities which is acknowledged in the OECD model tax convention. The definition of pension funds in the model tax convention therefore includes entities that are established and operated exclusively or almost exclusively to invest funds for the benefit of pension funds. Does the definition in Article 5 (2) include such investment entities?

Amendments to Council Directive 2016/1164/EC (ATAD)

1. According to Article 3 (2) Chapter II shall not preclude the application of domestic provisions or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases.

Can Member States in addition to the interest limitation rule provided by ATAD (article 4) also use other targeted rules against intra-group debt financing, in particular thin capitalisation rules (as stated in the recital 6 of the current ATAD)? If the proposed Article 4 (9) is meant to preclude such other rules, it seems to be a contradiction to the minimum level of protection in Article 3 (2).

Will Member States despite the proposed deletion of the rule on imported mismatches in ATAD be able to continue to apply the rule in domestic law (in accordance with the OECD report on hybrid mismatches)?

2. How will the rule on low-risk third-party loans in Article 4 (2a) apply in a situation where a company in a high-tax jurisdiction borrows the funds from a third-party to acquire a controlling interest in a company in a low-tax jurisdiction? Will it affect the verdict if the acquisition is made from another group company or if the acquired company is without substance?

Would the Commission agree that the purpose of the group escape rule also allows groups that permanently or temporarily have third-party interests above the 30 % threshold to be able to deduct the interest expenses on the third-party loans if the loans are placed evenly (see OECD BEPS report on Action 4, paragraph 115)?

Would the Commission agree that legal certainty is generally better achieved through an objective rule like the group escape rule than through a subjective rule like the proposed rule on low-risk third-party loans?

3. On Article 6 (1), would the Commission agree that it follows from EUCJ-case law (e.g. C-116/16) that Member States must prevent the abuse of EU-law (including the directive 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union) which is similar to the obligation in the General Anti-Abuse Rule (GAAR)?

4. Would the Commission agree that the current CFC-rule in Article 7 (model A) primarily addresses situations where MNE Groups have mobile income in subsidiaries or permanent establishments in third countries as it does not apply in intra EU situations where the CFC carries on a substantive economic activity as defined in the Cadbury Schweppes-judgement?

5. In the EUCJ-court case (C-524/23) it was argued that in the absence of CFC-rules, the GAAR would apply to non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage, i.e. similar to the current model B. Would the Commission agree that the GAAR would apply to non-genuine arrangements which have been put in place by SME groups or Pillar 2 group or is the GAAR disapplied as a consequence of the proposed Article 9 (8)?

6. According to Article 7 (1) (a) there is only CFC-taxation on the non-distributed income of the CFC (also in the current Directive). However, it seems simpler to tax the entire income and exempt the dividends from taxation – and more efficient if the CFC is only owned indirectly. Will it continue to be in line with the minimum level protection principle to apply CFC taxation to the entire income?

7. Would there be any double taxation because of the interaction between CFC-rules and Pillar 2 if Member States already provide for credit for QDMTT-taxes in their CFC-legislation?

8. How shall 'any provisions with a subject-matter that falls within the scope of paragraphs 5, 6 and 7' be interpreted? Will it e.g. preclude taxation of permanent establishments in general if the permanent establishment is part of a SME-group or a Pillar 2-group?

9. Would the Commission further explain the reasoning behind the calculation of administrative costs savings from carving-out SMEs from CFC? According to the impact assessment CIT-related compliance costs of 'medium'-sized enterprises could amount to around EUR 4,700 per entity. The Commission then assumes that one third of these CIT related costs relates to CFC compliance. This assumption is made with reference to the analysis on the Pillar 2 carve out but there it was one third of the ATAD related costs.

10. On the deletion of imported mismatches, would the Commission agree that the GAAR might apply to situations where a mismatch is 'imported' through the insertion of an associated enterprise as in the current imported mismatch rule? And that Member States are obliged to prevent such abuse?

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GERMANY

DEUTSCHLAND

GER observations on the first meeting of the Antici Group on Simplification on the Omnibus XI: Taxation proposal

We would like to express our gratitude for the presentation that allowed for a comprehensive overview of the proposed measures. The direct taxation omnibus is an ambitious proposal to reduce red tape by simplifying and decluttering EU Directives in the area of business taxation.

GER generally welcomes the aim to give impulses for the internal market and its competitiveness through less bureaucracy, more efficiency and simplification.

We will analyse the various elements of the proposal in detail and are willing to constructively engage in the negotiation process. In doing so it is important to combine the effectiveness of mechanisms against tax evasion, harmful tax avoidance and profit shifting with the aim of significantly reducing complexity and administrative burdens. At the same time, the fiscal and economic implications of the respective proposals have to be determined and evaluated.

We are grateful for the impact assessment the Commission provided. We will assess the implications and test the respective parameters and assumptions for our domestic environment to determine the effects for Germany.

At the heart of this exercise will be the thorough analysis of the first building block that covers IRD, PSD and FASTER. The proposed abolishment of withholding taxes on interest, royalties and dividends in conjunction with the shift away from upfront procedure results in a fundamental change in source taxation, not only in substantive law but also in procedural law and practice.

Not only in GER, states are generally distinguishing between source taxation of different income categories. In our view, the debate would benefit from a separate discussion on safeguard mechanisms under the IRD on the one hand and the PSD on the other hand.

Another aspect that will be important in the upcoming discussion is to ensure robust safeguards to counter unintended spill-over effects vis-à-vis third countries. Creating competitive advantages for the common market needs to go hand in hand with mechanisms that guarantee an adequate level of taxation within the EU.

The establishment of the Anti-Tax-Avoidance Directive (ATAD) constituted an important step towards a common commitment to fight base erosion and profit shifting and harmful tax competition. In order to increase the effectiveness of ATAD, we generally appreciate the objective by the Commission to streamline and consolidate the rules and will analyse them in the upcoming weeks.

This also applies to the goal to update, consolidate and improve the merger directive and the Dispute Resolution Mechanisms.

We are looking forward to further outline our position on the various elements of the proposal in the coming months when being discussed in the Antici-Group.

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FRANCE

FRANCE

Questions générales

- La Commission envisage-t-elle de publier d'autres versions linguistiques de la proposition Omnibus XI et de l'évaluation d'impact ? Si oui, pour quelle date limite ?
- Bien que la Commission ne souhaite pas fournir d'évaluations d'impact financier par pays, prévoit-elle de quantifier la perte budgétaire cumulative pour les États membres pour l'ensemble des mesures qui auront une incidence sur les recettes fiscales ?

Concernant l'estimation des coûts des mesures proposées dans l'article 1 (IRD) et l'article 3 (PSD) de l'Omnibus :

- Concernant les articles 1 et 3, la Commission peut-elle fournir une ventilation des économies estimées pour les entreprises, en distinguant (a) les économies liées à l'extension du champ d'application des directives (suppression du seuil de détention) et (b) les économies liées à la simplification des conditions pour bénéficier d'exonérations à champ constant, y compris (b1) les économies liées à la réduction des coûts administratifs grâce à des procédures simplifiées, (b2) les économies liées au fait que les procédures simplifiées ne donneront plus lieu à des retenues à la source indues qui ne sont jamais réclamées, et (b3) les économies liées au fait que les entreprises n'auront plus besoin d'avancer des flux de trésorerie pour des retenues à la source qui sont ensuite remboursées ?
- Toujours concernant les articles 1 et 3 de l'Omnibus, la Commission peut-elle fournir une ventilation des économies estimées pour les entreprises par État membre ?

IRD intérêts redevances

- La Commission peut-elle clarifier, par exemple en fournissant des illustrations, le contenu des amendements proposés à l'article 1(3) de la directive Intérêts et Redevances concernant les établissements stables ?
- La Commission propose que, lorsque des paiements d'intérêts ou de redevances sont effectués depuis un État membre de l'UE vers un pays tiers sans impôt sur les sociétés, les États membres puissent choisir entre appliquer une retenue à la source ou refuser la déduction du paiement aux fins de la base imposable de l'impôt sur les sociétés.
  - Sur quels motifs la Commission propose-t-elle de donner aux États membres le choix entre ces deux options ? La Commission ne craint-elle pas que ces options n'introduisent une nouvelle complexité dans le paysage fiscal de l'UE ?
  - Le critère "*where no corporate tax is levied or a nominal corporate tax at zero rate applies to interests and royalty income*" semble facilement contournable en adoptant un taux d'imposition sur les sociétés très proche de zéro. Pourquoi la Commission n'a-t-elle pas adopté un critère plus strict, tel qu'exigeant un taux d'imposition minimal de 15 % ou le respect du Pilier 2 dans la juridiction de destination, conformément à la réforme fiscale internationale menée par l'OCDE ?
  - Dans les cas où les États membres choisissent d'appliquer une retenue à la source, la proposition de la Commission ne fixe pas de taux minimal. La Commission n'identifie-t-elle pas un risque de course vers le bas entre les États membres, certains appliquant potentiellement des retenues à la source à des taux proches de 0 % ? Si oui, comment ce risque peut-il être atténué ?

- Toujours en lien avec la clause de sauvegarde (article 5, paragraphe 3) :
    - o La possibilité d'encourager le "treaty shopping" a-t-elle été prise en compte, étant donné la difficulté à identifier le dernier bénéficiaire effectif d'un paiement d'intérêts ou de redevances ?
    - o Cette disposition prévoit-elle l'exigence d'une imposition effective du bénéficiaire dans un pays tiers ?
- En particulier, si une entreprise française devait effectuer un paiement à une entreprise tierce en dehors de l'Union européenne, comment pourrait-on se prémunir contre une structure dans laquelle l'entreprise tierce interposerait une filiale dans un pays de l'UE pour neutraliser une retenue à la source (RAS) due en France qui serait plus élevée que celle due dans un autre État membre de l'UE ? Cette mesure proposée ne risque-t-elle pas de pénaliser les États membres de l'UE dont les taux de retenue à la source ou les bases fiscales sont plus élevés que ceux d'autres États membres de l'UE ?
- Quelle est la date de mise en œuvre prévue pour une telle mesure ? Des mécanismes spécifiques de remboursement de la RAS devront-ils être établis ?
- Comment cette mesure proposée s'alignera-t-elle avec le cadre du Pilier 2 ? Quels seront les retraitements à prévoir lors de l’entrée en vigueur du dispositif ? Comment le taux d'imposition effectif (ETR) d'une entité désormais exonérée de cette RAS devrait-il être modifié ?

TMD fusions

- Concernant les conversions transfrontalières (chapitre Va) : La Commission peut-elle expliquer quel besoin ou risque les nouveaux paragraphes 2 et 3 de l'article 14 a visent à traiter ? En particulier, peut-elle clarifier leur fonctionnement en fournissant des exemples ?

➢ *Article 2, a, iv*

- L'exclusion des cas d’auto-détention et des fusions inverses est-elle délibérée, ou résulte-t-elle d'une omission de rédaction ? Si elle est délibérée, quelles sont les implications fiscales pour une fusion transfrontalière inverse au titre de la TMD révisée — reste-t-elle couverte par les cas existants dans la directive, ou sort-elle de son champ d'application ?
- Les fusions sans échange d'actions, où la détention est exercée par un intermédiaire pour compte, bénéficient-elles de la neutralité fiscale de la TMD révisée ? Le concept de propriété indirecte est-il suffisamment large pour couvrir ces situations, ou le libellé devrait-il être clarifié en conséquence ?
- Le libellé de l'article 2(a)(iv) modifié, en faisant référence à une "seule personne" sans distinction, vise-t-il à couvrir la propriété par une personne physique ? Si oui, comment la Commission entend-elle concilier cela avec les législations nationales sur les sociétés (comme le droit français) qui n'autorisent les fusions par échange d'actions qu'entre personnes morales — la neutralité fiscale de la TMD pourrait-elle alors s'appliquer à une opération que le droit des sociétés de l'État membre concerné n'autoriserait pas sous cette forme ?
- Les États membres peuvent-ils maintenir dans leur droit interne une condition de conservation des proportions post-fusion pour les opérations relevant du Cas B de l’article 2, a, iv, ou une telle restriction serait-elle incompatible avec le principe de neutralité fiscale établi par la directive ?

➢ *Article 2, b, ii*

- Concernant la scission par séparation, l'absence de toute condition relative à la nature des actifs transférés et à la reprise des passifs associés est-elle délibérée ? Les États membres peuvent-ils maintenir des conditions équivalentes à une branche complète d'activité dans leur

transposition de la directive, ou de telles conditions seraient-elles considérées comme des restrictions incompatibles avec le principe de neutralité fiscale de la directive ?
- La TMD révisée empêche-t-elle l'application d'un régime d'agrément déclenché par l'absence de conditions substantielles — branche complète d'activité et reprise de passifs — que la scission par séparation ne peut structurellement pas satisfaire ?
- La Commission peut-elle clarifier pourquoi la condition de branche complète d'activité — inscrite dans la TMD elle-même à l'article 2(d) pour les apports d'actifs — n'a pas été retenue pour la scission par séparation ?
- De manière générale, existe-t-il une mesure préventive pour garantir que, en l'absence de la condition de branche d'activité, de l'absence d'obligation de reprise des passifs et d'aucune approbation préalable nécessaire, la TMD ne sera pas utilisée pour mener des opérations de restructuration patrimoniales ? Dans quelle mesure la clause anti-abus de l'article 15 de la directive permet-elle de couvrir ce risque dès lors qu'elle opère a posteriori et fait peser sur l'administration une charge de la preuve substantielle ?
- La définition de la scission par séparation n'implique pas la dissolution de la société divisée. Comment coexiste-t-elle avec la scission partielle tout en conservant son utilisation dans ces formes de réorganisation ?

PSD mère fille

- Les amendements à la PSD introduisent une nouvelle disposition concernant les mesures nationales anti-abus relatives aux sociétés holding (article 4, paragraphe 1, dernier alinéa : « Le présent paragraphe est sans préjudice des mesures nationales anti-abus visant à empêcher l'évitement des obligations fiscales sur la fortune ou le revenu par l'utilisation de sociétés holding. »).
    - La Commission peut elle préciser la portée de cet alinéa et ses implications pour les États membres ?
    - La Commission peut-elle fournir des exemples des abus visés par cette disposition ou des mesures que cette disposition permet ?
    - Cette disposition vise-t-elle à permettre aux États membres de mettre en place une taxe sur les revenus non distribués des holdings patrimoniales , similaire au modèle du droit fiscal américain (surtaxe de 20 % sur les revenus non distribués des "personal holding companies" (PHC) / taxe de 20 % en cas d'accumulation de bénéfices pour éviter l'imposition plutôt que pour des raisons économiquement rationnelles — "Corporations improperly accumulating surplus — Accumulated earnings tax" appliquée lors des contrôles fiscaux) ?
- La Commission pourrait-elle préciser l'articulation de cette clause anti-abus avec la jurisprudence de la CJUE ?
- La Commission pourrait-elle préciser si la définition des « distributions de bénéfices » restera la même qu'initialement, c'est-à-dire aussi large que celle progressivement construite par la CJUE ? Dans quelle mesure la suppression du critère de détention de 10% d'une filiale par sa mère aura-t-elle une incidence sur les dispositions des articles 4 et 5 de la directive et notamment sur la capacité d'un Etat membre à instaurer une taxe applicable aux opérations de rachat par une filiale européenne de ses propres titres auprès de sa mère européenne sans qu'elle ne soit regardée comme une retenue à la source sur une distribution de profits ?
- Pourquoi la PSD n'inclut-elle pas une clause de sauvegarde similaire à celle créée dans l'IRD ? La possibilité de "treaty shopping" n'a-t-elle pas été prise en compte ?
- La Commission pourrait-elle expliciter son raisonnement (rationnel économique) pour maintenir l'option selon laquelle les charges relatives à la détention ne sont pas déductibles lorsque la participation au capital dépasse le seuil de 10 % [article 4(3) de la PSD] ?

- La Commission a-t-elle connaissance d'autres grandes économies où les bénéfices reçus par une société de ses participations dans une autre société sont entièrement exonérés d'impôt sur les sociétés, sans aucun seuil minimal de participation ?
- Pourquoi étendre l'exonération de retenue à la source sur les dividendes distribués aux fonds de pension alors que, d'une part, l'article 2 de la directive stipule qu'elle s'applique aux sociétés dans un État membre soumises à l'un des impôts listés en annexe et que, d'autre part, les fonds de pension sont souvent exonérés d'impôt sur les sociétés ?
- La Commission peut-elle nous informer sur le calendrier de mise en œuvre de ces nouvelles dispositions et nous indiquer si des mécanismes de remboursement de la retenue à la source devront être établis ?

ATAD

➢ **R&D**

- Les mesures proposées par la Commission ne simplifient pas la législation existante de l'UE mais créent ex nihilo un nouvel ensemble de règles. Pourquoi la Commission a-t-elle choisi d'inclure cette proposition dans un texte « omnibus » plutôt que de la présenter comme une proposition distincte ?
- En outre, pourriez-vous expliquer l'inclusion du chapitre I a dans l'ATAD et son lien avec son objectif général et principal ? Pourriez-vous expliquer son lien avec l'article 115 TFUE qui est, à ce jour, utilisé principalement pour placer les situations nationales et transfrontalières sur un pied d'égalité ?
- Concernant l'ajout d'un nouveau chapitre relatif aux dépenses déductibles liées aux activités de recherche et développement, pourriez-vous préciser si, lors de l'élaboration de la proposition, vous avez pris en considération le manuel de Frascati ? La directive entend-elle harmoniser les définitions en renvoyant au manuel de Frascati ou retenir une définition autonome, ce qui serait de nature à poser des difficultés de transposition ?
- Certaines des mesures du chapitre Ia sont formulées en termes impératifs. Comment cela fonctionne-t-il avec l'harmonisation minimale revendiquée ? Les États membres pourront-ils véritablement mettre en place des mesures plus favorables dans ce contexte ?
- La Commission propose de modifier l'article 3 de la directive ATAD pour permettre aux États membres de conserver un traitement fiscal plus favorable pour les dépenses éligibles que celui prévu dans le nouveau chapitre I bis. Comment la Commission entend-elle comparer ces régimes ? En particulier, étant donné que la proposition de la Commission implique un décalage temporel dans l'assiette fiscale (déduction immédiate plutôt qu'amortissement), la comparaison entre ce régime et d'autres mesures que les États membres pourraient choisir (par exemple, crédits d'impôt) pourrait-elle dépendre des taux d'intérêt ? Dans ces conditions, comment la sécurité juridique pour les États membres peut-elle être garantie ?
- Certains États membres disposent de régimes de soutien à la recherche et au développement qui ne constituent pas des aides d'État au sens de l'article 107 du TFUE. Existe-t-il un risque que, en raison de la création d'un cadre minimal pour soutenir certaines dépenses de R&D, les régimes nationaux préexistants qui n'étaient pas précédemment considérés comme sélectifs soient désormais jugés sélectifs et reclassés comme aides d'État au sens de l'article 107 du TFUE ? La Commission est-elle disposée à aider les États membres à analyser leurs régimes de soutien à la R&D afin de garantir la sécurité juridique en matière de droit des aides d'État ?

➢ **Règle de limitation des intérêts**

- La Commission ne propose pas, pour la règle de minimis (permettant aux États membres d'autoriser la déduction des dépenses jusqu'à 3 millions d'euros indépendamment de l'EBITDA), d'ajustement pour l'inflation depuis l'entrée en vigueur de la directive ATAD. Pourquoi ? Serait-il possible de permettre aux États membres, à leur discrétion, d'appliquer un seuil plus élevé qui tienne compte de l'inflation depuis cette date ? D'autant plus que l'article 3 n'autorise les États membres à fournir qu'un niveau de protection plus élevé pour l'assiette fiscale nationale des sociétés. Le montant du seuil de minimis indexé sur l'inflation sera-t-il communiqué par les autorités de l'UE, ou chaque État membre sera-t-il responsable du calcul de ce seuil et de sa communication aux entreprises ?

- Concernant les prêts à faible risque de tiers, de nombreux groupes multinationaux opèrent en ayant une société qui sert de centre de financement interne pour toutes les sociétés du groupe. Comment cela fonctionnera-t-il en pratique, puisqu'il sera impossible de cibler l'utilisation dudit prêt ?
- Concernant l'exclusion des projets d'intérêt public à long terme (point 5f) : le paragraphe 4 de l'article 4 de l'ATAD dans sa version actuelle prévoit une exception pour les "projets d'infrastructure à long terme". La version révisée fait référence aux "projets d'intérêt général à long terme". Ces deux concepts couvrent-ils exactement les mêmes projets ?
- Concernant l'exclusion des dépenses liées aux prêts finançant des investissements dans des produits de défense (point 5g) : la Commission identifie-t-elle des conflits potentiels entre cette exclusion sectorielle et les règlements applicables en matière d'aides d'État ?
- Sur la clause de sauvegarde (point 5h)
  - Le paragraphe 5 de l'article 4 de la directive ATAD permet aux États membres d'autoriser la déduction intégrale des coûts d'emprunt excédentaires pour les entreprises appartenant à un groupe consolidé, sous certaines conditions.
  - La France a incorporé cette option de déduction supplémentaire pour les coûts d'emprunt en la plafonnant à 75 % des coûts excédentaires non déductibles au titre de la clause de sauvegarde.
  - Pouvez-vous confirmer que la version révisée de la directive permettra de conserver un tel plafonnement au titre de la clause de sauvegarde ?

➢ **CFC sociétés étrangères contrôlées**

- La Commission propose d'exempter les entreprises soumises aux règles du Pilier 2 des règles CFC. Comment la Commission entend-elle lutter contre les stratégies de planification fiscale agressive que les entreprises multinationales soumises au Pilier 2 pourraient mettre en œuvre pour transférer leurs bénéfices vers des juridictions qui, tout en respectant les règles du Pilier 2, offrent des taux d'imposition plus avantageux que ceux des États membres de l'UE où leurs activités sont situées ?
- Si la proposition de la Commission était adoptée, les États membres devraient-ils supprimer les règles CFC qui existaient dans leur droit national avant l'entrée en vigueur de la directive ATAD, dans la mesure où elles s'appliquent aux petites et moyennes entreprises ou aux entreprises soumises aux règles du Pilier 2 ? Étant donné, là encore, que l'article 3 de l'ATAD permet aux États membres de prévoir un niveau de protection plus élevé pour l'assiette fiscale nationale des sociétés.

DRM

- La Commission pourrait-elle justifier une délégation aussi large à l'article 19a ?

General questions

- Does the Commission intend to publish other linguistic versions of the Omnibus XI proposal and the impact assessment? If so, by what deadline?
- Although the Commission does not wish to provide country-by-country financial impact assessments, does the Commission plan to quantify the cumulative budgetary loss for Member States regarding all the measures that will have an impact on tax revenues?

Regarding the cost estimation of the measures proposed in article 1 (IRD) and 3 (PSD) of the Omnibus:

- Regarding articles 1 and 3, can the Commission provide a breakdown of the estimated savings for businesses, distinguishing between (a) savings linked to the extension of the scope of the directives (removal of the holding threshold) and (b) savings linked to the simplification of conditions for benefiting from exemptions at a constant scope, including (b1) savings linked to lower administrative costs due to simplified procedures, (b2) savings linked to the fact that simplified procedures will no longer result in undue withholding taxes that are never reclaimed, and (b3) savings linked to the fact that businesses will no longer need to advance cash flow for withholding taxes that are later reimbursed?
- Still regarding Articles 1 and 3 of the Omnibus, can the Commission provide a breakdown of the estimated savings for businesses on a per Member State basis?

IRD

- Can the Commission clarify, for example by providing illustrations, the substance of the proposed amendments to Article 1(3) of the Interest and Royalties Directive regarding permanent establishments?
- The Commission proposes that, where interest or royalty payments are made from an EU Member State to a third country with no corporate tax, Member States may choose between applying a withholding tax or denying the deduction of the payment for corporate tax base purposes.
    - On what grounds does the Commission propose giving Member States the choice between these two options? Does the Commission not fear that these options may introduce new complexity into the EU tax landscape?
    - The criterion "where no corporate tax is levied or a nominal corporate tax at zero rate applies to interests and royalty income" appears easily circumvented by adopting a corporate tax rate very close to zero. Why did the Commission not adopt stricter criterion, such as requiring a minimum tax rate of 15% or compliance with Pillar 2 in the destination jurisdiction, in line with the international tax reform led by the OECD?
    - In cases where Member States choose to apply a withholding tax, the Commission's proposal does not set a minimum rate. Does the Commission not identify a risk of a race to the bottom among Member States, with some potentially applying withholding taxes at rates close to 0%? If so, how can this risk be mitigated?
- Still in link with the safeguard clause (article 5, paragraph 3):
    - Was the possibility of encouraging treaty shopping taken into account since there is and will be a lot of difficulty identifying the last effective recipient/beneficiary of an interest or royalty payment?
    - Does this provision provide for the requirement for an effective taxation of the recipient in a third country?
- Especially, if a French company were required to make a payment to a third-party company outside the European Union, how could one guard against a structure in which the third-party company interposes a subsidiary in an EU country to neutralize a withholding tax

(WHT) due in France that would be higher than that due in another EU Member State? Does this proposed measure risk penalizing EU Member States whose withholding tax rates or tax bases are higher than those of other EU Member States?

- What is the planned implementation date for such a measure? Will specific WHT refund mechanisms need to be established?
- How will this proposed measure align with the Pillar 2 framework? What adjustments should be anticipated when the system comes into effect? How should the effective tax rate (ETR) of an entity now exempt from such WHT be modified?

TMD

- On cross-border conversions (chapter Va): Can the Commission explain what need or risk the new Article 14 bis, paragraphs 2 and 3, are addressing? In particular, can it clarify how they work by providing examples?

➢ *Article 2, a, iv*

- Is the exclusion of self-ownership and reverse amalgamations deliberate, or does it result from a drafting omission? If deliberate, what are the tax implications for a cross-border reverse amalgamation under the revised TMD—does it remain covered by existing cases in the directive, or does it fall outside its scope?
- Do mergers without an exchange of shares, where ownership is held through a nominee, qualify for the tax neutrality of the revised TMD? Is the concept of indirect ownership broad enough to cover these situations, or should the wording be clarified accordingly?
- Does the wording of the amended Article 2(a)(iv), by referring to a "single person" without distinction, intend to cover ownership by a natural person? If so, how does the Commission intend to reconcile this with national company laws (such as French law) that only permit share-for-share mergers between legal entities—could the tax neutrality of the TMD then apply to an operation that the company law of the Member State in question would not allow in this form?
- May Member States retain in their domestic law a requirement for maintaining the same proportional ownership post-merger for operations falling under Case B article 2, a, iv, or would such a restriction be incompatible with the principle of tax neutrality established by the directive?

➢ *Article 2, b, ii)*

- Regarding division by separation, is the absence of any condition regarding the nature of the transferred assets and the assumption of associated liabilities deliberate? May Member States retain equivalent branch of activity-related conditions in their transposition of the directive, or would such conditions be considered restrictions incompatible with the directive's principle of tax neutrality?
- Does the revised TMD prevent the application of an approval regime triggered by the absence of substantive conditions—branch of activity and liability assumption—that division by separation structurally fails to meet?
- Can the Commission clarify why the branch of activity condition—enshrined in the TMD itself under Article 2(d) for asset contributions—was not retained for division by separation?
- Generally speaking, is there a preventive measure to ensure that, in the absence of the branch of activity condition, the absence of a requirement to assume liabilities and no prior approval needed, the TMD won't be used in order to conduct wealth restructuring operations? Does the anti-abuse clause in Article 15 of the directive cover this risk, given that it operates retrospectively and places a substantial burden of proof on the administration?

- The definition of the division by separation does not imply the dissolution of the company being divided. How does it coexist with the partial division or the transfer of assets with those form of reorganisation keeping their use?

PSD

- The amendments to the PSD introduce a new provision concerning national anti-abuse measures regarding holding companies (article 4, paragraph 1, last subparagraph: "This paragraph shall be without prejudice to national anti-abuse measures aimed at preventing the avoidance of wealth or income tax liabilities through the use of holding companies.").
    - o Could you specify the scope of this paragraph and its implications for Member States?
    - o Can the Commission provide examples of the abuses targeted by this provisions or what measures this provision enables?
    - o Is this provision intended to allow Member States to implement a tax on undistributed income from asset-holding companies, similar to the U.S. tax law model (20% surtax on undistributed income of "personal holding companies" (PHC) / 20% tax in cases of profit accumulation to avoid taxation rather than for economically rational reasons – "Corporations improperly accumulating surplus – Accumulated earnings tax" enforced during tax audits) ?
- Could the Commission specify the articulation of this anti-abuse clause with the ECJ's case law?
- Could you specify if the definition of the "distributions of profits" will remain the same as it was initially, meaning as large of the scope that was progressively build up by the ECJ? To what extent will the removal of the 10% minimum holding affect the provisions of Articles 4 and 5 of the Directive—and, in particular, a Member State's ability to impose a tax on the repurchase of its own shares by a European subsidiary from its European parent company without that tax being classified as a withholding tax on a profit distribution?
- Why doesn't the PSD include a safeguard clause similar to the one created in IRD? Was the possibility of a treaty shopping not taken into account?
- Could the Commission explicit it's reasoning (economic rationale) for keeping the option to consider that charges relating to the holding are not deductible when the participation in the capital exceed the 10% threshold [article 4(3] of PSD)?
- Is the Commission aware of any other major economies where profits received by a company from its shareholdings in another company are entirely exempt from corporate tax, without any minimum participation threshold?
- Why extend the exemption from withholding tax on distributed dividends to pension funds when, on the one hand, Article 2 of the directive states that it applies to companies in a Member State subject to one of the taxes listed in the annex, and, on the other hand, pension funds are often exempt from corporate tax?
- Can the Commission inform us about the implementation timeline for these new provisions and whether withholding tax refund mechanisms will need to be established?

ATAD

- ➢ **R&D**

- The measures proposed by the Commission do not simplify existing EU legislation but instead create ex nihilo a new set of rules. Why did the Commission choose to include this proposal in an "omnibus" text rather than presenting it as a separate proposal?
- Could you explain the inclusion of the chapter Ia in ATAD and the link with its general and main objective? Could you explain how it is linked to the article 115 TFEU that is, at date, used mainly to place domestic and cross-border situation on equal footing?
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- Regarding the addition of a new chapter regarding deductibles expenses related to research and development activities, could you specify if, during the elaboration of the proposal, you took into consideration the Frascati manual? Does the directive intend to harmonize definitions by referring to the Frascati manual or to adopt an autonomous definition, which would be likely to pose difficulties in transposition?
- Some of the measure in chapter I a are phrased in imperative terms. How does that work with the minimal harmonisation claimed? Will the Member States may truly put into place more favourable measures in this context?
- The Commission proposes amending Article 3 of the ATAD Directive to allow Member States to retain more favourable tax treatment for qualifying expenditures than that provided for in the new Chapter I bis. How does the Commission intend to compare these regimes? In particular, given that the Commission’s proposal involves a time shift in the tax base (immediate deduction rather than depreciation), could the comparison between this regime and other measures that Member States might choose (e.g., tax credits) depend on interest rates? How, under these conditions, can legal certainty for Member States be ensured?
- Some Member States have research and development support schemes that do not constitute State aid under Article 107 of the TFEU. Is there a risk that, due to the creation of a minimal framework for supporting certain R&D expenditures, pre-existing national schemes that were not previously considered selective may now be deemed selective and reclassified as State aid under Article 107 of the TFEU? Is the Commission willing to assist Member States in analyzing their R&D support schemes to ensure legal certainty with regard to State aid law?

➢ **Interest limitation rule**

- The Commission does not propose, for the *de minimis* rule (allowing Member States to permit the deduction of expenses up to €3 million regardless of EBITDA), to adjust for inflation since the ATAD Directive came into force. Why not? Would it be possible to allow Member States, at their discretion, to apply a higher threshold that accounts for inflation since that date? Especially since article 3 only allows Member State to provide a higher level of protection for domestic corporate tax base? Will the inflation-indexed *de minimis* threshold amount be communicated by EU authorities, or will each Member State be responsible for calculating this threshold and communicating it to businesses?
- On the low-risk third-party loan, a lot of multinational group operate by having company that is an internal financing hub for all the companies of the group, so how will it be operational in practice since it will be impossible to target the use said loan?
- Regarding the exclusion of long-term public interest projects (point 5f): paragraph 4 of Article 4 of ATAD current version provides an exception for "long-term infrastructure projects." The revised version refers to "long-term projects of general interest." Do these two concepts cover exactly the same projects?
- Regarding the exclusion of expenses related to loans financing investments in defense products (point 5g): does the Commission identify any potential conflicts between this sectoral exclusion and the applicable State aid regulations.
- On the escape clause (point 5h)
    - o Paragraph 5 of Article 4 of the ATAD Directive provides Member States with the option to allow the full deduction of excess borrowing costs for companies belonging to a consolidated group, under certain conditions.
    - o France has incorporated this additional deduction option for borrowing costs by capping it at 75% of the non-deductible excess costs under the escape clause.
    - o Can you confirm whether the revised version of the directive would permit such a cap under the escape clause?

- **CFC**

- The Commission proposes exempting companies subject to Pillar 2 rules from the CFC rules. How does the Commission intend to combat aggressive tax planning strategies that multinational companies subject to Pillar 2 might implement to shift their profits to jurisdictions that, while complying with Pillar 2 rules, offer more advantageous tax rates than the EU Member States where their activities are located?
- If the Commission's proposal were adopted, would Member States be required to remove the CFC rules that existed in their national law prior to the entry into force of the ATAD Directive, insofar as they apply to small and medium-sized enterprises or companies subject to Pillar 2 rules? Since, again, article 3 of ATAD allows Member State to provide for a higher level of protection for domestic corporate tax base.

DRM

- How do you justify such a large delegation of power in article 19a?

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CROATIA

HRVATSKA

Croatia's comments on the Tax Omnibus Proposal

1. Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. (IRD)

The Republic of Croatia in principle supports the goal of simplifying the existing legislative framework and removing obstacles that may affect the functioning of the single market. At the same time, it considers that, before adopting a final solution, it is necessary to further examine the possible effects of the proposed amendments on the tax revenues of Member States and assess whether the proposed solutions are proportionate to the objectives to be achieved. The Republic of Croatia remains open to further discussion and constructive cooperation during the negotiations.

During the drafting of the Proposal for Amendments, we would also like to draw attention to the application of the Directive to the European Economic Area and the Swiss Confederation.

The Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments states in Article 9 an exemption upon the payment of interest, royalties, and also dividends to associated companies subject to a 25% association requirement, whereas there is no specific regulation for EEA countries.

Given that the Directive contains an Annex with a list of types of companies and that according to this Proposal the Commission will be empowered to update this list, it would be very useful for us, in order to reduce potential disputes and ambiguities, to receive clarification regarding companies from the European Economic Area countries and the Swiss Confederation to which the application of these new rules should be extended, or to explicitly prescribe that they do not apply.

2. Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (codified version). (TMD)

We welcome in principle the proposed amendments to Directive 2009/133/EC as they contribute to the alignment of tax legislation with Directive (EU) 2017/1132 relating to certain aspects of company law and contribute to greater terminological consistency in the regulations governing structural changes to companies.

We would like to emphasize that the accounting standards applied by the covered companies have also changed in the period since the adoption of the normative part of Directive 90/434/EEC in 1990. In the Republic of Croatia, income, profits, and capital gains arising from structural changes covered by Directive 2009/133/EC, as determined by accounting standards, are also used for tax purposes.

Directive 2009/133/EC mandates neutrality at the time the reorganization occurs – the normative part uses the expression "as if there had not been" a certain event, while the preamble explains that the system of tax deferral applies until their actual disposal. In practice, doubts arise as to what constitutes a disposal, i.e., it is not stated clearly enough when and how certain items are taxed.

Only Article 7, paragraph 1 of the Directive states that where the receiving company has a holding in the capital of the transferring company, any gains accruing to the receiving company on the cancellation of its holding shall not be liable to any taxation. This assumes that subsequent taxation does not occur, but it is still not clear enough.

The question also arises whether it will be possible to apply the Directive to the European Economic Area and the Swiss Confederation. If this will be legally possible to implement, given company law, and considering that the Directive contains an annex containing a list of types of companies, and according to this Proposal the Commission will be empowered to update that list, it would be very useful for us, in order to reduce potential disputes and ambiguities, to have clarification for recognizing companies from the European Economic Area countries and the Swiss Confederation to which these new rules should be extended, or to explicitly prescribe that they do not apply.

3. Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. (PSD)

The Republic of Croatia in principle supports the goal of simplifying the existing legislative framework and removing obstacles that may affect the functioning of the single market.

It also considers that the proposed extension of the exemption from withholding tax on dividend payments to pension institutions is in line with the objectives of the Commission Communication "A Savings and Investments Union – Strategy to boost citizens' wealth and EU economic competitiveness".

However, at the same time, it considers that, before adopting a final solution, it is necessary to further examine the possible effects of the proposed amendments on the tax revenues of Member States and assess whether the proposed solutions are proportionate to the objectives to be achieved. The Republic of Croatia remains open to further discussion and constructive cooperation during the negotiations.

During the drafting of the Proposal for Amendments, we would also like to draw attention to the application of the Directive to the European Economic Area and the Swiss Confederation.

The Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments states in Article 9 an exemption upon the payment of interest, royalties, and also dividends to associated companies subject to a 25% association requirement, whereas there is no specific regulation for EEA countries.

Given that the Directive contains an annex containing a list of types of companies and that according to this Proposal the Commission will be empowered to update this list, it would be very useful for us, in order to reduce potential disputes and ambiguities, to have clarification for recognizing companies from the European Economic Area countries and the Swiss Confederation to which these new rules should be extended, or to explicitly prescribe that they do not apply. The issue of applying these rules to pension institutions is particularly important.

4. Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules on the tax treatment of research and development expenditure and against tax avoidance practices that directly affect the functioning of the internal market. (ATAD)

4.1. rules on the tax treatment of research and development expenditure

The Republic of Croatia in principle supports the proposal to establish a common framework for the tax treatment of research and development expenditures, provided that the proposed provision of Article 3, which regulates the minimum level of harmonization and the minimum level of protection, is retained.
Namely, the Republic of Croatia applies a specific Act on State Aid for Research and Development Projects. State aid within the framework of this Act is based on Commission Regulation (EU) No 651/2014, with its respective amendments, which regulates state aid. Therefore, the provision of the Proposal stating that Member States may choose to retain or introduce alternative national measures instead of the proposed ones is important, provided that these national measures treat qualifying expenditures more favorably.
We believe that the proposed measures can contribute to stimulating investment in research and development, strengthening innovation, increasing the competitiveness of the European Union's economy, and achieving the goals of the green and digital transition.

4.2. Interest limitation rule – Article 4

The Republic of Croatia in principle supports the proposed amendments to Article 4 of Directive (EU) 2016/1164 regulating the interest deduction limitation rule. We believe that the proposed amendments contribute to simplifying the existing system and take into account changes that may occur in the economic environment.

We note that the Republic of Croatia, in addition to the provision from Article 4 of Directive (EU) 2016/1164, also applies targeted rules for loans between related parties which are stricter than the minimum standard from Article 4 of the Directive.

Given that the provision of Article 4 of Directive (EU) 2016/1164 is linked to OECD Action 4 of the BEPS Action Plan, we draw attention to Article 11, paragraph 6 of Directive (EU) 2016/1164. According to this provision, Member States which as of 8 August 2016 have national targeted rules for preventing BEPS risks, which are equally effective to the interest limitation rule, may apply these targeted rules until the end of the first full fiscal year following the date of publication of the agreement between the OECD members on the official website on a minimum standard with regard to BEPS Action 4, but no later than 1 January 2024.

We believe that Article 11, paragraph 6 needs to be adapted.

4.3. Controlled foreign company (CFC) rule – Article 8

The Republic of Croatia supports the goal of simplifying tax rules, reducing administrative burdens, and ensuring proportionality in the application of anti-tax avoidance rules.

CFC rules overlap with the income inclusion rule established in Directive (EU) 2022/2523 (Pillar Two framework), which ensures a minimum level of taxation, therefore we support the proposal that taxpayers subject to the minimum global tax be excluded from the application of CFC rules because this will not undermine the preservation of the objective of the CFC rules.

However, we believe it should be taken into account that the size of the taxpayer itself should not be the decisive criterion for the application of rules aimed at preventing profit shifting and protecting the tax base. Although the explanatory memorandum to the Proposal states that in practice CFC rules are rarely applied to small and medium-sized enterprises and that their exclusion would contribute to a reduction in administrative burdens, we believe that this in itself is not sufficient justification for the complete exclusion of certain groups, especially medium-sized ones, from the scope of CFC application.

4.4. Hybrid mismatches

The Republic of Croatia agrees with the proposed deletion of the provision of Article 9, paragraph 3. We consider that this is an extremely complex provision which in practice creates significant administrative demands, while its implementation is hindered due to complex international [transactions/relations].

Therefore, we support the proposal to delete the aforementioned provision, as this will contribute to simplifying the system, reducing the administrative burden on taxpayers and tax authorities, and increasing legal certainty, while maintaining an appropriate level of protection against tax avoidance through the other rules of the Directive.

5. Council Directive (EU) 2025/50 of December 10, 2024, on faster and safer relief of excess withholding taxes. (FASTER)

The Republic of Croatia agrees with the proposed amendments to Directive (EU) 2025/50 (FASTER) and supports the goal of simplifying withholding tax rules and reducing the administrative burden for taxpayers and tax authorities. We believe that extending the application of standardized relief-at-source and quick refund procedures for withholding tax to cases where the exemptions provided by Directives 2003/49/EC and 2011/96/EU apply will contribute to greater legal certainty, more efficient implementation of the Directive, and a more consistent application of rules in cross-border situations.

6. Council Directive (EU) 2017/1852 of October 10, 2017, on tax dispute resolution mechanisms in the European Union. (DRM)

The Republic of Croatia agrees with the proposed amendments to Directive (EU) 2017/1852 as the proposal introduces necessary simplifications and increases legal certainty in resolving cross-border tax disputes within the European Union. We believe that introducing a 30-day deadline for submitting complaints and more flexible options for group cases will eliminate past administrative obstacles and legal ambiguities. We also believe that the amendments will significantly reduce the reasons for rejecting complaints and introduce the possibility of correcting deficiencies, thereby greatly facilitating taxpayers' actual access to legal protection mechanisms. Prescribing the obligation to inform the taxpayer without delay when an agreement is not possible enables a much faster initiation of the arbitration process and prevents the long-term blocking of solutions. The Republic of Croatia considers that the proposed amendments effectively reduce overall compliance costs and strengthen the stability of the internal market, which directly contributes to the better competitiveness of the EU economy.

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ITALY

ITALIA

OMNIBUS TAX DIRECTIVE PROPOSAL COM (2026) 560 final

Italy's comments

We would like to thank you for the possibility to provide written comments. As highlighted during the meeting of last 13 of July, we are still analyzing the legal text with all its implications, so we keep a scrutiny reservation on the whole document.
However, we would like to share with you some preliminary observations that can be divided into two parts: 1) preliminary policy observations (some of which were already made at the 13th July meeting) and 2) technical questions for the Commission.

- **Preliminary observations**

- ***Impact on tax revenue and weakening of anti-abuse safeguards***

Some of the proposed measures included in the package extend the scope of existing tax exemptions or make certain options mandatory - that Member States could have previously chosen not to implement. The cumulative negative effect on tax revenue, at least for some Member States, will be particularly relevant. This is in contradiction with the assumption that rationalization and simplification measures should be in principle revenue neutral.

The elimination of any requirements to grant the benefits of PSD and IRD is a politically sensitive issue. In our view, the rationale behind the thresholds in the directive PSD and IRD lies in the need to limit potential abuses in the flows of such payments, especially regarding interest and royalties. For this reason, we believe that the elimination of the withholding tax for payments across and the EU could create opportunities for increased tax avoidance schemes due to discrepancies of tax systems of Member States that would allow to further exploit the existing more favorable treatments of such items.

- ***Incentives for borrowing***

The proposals on the deductibility of interest expenses risk increasing debt-equity bias, which entails a policy choice that should remain in the hands of the Member States. Italy is of the view that in general it is not suitable from an economic policy perspective to incentivize debt, especially considering that there is not a common measure at the EU level to incentivize equity. Italy already had an interest limitation rule in place prior to the entry into force of ATAD and the approval of the BEPS project. This rule, which was substantially aligned with the ATAD provisions, was introduced not only as an anti-avoidance measure or to tackle profit shifting, but rather to annually assess the appropriateness of the cost of debt in relation to the gross operating income generated by core business activities. In this regard, we are concerned that broadening the scope of the interest limitation rule could lead to undercapitalization and over-indebtedness, the effects of which must be carefully assessed. Moreover, this seemed to be something that was also being considered by the Commission when CCTB proposal was tabled, whereas it provided for an allowance corporate equity.

- ***Asymmetric impact across Member States***

The proposal does not consider the structural differences between national tax systems among Member States, including the different corporate tax rates. Certain measures risk producing markedly uneven effects: Member States that had already implemented the optional provisions would face limited or no adjustments, whilst others, including Italy, would bear a disproportionate share of compliance and revenue costs. Any measure with potentially asymmetric effects should be subject to a country-specific impact assessment and, where appropriate, accompanied by transitional provisions or safeguard clauses.

- ***CFC changes***

Iin relation to CFC changes included in the proposal:

- regarding the exclusion of SMEs from CFC rules, in our view it could lead to the non-application of CFC rules in potentially relevant cases, such as a holding company that, despite having significant shareholdings/passive income in foreign entities with a tax rate lower than 15%, could qualify as an SME by not exceeding the required thresholds for employees and turnover.
- regarding the exclusion of Pillar II groups, we consider it to be too broad and it may lead to the adoption of abusive tax schemes. We would rather prefer the alternative option proposed during the Woking party IV meetings to consider the Qualified domestic top-up tax (QDMTT) paid in the calculation of CFC tax liability.

❖ **Technical questions**

1. Interest and Royalties Directive (IRD) - Directive 2003/49/EC

Q1. *Beneficial ownership in the absence of an association requirement*
With the removal of the association condition, the beneficial-ownership test becomes the primary anti-avoidance gateway. Does the Commission intend to provide guidance on how the beneficial-ownership concept should be interpreted and applied by Member States??

Q2. *Anti-double-non-taxation clause - Article 5(3): scope and mechanics*
New Article 5(3) requires the source State to levy withholding tax or deny deductibility where interest/royalties are paid to a recipient in a third party jurisdiction with no corporate tax or zero rate on such income. The rule targets the "*direct recipient*" only. How should the payer/source State determine whether the third-country jurisdiction applies "*a nominal corporate tax at zero rate*" to interest and royalty income, especially where the jurisdiction applies a general CIT rate but provides specific exemptions or preferential regimes for certain income categories?
In addition, Article 5(3) gives the source State a choice between two alternative measures: (a) the levying of a withholding tax on the payment; (b) the denial of the deductibility, for tax purposes, of the corresponding payment for the payer. Is this choice left entirely to each Member State's discretion, to be exercised on a case-by-case basis or fixed once in national implementing legislation? If Member States are free to choose, does the Commission anticipate divergent approaches across the EU – with some Member States uniformly levying withholding tax and others uniformly denying deductibility – and if so, how is this consistent with the Proposal's stated objective of reducing fragmentation and ensuring uniform application of the anti-abuse safeguard? Could a taxpayer be exposed to inconsistent treatment (*e.g.*, different tax rates of the WHT) depending on the Member State of source for economically identical cross-border payment structures? Where a bilateral tax treaty prevents or limits the levy of WHT on the payment to a third-country zero-tax jurisdiction, is the source State expected to apply the alternative measure (denial of deductibility) in order to comply with Article 5(3)?

Q3. *Prohibition of prior authorisation — meaning of "at the time of payment"*
New Article 1(11) provides that Member States "*shall not require any prior authorisation or administrative procedure verifying the fulfilment of the requirements (…) at the time of payment*".

Does this prohibit any documentary requirement before the payment date (*e.g.* tax-residence certificates, forms of attestation), or only formal authorisation decisions? May Member States still require that supporting documentation be available at the time of payment for *ex post* verification purposes?

2. Parent-Subsidiary Directive (PSD) — Directive 2011/96/EU

Q1. *Scope of distribution of profits after the deletion of Article 3*
The deletion of Article 3 eliminates the 10% holding requirement and the holding-period condition. The Directive will apply to all "distributions of profits" between qualifying EU companies. Is "distribution of profits" an autonomous EU concept, or do Member States retain the right to define it under domestic law? For example, does it cover in-kind distributions, share buy-backs and other corporate-law transactions that may be treated as profit distributions in some Member States but not in others?

Q2. *Anti-hybrid condition - Article 4(1)(a): profits not deductible by the distributing company*
New Article 4(1)(a) requires the receiving-company State to refrain from taxing distributed profits to the extent that such profits are not deductible by the distributing company. How should the receiving company determine whether a distribution is deductible in the distributing company's State? What happens where the distributing company makes a distribution that is partially deductible?

Q3. *10% threshold for non-deductibility of holding costs - Article 4(3)*
New Article 4(3) limits the Member State option to deny deduction of charges and losses relating to a holding to cases where the receiving company holds at least 10% in the capital or voting rights. Our understanding is that, for holdings below 10%, Member States must allow full deduction of all holding-related charges. If that is the case, does the 10% threshold apply at a specific point in time (*e.g.*, date of distribution), or must it be met throughout a continuous period?

Q4. *Prohibition of prior procedures and ex post verification - Articles 5a, 5b, 5c*
Articles 1(11) IRD and 5a PSD prohibit prior authorisation or administrative procedures for verifying eligibility at the time of payment/distribution. Recital (12) preserves Member States' *ex post* control powers. In practice, certain Member States currently require taxpayers to hold a valid tax-residence certificate or attestation before the payment is made, not as a formal authorisation but as a precondition for the payer to apply the exemption at source. Does the prohibition extend to such requirements, or may Member States continue to condition the at-source application of the exemption on the availability of pre-existing documentation, provided that no formal authorisation decision is required?

3.Tax Merger Directive (TMD) - Directive 2009/133/EC

Division by separation - no branch of activity requirement
New Article 2(b)(ii) allows a company to transfer part of its assets and liabilities to recipient companies in exchange for shares issued to the transferring company itself. Unlike a partial division under Article 2(c), the text does not require the transfer of a branch of activity. Can the Commission confirm that any combination of individual assets and liabilities qualifies, without an organisational coherence or minimum-threshold requirement?

4. Atad Directive- Research and Development Provisions

Q1. *Meaning of circumstances beyond the reasonable control of the taxpayer*
Article 3c(2) exempts from recapture of the R&D allowance cases where the failure to satisfy the three-year minimum-use condition results from force majeure or circumstances beyond the reasonable control of the taxpayer. Can the Commission clarify the intended scope of this exception? Is it possible to get some concrete examples?

Q2. *Scope of 'qualifying expenditure' - tangible assets only and missing definition of 'capital expenditure'*
The Proposal does not define capital expenditure. Does the classification as capital (vs. current) expenditure follow the taxpayer's applicable accounting standards, the tax-accounting rules of the Member State of residence, or an autonomous EU concept? In addition, does the allowance cover capitalised maintenance, refurbishment or improvement expenditure on existing assets, or only the original acquisition cost?

Q3. *Public subsidies and EU funding*
The definition of qualifying expenditure refers to capital expenditure net of deductible value added tax but does not provide for a deduction of public subsidies, grants or EU funding received in respect of the same R&D investment. Does the full gross cost qualify even where the taxpayer has received a public contribution covering part or all of the expenditure?

Q4. *Comparator test for national alternative measures — Article 3(1)*
Article 3(1) allows Member States to maintain domestic measures if they treat qualifying expenditure more favourably than Chapter Ia. Many Member States use R&D tax credits rather than deductions. Should favourability be assessed by reference to the statutory amount, the net present value of the benefit, or taxpayer-by-taxpayer outcomes? Should the comparison be limited to the treatment of tangible R&D capex (the scope of Chapter Ia), or does it take into account the broader national R&D incentive regime including current-expenditure credits?

5. ATAD Directive- Interest Limitation Rule - Article 4

Q1. *Low-risk third-party loans - own activities*
New Article 4(2a) excludes from the ILR exceeding borrowing costs on low-risk third-party loans, provided the loan finances exclusively the borrower's own activities with no on-lending or equity contributions to the group. What constitutes "own activities", also considering the complexity of tracing the use of loan proceeds within a group?

Q2. *Mandatory safe harbour - EUR 3 million: scope and interaction with carry-forward*
As a premise, we are aware that it is possible that some of the following questions have been already addressed in practice, so we apologies in advance if that is the case but please consider that Italy has no de minimis threshold, so we never had to face these doubts. Can the Commission clarify how this safe harbour interacts with the ordinary 30% EBITDA limitation? In particular, is the EUR 3 million threshold an additional deduction on top of the 30% EBITDA capacity? In addition, can the safe harbour be used to deduct exceeding borrowing costs carried forward from previous tax periods, or only exceeding borrowing costs incurred in the current tax period? If a taxpayer has both current-year exceeding borrowing costs and carried-forward exceeding borrowing costs in the same tax period, should the 30% EBITDA capacity be used before the EUR 3 million safe harbour?

Q3. *50% EBITDA-drop derogation — reference base*
New Article 4(3a) provides full deductibility where the taxpayer's EBITDA decreases by at least 50% compared to the immediately preceding tax period. Should the 50% drop be measured by reference to tax-adjusted EBITDA (as defined in Article 4(2)) or accounting EBITDA?

6. Faster Directive

Q1. Scope

In the explanatory memorandum to Article 6 it is stated that "Article 6 of the proposal adjusts the scope of FASTER, to ensure that it covers refunds in the event of the IRD/PSD". However, our understanding (also in light of Recital 13) is that the Proposal does not extend the scope of the FASTER Directive, which remains limited to dividends and interests deriving from publicly traded shares and bonds. Could you please confirm that dividends and interests arising from shares and bonds other than publicly traded ones remain outside the scope of FASTER Directive (so that FASTER procedures are not applicable to these payments) even where an exemption is available under IRD or PSD?

Q2. *Conditions for the application*

It is our understanding that, according to the new article 11(2) of the FASTER Directive as amended by Article 6 of the Proposal, a Members State:
a) may not exclude a request from the application of the FASTER procedures where an exemption of the withholding tax is claimed and such exemption derives from the application of IRD or PSD;
b) may still opt to exclude a request from the application of the FASTER procedures where a reduced withholding tax rate not deriving from double tax treaties is claimed (including cases when the reduced withholding tax rate could result from the application of IRD or PSD).
Could you please confirm whether our understanding is correct, and provide clarifications of the rationale behind the difference in treatment in the two cases?

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LATVIA

LATVIJA

LV contribution – Call for Comments Omnibus XI Taxation

Comments and questions made by Latvia at the July 13th AGS meeting:

General considerations
In general Latvia supports the overall objective of simplification of procedures and reduction of administrative burden. However, we have doubts whether this Council format (Antici) is best suited to addressing its tax-related and highly technical aspects, including new rules and requirements set out in this proposal. We cannot rule out the possibility that the time may come when parallel technical discussions and even political ones within the Working Party on Tax Questions and ECOFIN accordingly might be necessary.
We would also like to recall that ATAD was designed as a de minimis directive adopted on the basis of a finely balanced compromise. Against this background, the proposed move towards full harmonisation of certain ATAD provisions merits careful consideration.

Interest and Royalties Directive
In general, we have nothing against of removing withholding taxes on cross-border intra-EU transactions. However, we have concerns regarding the proposed safeguard rule towards third countries, in particular its practical application and the potential administrative burden it creates. We also seeking answers to questions like: Who will assess third country tax systems? How will this rule interact with existing bilateral tax treaties? Could this provision be considered discriminatory, as it applies only towards third countries? Why instead of simplification we are creating new harmonised requirements?

Anti-Tax Avoidance Directive
CFC legislation: In Latvia there is a distribution-based CIT system, under which tax is levied upon profit distribution and not when profits are earned. This was the key reason why Latvia chose to implement the ATAD CFC legislation through Model B rather than Model A. Therefore, it is not clear to us, how Model A could operate in the context of a distribution-based CIT system. We would therefore welcome further clarification on how the proposal is intended to interact with such systems. Preliminary it appears that for distribution-based CIT systems there may need to be granted a derogation with the possibility of continuing to apply the Model B.

Interest limitation rule: Before forming a position in this regard, we would welcome clarification on what full harmonisation would mean in practice, particularly regarding its impact on Member States that currently in addition to ATAD interest limitation rule apply also broader domestic rules, such as thin capitalisation rule, and whether such domestic rules could continue to apply under a fully harmonised framework.

Investments in R&D: We fully support the objective of promoting investment and strengthening the EU competitiveness. However, the proposed solution may not be equally effective across different CIT systems. As our distribution-based CIT system already encourage investment by taxing profits only upon distribution, we do not see how the proposed incentive for investments in R&D would create any significant benefit for taxpayers. Therefore, preliminary it appears that for distribution-based CIT systems there may need to be granted a derogation from the transposition of this new provision.
We will be grateful to receive written responses to the questions.

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LUXEMBOURG

LUXEMBOURG

The comments below on the tax Omnibus proposal (the "Proposal") are preliminary and non-exhaustive. As our technical analysis of the Proposal is not yet completed, we will provide you with additional comments in light of that review.

I. Amendments to directive 2003/49/EC - Interest and royalties directive ("IRD")

We understand that the proposal would remove the ownership-threshold requirements, as per article 1 of the Proposal, and that Article 1(5) of the Proposal is intended to introduce a "defensive measure" in situations involving interest payments to entities established in zero-tax third-country jurisdictions through a new Article 5, paragraph 3 of the IRD.

Within the framework of the Code of Conduct on Business Taxation, Member States have collectively committed to implementing defensive measures against non-cooperative tax jurisdictions. The EU list of non-cooperative jurisdictions may also include jurisdictions that either do not levy corporate income tax or apply a zero nominal corporate tax rate. In this context, the proposed introduction of an additional defensive measure under the IRD appears to duplicate the existing framework of defensive measures established pursuant to the Code of Conduct.

We also consider that the additional provision in article 5 (3) IRD will duplicate the prerogatives Member States have already based on the "Danish beneficial ownership" ECJ cases[1]. Even in the absence of specific national anti-abuse measures implemented on basis of current articles 5 (1) or (2) IRD, Member States have already the possibility to deny the benefits of the IRD, based on the general principle of EU law that EU law cannot be relied on for abusive or fraudulent ends. The concept of "beneficial owner" included in article 1 (1) IRD, as interpreted in the "Danish beneficial ownership" cases, provides an additional mechanism for Member States to deny the benefits of the IRD if the company receiving the interest can not be considered as the "beneficial owner".

The proposed "defensive measure" will significantly alter both the purpose and the scope of the IRD. In our view, such a change would extend beyond the IRD's original objectives and encroach upon Member States' competence in direct taxation, thereby affecting their fiscal sovereignty. We are also scrutinizing how the defensive measure will impact double tax treaties.

More fundamentally, we consider that the proposed approach will have substantial negative effects on the EU's competitiveness and the international level playing field. The measure will result in a less favourable framework for third-country investors, potentially affecting the attractiveness of the EU as an investment destination. In practice, a considerable number of European investment structures, particularly within the investment fund industry, rely extensively on capital originating from non-EU investors to finance their underlying investments. Put differently, the European investor base alone is often insufficient to meet the financing needs of many investment projects.

By introducing a differentiated treatment between investors established in third countries and those located within the EU, the proposal creates an uneven investment landscape. As a consequence, a significant portion of third-country capital flows may be redirected towards third country jurisdictions that will not be subject to the same regulatory and tax constraints than those being proposed under the Proposal.

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[1] Judgment of the Court (Grand Chamber) of 26 February 2019 - Joined Cases C-115/16, C-118/16, C-119/16 and C-299/16

Accordingly, rather than encouraging inbound investment and strengthening the UE's overall competitive position, the proposed measure will discourage foreign capital inflows and impair the ability of EU-based investment structures to attract the international capital necessary for their growth and development.

For the reasons set out above, we have serious reservations regarding the proposed "defensive measure" and are therefore not in a position to support it.

II. Amendments to Directive 2011/96/EU - Parent-Subsidiary Directive ("PSD")

a) Article 3 of the Proposal- removal of the Holding threshold

With regard to the proposed removal of the minimum holding threshold and holding period, we are currently analysing its budgetary impact, and reserve therefore our position pending that assessment.

We also seek further clarification regarding subparagraph 2 in the newly proposed article 4 (1) PSD. In particular, it is unclear what additional purpose this provision is intended to serve in light of existing Article 1(4) PSD which already provides that the PSD does not preclude the application of domestic or agreement-based provisions for the prevention of tax evasion, tax fraud or abuse. In this context, we also note that certain key concepts used in subparagraph 2 are not defined. In particular, is also not clear what is meant by "*avoidance of wealth or income tax liabilities*". Similarly, we also note that the concept of "*holding companies*" in this context is not defined, creating additional uncertainty as to the category of entities targeted by the provision. Accordingly, the exact scope and practical application of subparagraph 2 remains unclear and we reserve our position in this regard.

As a technical remark, and without prejudice to our ongoing assessment on the removal of the holding threshold, we note that the reference to article 3 PSD in article 4 (2) PSD is now incorrect, as article 3 PSD is proposed to be deleted by the Proposal. The wording would need to be adapted in case article 3 would indeed be deleted from the PSD.

b) Article 3 of the proposal – extension of the scope to pension funds

We are, in principle, supportive of the proposed extension of the PSD exemption to pension funds. We understand that this reflects a policy choice aimed at ensuring a more favourable and coherent tax treatment of long-term institutional investors and at promoting investment in this field to support pension financing within the European Union ("EU").

We request however a clarification as to whether the reference in the newly proposed article 5 (2) PSD to article 6 (1) of directive 2016/2341 implies that the proposed exemption would be limited to pension institutions established within the EU. If that were to be the case, we wonder whether such limitation would be compatible with the free movement of capital.

III. Amendments to the Directive (EU) 2016/1164 - Anti-Tax Avoidance Directive ("ATAD")

a) Article 4 of the Proposal - R&D allowance

With regard to the proposed R&D allowance introduced through a new chapter Ia in ATAD, we note that this measure is not directly connected to the anti-abuse objectives pursued by ATAD. Its inclusion extends the ATAD beyond its original scope and purpose, leading to a substantive modification of both its focus and its underlying policy objectives.

We understand from the Commission's explanations during the last Antici Group meeting that this measure can be linked to ATAD due to its impact on the calculation of EBITDA under the interest deduction limitation rule.

We consider this explanation to be unconvincing and questionable. We therefore maintain a scrutiny reservation as to the legal and policy rationale underpinning this approach and consider that further analysis is required to assess its implications for the coherence and integrity of the ATAD framework.

Without prejudice to this fundamental concern, and subject to our ongoing assessment of the substantive merits of the proposed R&D allowance, we would welcome further clarification as to whether the allowance is intended to operate as a super-deduction for qualifying R&D expenditure, or whether it is based on a different mechanism.

In connection with the proposed R&D allowance, we have also question on the newly proposed article 3(1) of ATAD. While the provision appears to permit Member States to maintain or introduce domestic measures that provide a more favourable treatment of qualifying expenditure than that envisaged under the new Chapter Ia, its current wording gives rise to significant legal uncertainty for Member States and taxpayers.

In particular, it is unclear how Member States are expected, in practice, to determine whether a domestic measure treats qualifying expenditure "*more favourably*" than the regime provided for under new Chapter Ia.

This provision does not appear to establish any clear methodology, benchmark, or set of criteria for carrying out such an assessment. Furthermore, it remains uncertain whether this determination is intended to be made solely by Member States.

b) Article 4 of the Proposal - Interest deductibility limitation rule ("IDLR")
   1. Threshold related provisions

We are currently assessing the implications of the proposed changes regarding the various thresholds that serve as reference points under the IDLR framework. At this stage, we can support the provisions in relation to the mandatory EUR 3 million threshold and 30% threshold.

   2. Exclusion of third-party loans

We could support the underlying principle of this approach, insofar as it appears intended to ensure that the IDLR is applied only in situations where the risk of BEPS structures through excessive interest payments is the highest.

However, the anti-circumvention condition set out in point (b), namely the requirement that the relevant assets or activities be used "exclusively for the undertaking's own activities", raises a number of practical, legal and interpretative concerns.

In particular, the scope and meaning of this condition are not entirely clear. The term *"exclusively"* as well as "*own activities*" may give rise to uncertainty as to its application in common commercial and operational situations, notably within group structures where functions, resources and assets may support multiple entities or activities or in the bond market. Further clarification should therefore be considered, either in point b) directly, or in a recital explaining the intended functioning of this rule.

3. Limitation of the IDLR in case of a significant decrease in EBITDA

While we can support the overall rationale underlying the proposed limitation of the IDLR where EBIDTA has decreased by at least 50% in the immediately preceding tax period (year N), we are wondering whether the objective of mitigating the procyclical effects of the IDLR in year N+1 would not equally be relevant in year N+2, if the condition relating to the 50% decrease of EBITDA as compared to year N continues to be met in that year. We would therefore welcome further clarification as to the policy rationale for restricting the relief to year N+1 only.

We are also wondering about the practical implications of the requirement for the taxpayer to "demonstrate" that EBITDA has decreased by at least 50%. It is unclear to us whether this wording is intended to impose a specific evidentiary or documentation requirement beyond the information normally provided in a tax return and supporting records. We would therefore appreciate clarification as to the purpose and implications of this specific requirement, especially given that similar wording does not appear to be used elsewhere in the IDLR framework.

4. modification of the financial undertaking list

We note that the Alternative Investment Funds (AIFs) have been removed from the currently applicable definition of "*financial undertakings*". We can not support such exclusion as it goes directly against the stated policy rationale of the exclusion of financial undertakings from the scope of the IDLR.

We also note that securitization vehicles falling within the scope of Regulation (EU) 2017/2402 do not appear to be included among the entities benefiting from the relevant exemption. These entities operate within a comprehensive and regulated EU framework. In light of the policy rationale of the definition of financial undertaking (as outlined in recital 37 of the Proposal), the exclusion of securitization vehicles from the scope of "financial undertakings" does not appear to be justified.

In general, we consider that all financial undertakings that are subject to a specific regulatory framework under EU law should fall within the definition of financial undertaking for purposes of the IDLR.

5. Proposed exclusion for the Defence Sector

While we are still scrutinizing the scope of this exclusion from the scope of the IDLR, we would welcome further clarification regarding the reference introduced in the newly proposed paragraph 4a, subparagraph 3, to "*defence products or other products for defence purposes <u>in critical capability areas</u>*". Furthermore, it is unclear whether the reference to "critical capability areas" in subparagraph 3 is intended to constitute an additional substantive condition for the application of the exclusion provided for in subparagraph 1, or whether it merely serves to clarify the types of defence-related activities and products covered by that exclusion. We would therefore appreciate additional clarification on the interaction between subparagraphs 1 and 3, as well as on the intended scope and practical application of the concept of "critical capability area

We also would like to get an explanation on the policy rationale for limiting the scope of this exclusion to situations where the "*taxpayer, borrowing cost, assets and income are all in the Union*". In particular, it would be helpful to understand how this restriction is intended to operate in light of the principles of the free movement of capital.

On a technical note, how should the location of "*borrowing costs*" and "*income*" be determined for purposed of applying this proposed temporary exemption? Under what circumstances are "borrowing costs" considered to be located within the EU?

6. introducing new article 4, paragraph 9 in ATAD

The Proposal introduces a new provision specifying that "*For the purpose of this Article, Member States shall not maintain or introduce, in their national law, any provisions with a subject matter that falls within the scope of this Article if they lay down rules that diverge from the laid down in this Article*"

We would welcome further explanations from the Commission as to the rationale, objectives and expected outcomes of this provision. In its current form, the purpose of the measure and the specific concerns it seeks to address are not entirely apparent, and additional information would therefore be helpful in evaluating its appropriateness and coherence within the overall framework of the Proposal. It is also not clear how this provision can be reconciled with article 3 of ATAD.

c) Article 4(g) of the Proposal - Extension of GAAR to P2

We take note of the proposed inclusion of taxes arising under the Pillar 2 framework within the scope of the General Anti-Abuse Rule (GAAR). In our view, this proposed amendment needs to be assessed in the context of the ongoing OECD discussions on the development of specific "integrity measures" for Pillar 2. If the Proposal's objective is to effectively reduce the compliance burden for Pillar 2 taxpayers, it is essential in this context to ensure that the proposed application of the GAAR to Pillar 2 taxes will be regarded as sufficient to address the Pillar 2 "integrity concerns" currently being discussed at OECD level. An outcome whereby specific Pillar 2 "integrity measures" would need to be applied on top of the ATAD GAAR would undermine the objective of simplification and further increase the overall complexity of the Pillar 2 framework. We would therefore appreciate the Commission's explanation of the added value to adopt this amendment to the ATAD GAAR before completion of the relevant OECD discussions on "integrity measures", as well as confirmation of how duplication or inconsistencies with those future integrity measures (whose exact content and scope remains yet to be discussed at OECD level) would be avoided.

d) Article 4 of the Proposal - Controlled foreign Company rule
   1. exemptions P2 entities, SMEs and stand-alone entities

While the CFC rules and the Pillar 2 Income Inclusion Rule are not fully aligned from a technical perspective, they still pursue broadly comparable policy objectives, namely the prevention of profit shifting and the taxation of low-taxed income. In practice, the concurrent application of both regimes may therefore give rise to overlapping compliance obligations and additional administrative burdens for affected taxpayers. In our view, the proposed exemption for entities subject to the Pillar 2 framework represents therefore a pragmatic and proportionate response to the broader competitiveness challenges facing the EU, including those arising in the context of the Side-by-Side agreement.

Against this background, we consider that the proposed exclusions as regards Pillar 2 entities, SMEs, and stand-alone entities strike an overall appropriate balance between safeguarding the anti-abuse objectives of ATAD and avoiding unnecessary regulatory and compliance burdens. In our view, these targeted carve-outs contribute to enhancing the EU's competitiveness and investment attractiveness, while ensuring that ATAD remains proportionate and focused on areas where tax avoidance risks are most significant.

2. Deletion of Model B

It is proposed to exclude Model B from the scope of the CFC rules, thereby removing the discretion currently afforded to Member States to choose between Model A and Model B when implementing the ATAD provisions.

We have significant concerns regarding this proposal. This measure can not be reconciled with the stated objective of reducing administrative burdens for both taxpayers and tax administrations, more particularly for those who have implemented Model B. In this context, we have not heard a convincing explanation as to why Model A would be inherently preferable to Model B. The mere fact that less Member States have retained Model B in their ATAD implementation is not sufficient. In addition, we do not agree with the statement in recital 41 of the Proposal according to which the removal of Model B would be necessary to "*simplify the CFC framework, enhance legal certainty*".

The option for Member States to adopt either Model A or Model B constituted a key element of the political compromise that enabled the unanimous adoption of ATAD in 2016. As such, the proposed removal of this flexibility calls into question a deliberate policy choice made by the Union legislator at that time.

Furthermore, requiring Member States that currently apply Model B to transition to a different framework will entail significant legislative and administrative adjustments at national level, while also creating additional compliance obligations and legal uncertainty for affected taxpayers. Rather than simplifying the application of the CFC rules, the proposal will therefore result in increased complexity at both administrative and taxpayer level.

Accordingly, we firmly consider that the existing flexibility allowing Member States to choose between Model A and Model B needs to be preserved, as it reflects a carefully balanced policy choice that formed an integral part of the consensus underlying the adoption of ATAD in 2016.

e) Article 4 of the Proposal- Anti-Hybrid rule

We understand that the Proposal envisages the removal of the rules relating to "imported hybrid mismatches". From our perspective, this proposed measure would *a priori* move in the right direction.

The imported hybrid mismatch rules are indeed particularly complex to apply in practice, often requiring extensive information gathering and analysis across multiple jurisdictions. Consequently, their removal could be considered to be in line with the broader simplification objective pursued by the Proposal.

IV. Amendments to Directive 2009/133/EC - Tax Merger Directive ("TMD")

Our technical analysis of proposed amendments to the TMD is currently ongoing and has not yet been finalised. We will revert to the Presidency in due course.

V. Amendments to Directive (EU) 2017/1852 - Dispute Resolution Mechanism Directive ("DRM")

At this stage, the proposed amendments to the DRM remain subject to an ongoing technical analysis. Nevertheless, we would appreciate already at this stage further clarifications on the points set out below.

1. Article 5 – Council implementing act

While new Article 19a of the DRM envisages that "*further technical or procedural rules*" may be specified through a Council Implementing Act, we consider that additional information regarding the intended scope and content of such rules is needed.
In particular, greater detail on the specific measures, adjustments or procedural changes that are considered necessary to ensure a *"consistent and streamlined application*" need to be provided before we can assess whether the proposed Council implementing act would be appropriate.

2. Article 5 – Statistical data

We note that the Proposal introduces a new Article 21 in the DRM, requiring the transmission of statistical data. To facilitate an adequate assessment of the proposed obligation, we would appreciate further information, notably with respect to the type of data expected to be reported, the level of detail required and the practical implementation of the reporting process.

VI. Amendments to Directive (EU) 2025/50 ("FASTER")

At this stage, we are still assessing the impact of the proposed amendments to a legislative framework that has not yet entered into application and whose practical effects have therefore not yet been assessed in practice.

VII. Horizontal comment – delegated acts

As a final remark, we would like to make a broader and horizontal observation regarding the proposed use of delegated acts with respect to the TMD, IRD and the PSD.
As a matter of principle, we have reservations regarding the recourse to delegated acts where the proposed amendments concern elements that affect the substance, scope or essential characteristics of a legislative instrument. These concerns are particularly relevant in the field of direct taxation.

In the present case, the proposed amendments relate to the personal scope of the relevant directives, notably for example, through modifications to the categories of entities eligible to benefit from their provisions. In our view, the determination of the entities falling within the scope of application of a directive constitutes an essential element of the legislative framework that can not be regulated through delegated acts.

In addition, we note that the annexes to the TMD and PSD are proposed to be substantively changed as compared with the currently applicable versions containing the lists of eligible companies. In particular, the mechanism allowing for the dynamic extension of the list of eligible company forms in some Member States has been removed.

We would be interested in understanding why the Commission did not consider introducing a general dynamic clause applicable to all Member States as an alternative mechanism for updating the lists of eligible entity forms. Such an approach could provide a more consistent and future-proof framework, ensuring that newly introduced or amended company forms are automatically taken into account where appropriate. It could also contribute to enhancing legal certainty, ensuring equal treatment across Member States and reducing the need for recurring legislative amendments to update the annexes of the directives.

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HUNGARY

MAGYARORSZÁG

Hungarian Questions regarding

Proposal for a COUNCIL DIRECTIVE amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU

AGS Tax OMNIBUS XI.

We thank for the Irish Presidency following the AGS Working Party meeting of 13 July 2026, to provide opportunity for Member States to submit written questions and we greatly appreciate the European Commission's efforts to provide written responses.

In general Hungary approaches the Tax Omnibus negotiations constructively and supports the simplification of corporate tax directives, the reduction of administrative burdens, and efforts to strengthen competitiveness.

We consider it important that direct tax simplification measures support SMEs while also delivering tangible benefits for larger businesses. Simplification could support businesses to devote more resources to growth, innovation, and productivity.

We highly appreciate the Commission's early expert consultations with Member States prior to the publication of the Tax Omnibus proposal. With our general support for the objectives, Hungary looks forward to having a more detailed exchange of views on three specific topics: firstly, on the defensive measure regarding double non-taxation under the Interest and Royalties Directive; secondly, on the choice of model for Controlled Foreign Company (CFC) rules under ATAD; and finally, on the tax policy and technical details of R&D incentives.

We welcome the start of discussions on the Tax Omnibus proposal and we support regular, detailed updates to the High Level Working Party (HLWP) on the progress of the negotiations.

Interest and Royalties Directive (IRD)

Paragraph 5 of Article 1

Regarding the proposed anti-double non-taxation safeguard in paragraph 5 of Article 1 of the Omnibus proposal, we have the following comments and questions.

1. Obligations arising under respective double tax treaties

In particular, where an interest or royalty payment arises in a Member State and is made to a recipient resident in a third-country jurisdiction that imposes no corporate income tax, or a zero nominal tax on such income, paragraph 5 of Article 1 would require the Member State either to levy withholding tax on the payment or to deny the payer a deduction for the corresponding expense for tax purposes.

To levy withholding tax that is not in line with the provisions of the respective tax treaty may result in a conflict. If, instead, it is denied for the payer to deduct the payment under its domestic law, this would result in the increase of the payer's taxable base by reference to the amount of the interest or royalty paid, thereby effectively subjecting the payment to tax in the payer's jurisdiction. In our view it can also lead to a conflict with a tax treaty, where the source state is precluded from imposing tax on the payment or the tax charged shall not exceed a certain limit. Non-discrimination rules of a treaty (in para 4. “interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, or the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State”) also need to be taken into account. This appears to raise the question whether paragraph 5 of Article 1 is compatible with the treaty allocation of taxing rights.

Question

How should Member States reconcile these rules with the non-discrimination provisions typically contained in Article 24(4) of tax treaties, which generally require cross-border payments to remain deductible under the same conditions as comparable domestic payments?

2. Denial of deductibility

The proposal appears to introduce the denial of deductibility as an automatic consequence once the relevant conditions are met. However, it is not entirely clear whether this consequence is intended to apply irrespective of the commercial rationale of the transaction or whether it is aimed primarily at arrangements presenting tax avoidance concerns. Preliminary we consider that it would it be more appropriate to incorporate an explicit business purpose or anti-abuse test into the Directive in order to ensure a more proportionate application of the measure.

Question

Could the Commission clarify whether the denial of deductibility is intended to apply irrespective of the commercial substance of the transaction, or whether it should be limited to arrangements that are considered non-genuine, artificial or primarily tax-driven?

3. Definition of no-tax jurisdictions

The proposal refers to jurisdictions that do not impose corporate income tax or apply a nominal corporate income tax rate of zero. In practice, however, domestic tax systems vary considerably and may include sector-specific regimes, territorial taxation, exemptions or other features that make the application of this concept less straightforward. To our understanding a more precise and harmonised definition of jurisdictions falling within the scope of this provision could support the legal certainty.

Question

Could the Commission clarify whether the assessment is based solely on the statutory corporate income tax rate, or whether specific exemptions, territorial tax systems and preferential regimes should also be taken into account in determining whether a jurisdiction qualifies as having no corporate income tax or a zero nominal corporate income tax rate?

4. QDTT status and financial benefit

The proposal introduces conditions referring to QDTT status and to direct or indirect financial benefits linked to a QDTT. While these concepts are central to the operation of the rule, their practical application may prove challenging, particularly in complex multinational group structures where benefits may arise indirectly or through multiple intermediate entities. Additional clarification could contribute to a more consistent and predictable application across Member States. We would greatly appreciate it if the proposal could clarify how the concepts of QDTT status and direct or indirect financial benefit are intended to work in practice.

Question

Does the Commission plan to provide additional guidance or objective criteria for assessing whether a financial benefit is sufficiently connected to a QDTT?

Anti-Tax Avoidance Directive (ATAD)

ATAD CFC

1. Rationale for removing Member State discretion

The proposal would remove the long-standing option for Member States to apply the non-genuine arrangement approach (Model B) and instead require all Member States to apply only Model A. While the recitals state that Model B provides limited additional value and overlaps with transfer pricing rules, no detailed evidence or impact assessment appears to be presented demonstrating that a mandatory harmonised approach would produce better outcomes than preserving Member State flexibility. It is not clear what policy objective would not be achieved by allowing Member States to continue applying Model B where they consider it more appropriate. It is also not clear why Model A was selected as the common approach instead of Model B.

Recital (40) states that Model B offers limited additional value because of its interaction with transfer pricing rules. However, transfer pricing and CFC rules pursue different legal objectives and do not always address the same situations. It is not clear to us why the proposal concludes that Model B provides only limited additional value beyond transfer pricing rules.

In our view given the objective of the Omnibus proposal the simplification and greater legal certainty, these objectives might also be achieved while preserving Member States' existing policy choices with retaining Model B as an optional regime for Member States that already apply it, while introducing Model A as the default option for Member States implementing CFC rules in the future. Such an approach could preserve simplification without requiring unnecessary legislative changes in Member States that have an established Model B system.

Question

What practical impact is the mandatory replacement of Model B with Model A expected to have for taxpayers and tax administrations? Is the amendment expected to result in any material changes in practice? Has the Commission identified specific cases where Model B has led to unnecessary duplication without producing additional anti-abuse benefits?

ATAD R&D

1. Wording of R&D allowance

Generally, we welcome the proposal on R&D incentive. Preliminary we see that this topic will worth having detailed discussions.

The wording of the proposed Directive appears to point in different directions. While the operative provisions seem to describe an accelerated depreciation mechanism, other elements of the proposal, including the terminology used ("R&D allowance") and the specific EBITDA adjustment, could also suggest a different interpretation. This may create uncertainty for Member States when implementing the Directive and could lead to divergent national approaches.

Question

It would be helpful if the text clarified whether the proposed R&D allowance is intended to operate as an accelerated depreciation mechanism or as a genuine super-deduction.

2. Early-stage innovative companies

The objective of the proposal is to strengthen innovation and competitiveness across the EU. However, deduction-based incentives generally provide their greatest benefit to profitable taxpayers, whereas early-stage innovative companies often operate at a loss during the initial years of R&D investment. This raises the question whether the proposed mechanism is the most effective way to support the businesses that are most in need of financing.

Question

Has the Commission assessed whether the proposed allowance provides comparable economic benefits to profitable MNE groups and to early-stage innovative companies that are not yet generating taxable profits?

3. EBITDA adjustment

We understand that the proposed R&D allowance is intended to operate as an accelerated depreciation mechanism rather than as a super-deduction. If that is the case, we are trying to better understand the rationale behind the corresponding EBITDA adjustment.

Since EBITDA is calculated before depreciation and amortisation, accelerated depreciation would not normally reduce EBITDA in the first place. Therefore, an explicit add-back of qualifying R&D expenditure would not appear necessary to preserve the EBITDA used for the interest limitation rule. We would therefore appreciate some clarification on the purpose of this provision and whether it is intended merely as a drafting clarification or serves another policy objective.

Question

If the R&D allowance is intended to operate solely as an accelerated depreciation mechanism, depreciation would not normally affect EBITDA, as EBITDA is determined before depreciation and amortisation. In those circumstances, what specific concern is the adjustment intended to address? Is it included merely for the avoidance of doubt, or is it intended to accommodate particular accounting or tax systems where the calculation of EBITDA could otherwise be affected?

4. Minimum harmonisation

Since the proposal establishes only a minimum level of harmonisation, we understand that the proposal would allow Member States greater flexibility in implementing the allowance where domestic tax systems already provide equivalent or more favourable R&D incentives.

Question

Could the Commission confirm our understanding on the minimum harmonization? Also could the Commission confirm that MSs may opt for implementation of the R&D allowance or can apply the existing R&D incentives in current form?

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NETHERLANDS

NEDERLAND

Written Input by the Netherlands on the Tax Omnibus Proposal

The Netherlands would like to thank the Irish Presidency for the opportunity to provide written comments on the proposal for a Tax Omnibus Proposal. Generally, we appreciate the Commission's efforts to simplify EU tax legislation, reduce administrative burdens and strengthen the competitiveness of the European Union. At the same time, it remains important that simplification does not undermine the effectiveness of existing anti-avoidance measures or create unintended distortions between Member States. Furthermore, the budgetary consequences for Member States should be taken into account. Please note that the Netherlands maintains a parliamentary scrutiny reservation. Therefore we can only comment on technical aspects of the proposal.

Interest & Royalty Directive

On the Interest & Royalty Directive ('IRD') we have the following comments and questions:

- We very much welcome the simplification of procedures in the IRD, and also in the Parent-Subsidiary Directive, but we believe that there is an omission. To our understanding the proposed practice works as follows:
  1. Taxpayers self-assess whether they are eligible for the exemption. If at the time of self-assessment it is unclear whether the exemption applies, then,
  2. If the underlying instrument is publicly-traded the taxpayer makes use of the FASTER procedures, if not then,
  3. The taxpayer makes use of the national refund procedure.
- On the third step we receive a lot of stakeholder feedback that these refund procedures can be the taxation form of Hotel California: You can check out anytime you like, but you can never leave. Meaning that these can be procedures in which, as long as no decision is made, the taxpayer has no options to appeal and is stuck in a never-ending procedure.
- We would therefore suggest that a Member State must react within a year of a refund request with an appealable decision. If no decision is made, the request should be considered denied, and an appeal can be filed against this denial.

- Article 1(3) Omnibus amends article 3(a) IRD to include payments attributable to permanent establishments. This is a helpful clarification but only solves one problem in which the exemption is denied in practice. Under certain tax consolidation regimes, the receiving company is not itself subject to one of the listed taxes, although the consolidated group is. This may unintentionally deny the exemption. Could the Commission clarify whether it intended to exclude companies forming part of a tax consolidation regime from the scope of the exemption? If not, this amendment could be realized by adding the following wording (in *italics* below) in article 3(a)(iii):

"which is subject, *either itself or as part of a tax consolidation regime,* to one of the following taxes without being exempt"

- Article 1(5) Omnibus (article 5(3) IRD) introduces measures to ensure that an interest or royalty payment to a low-tax third country are either subject to levy of withholding taxes or subject to a denial of deduction. Is the assessment of a low-tax jurisdiction based solely on the applicable statutory corporate income tax rate, or does it also take into account the design of the tax system, such as a jurisdiction which has a territorial tax regime, i.e. only taxes income generated within its own borders, leaving foreign-sourced income exempt, a country against which such countermeasures should be taken?

- The proposed denial of deduction in Article 1(5) Omnibus (article 5(3) IRD) could amount to treaty override and therefore raises concerns regarding its compatibility with existing bilateral tax treaties and the principle of good faith between treaty partners. The Netherlands would welcome the Commission's views on this point.

Tax Merger Directive

We support the changes proposed in the Tax Merger Directive ('TMD') but note some technical amendments, primarily to ensure consistency with the terminology and concepts used in the Corporate Mobility Directive (CMD):

- Article 15 TMD, the anti-abuse provision, should be amended to include the new forms of cross-border operations.
- The terminology of newly introduced operations does not match that of the Corporate Mobility Directive ('CMD'), we believe that it should be aligned on the following points:
    1. recipient company is used in the TMD but receiving company is used in the CMD;
    2. "a company being divided" is introduced in the TMD but lacks a definition. The CMD has a definition so reference could be made to that definition;
    3. the definition of partial division in the CMD and TMD do not align.
- A division by separation is now included in "division" but should be included in partial division as the demerging entity is not dissolved.

Parent-subsidiary Directive

- The Parent-Subsidiary Directive ('PSD') does not include the requirement that the recipient should be the beneficial owner to the dividend. A number of Member States do have this requirement. Is the Commission of the opinion that the Member States may have this requirement in the situation where there is no threshold in the PSD?

- Investment vehicles are, in many cases, not subject-to-tax. Could the Commission clarify whether Member States may continue to deny the withholding tax exemption in such situations, including where the payment is made indirectly through another EU Member State?

- Can the Commission confirm that the proposed wording "subject to tax" is not intended to alter the interpretation established by the Court of Justice of the EU in Aberdeen (C-303/07), and that no substantive change to the current scope of the Parent-Subsidiary Directive is intended?

- We believe that, similar to the IRD, it should be clarified that a company included in a tax consolidation regime is considered to be subject-to-tax.

ATAD

<u>R&D immediate expensing</u>

- Why has the Commission chosen for immediate expenditure instead of discretionary depreciation? Given the differences in accounting and tax systems across Member States, we would welcome allowing Member States the option to opt for one of the two systems.

- Real estate is excluded from immediate expensing. Unless it is a dwelling primarily used for R&D. Could the Commission clarify which situations it intends to cover with this exception? In our view, a dwelling is a person's home which should generally not be applicable for corporate taxpayers. Furthermore, we would like the option to exclude dwellings from immediate expensing, which would significantly help mitigate the budgetary impact of this proposal.

<u>Interest limitation rule</u>

- Article 4(2a) ATAD introduces an exemption for low risk third party loans. Why has the Commission chosen for a loan from an entity outside of the accounting group and not for, e.g., a loan from a financial undertaking? What evidence supports the assumption that loans outside the accounting group are inherently low risk? Our experience with our previous thincap rule is that an accounting group can be easily manipulated.

- Furthermore, article 4(2a) sets the requirement that the loan is used to finance exclusively the own activities of the borrowing entity itself. Why has the Commission chosen for 'borrowing entity' instead of taxpayer?

- In article 4(4) the wording is amended from 'long-term public infrastructure project' to 'long-term public-benefit project'. The definition in the Directive has not changed however recital 33 it says: "*… the scope of that exclusion should be extended to cover a broader range of public-benefit projects, including those contributing to the Union's common priorities in particular in relation to climate, digitalisation, social and economic resilience, energy security and social and affordable housing, including the construction, transformation and renovation of buildings for social and affordable housing purposes*."

- The proposed defence exemption, article 4(4a) raises questions regarding companies that carry out both defence-related and civilian activities (dual-use companies). Could the Commission clarify how the scope of the exemption should be determined in such cases? In particular, should eligibility be assessed at entity level or activity level? The Netherlands would welcome further guidance to ensure a consistent and workable application across Member States.

- What does the Commission intend with the inclusion of article 4(9) ATAD?: '*For the purposes of this Article, Member States shall not maintain or introduce, in their national law, any provisions with a subject-matter that falls within the scope of this Article if they lay down rules that diverge from those laid down in this Article.'*

Does this provision prohibit Member States from maintaining or introducing other anti-base erosion measures that operate alongside Article 4? Does this mean that Member States will have to abolish other non ATAD related interest limitation rules? Or have to allow deduction of all interest paid up to €3 million or 30% EBITDA?

<u>General anti-abuse rule</u>

- What is the envisioned scope of the expansion of the GAAR?

The explanatory memorandum states: "all direct taxes that companies are subject to, in particular to ensure that it applies to withholding taxes or top-up taxes resulting from Directive (EU) 2022/2523". However, the wording of the article itself is so broad that it could apply to any direct tax or levy falling outside the scope of the EU company tax directives. We would welcome clarification in the article that it is only applicable to the PSD, IRD and Pillar 2.

- We would welcome clarifications by the Commission on:

1. How does the GAAR relate to SAARs in the Directives mentioned above? Can the Commission confirm that the specific anti-abuse rules should operate as lex specialis vis-à-vis the GAAR?
2. How does the GAAR relate to CJEU jurisprudence, especially the Danish cases and Nordcurrent Group UAB, C-228/24? Does the proposal merely codify existing CJEU case law or is it intended to extend it?

Concluding remarks

The Netherlands looks forward to constructive technical discussions on the proposal. While we support the Commission's objective of simplifying EU tax legislation and strengthening the competitiveness of the internal market, it is important that simplification is carefully balanced against the need to preserve effective anti-avoidance safeguards, ensure legal certainty and respect the different implementation choices that Member States have made within the framework of ATAD. Also, consideration should be made on whether the significant budgetary impact is an effective and efficient way of boosting competitiveness. The Netherlands would therefore welcome further explanation of the evidence supporting the expected competitiveness gains in relation to the estimated budgetary impact of the proposal.

The Netherlands looks forward to the Commission's further explanations during the negotiations.

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AUSTRIA

ÖSTERREICH

Austrian questions and comments regarding Omnibus XI (Taxation)
– 24 July 2026

Please note that Austria is still analysing the proposal. The following comments are therefore of preliminary nature.

I. IRD

Article 1 (3) - permanent establishment as the payer of interest or royalties

- As regards to Art 1 (3) IRD, we would like to ask for further clarification as to what has been the exact reason for shifting from relying on the tax deductibility of such payments to the expense being incurred for the respective PE (if possible, supported with examples).

Article 1 (7) in conjunction with Article 3 – material scope of the IRD

- As regards the proposed amendment to Art 1 (7) in conjunction with the proposed amendment to Art 3, we consider the extension of the material scope of the IRD critically. Interest and royalty payments are usually tax deductible for corporate income tax purposes and bear an inherently high profit shifting risk.
- The proposed safeguard measure in Art 5 (3) includes a zero-tax requirement meaning payments which are subject to a low corporate tax would not fall within the scope of the safeguard measure. Furthermore, the safeguard measure only applies to payments to third country jurisdictions. A robust safeguard measure is needed.
- We are currently analysing the safeguard measure in more depth and would, depending on how the discussion around the IRD generally evolves, come back with further remarks to it.

Article 1 (11) – procedural requirements

- As regards to Art 1 (11) [new] IRD, we would like to inquire which actions by Member States would exactly be encompassed by this proposed amendment, especially as regards to the meaning of „*any (…) administrative procedure verifying the requirements (…)“*.
- For the relief at source, would the proposed para 11 still allow Member States to require the payer of interests/royalties to be in possession of confirmations that the requirements provided by the IRD are fulfilled, while the actual possession and the confirmations themselves would only be subject to ex post controls?
- If such practice would be permitted, why would the current Art 1 (11) IRD then need to be deleted?
  For the sake of clarity, the current Art 1 (11) IRD should not be changed in the proposed manner but rather include a clarification that such confirmation should only be subject to ex post controls.

II. TMD

Article 4 (2) [AT Addition]

- Apart from the proposed amendments to the TMD, AT would like to draw the attention to Art 8 Tax of the Merger Directive, which does not allow member states to tax the exchange of shares in course of certain business restructurings for itself, even if Member States taxing rights are lost in course of that restructuring. Therefore, eg a contribution (Einbringung) of shares in exchange of shares in a receiving EU-company can take place without taxation, even if the taxing right in the transferred shares are lost in course of the contribution. Generally, we are of the opinion, that this concept laid down in Art. 8 of the merger directive on the one hand contradicts the idea of the exit taxation as laid down however in the ATAD on the other hand. The ATAD exit taxation rule, as a minimum standard within the EU, obliges member states to tax in case of lost taxing rights as well as it obliges the other state gaining a taxing right to grant a step up. By doing so, the ATAD ensures that member states can the tax hidden reserves arising in their particular tax sovereignty. In our view, Art 8 contradicts this idea laid down in the ATAD. Therefore, we suggest overthinking Art 8 to ensure that member states can exercise their taxing rights at the time it is restricted in order to overcome these tensions between merger directive on the one hand and ATAD on the other hand. Further, the standards of Art 8 merger directive open room for undesirable tax planning and forces Member States to implement special rules granting that their taxing right can be exercised at least once in course of a subsequent acquisition. Giving up Art 8 would not only help implementing a uniform standard for exit taxation, it would also contribute to simplification.

III. PSD

Art 1 in conjunction with proposed deletion of Art 3 - material scope of the PSD

- As regards the proposed amendment in Art 1 (1) PSD in conjunction with the proposed deletion of Art 3, we consider the proposed extension of the material scope of the PSD critically.

Art 5a [new] – procedural requirements PSD

- As regards the proposed Art 5a [new] PSD, we would like to inquire which actions by the Member States would exactly be encompassed by this proposed amendment, especially as regards to the meaning of „*any (…) administrative procedure verifying the requirements (…)*".
- For the relief at source, would the proposed Art 5a [new] still allow Member States to require that the payer of profit distributions to be in possession of confirmations that the requirements provided by the PSD are fulfilled, while the actual possession and the confirmations themselves would only be subject to ex post controls?
- For the sake of clarity, Art 5a PSD should be aligned with the current wording of Art 1 (11) IRD, potentially with an addition that such confirmation should only be subject to ex post controls.

IV. ATAD

Article 4 (4) - CHAPTER Ia, RESEARCH AND DEVELOPMENT

- In accordance with the subsidiarity principle laid down in Article 5(3) TFEU, action at EU level may be taken only when the envisaged objectives cannot be achieved sufficiently by Member States acting alone and in addition, when, by reason of the scale or effects of the proposed action, such objectives can be better achieved by the EU.
- The ATAD introduces a set of common anti-tax avoidance rules to address risks of base erosion and profit shifting. A minimum standard on the deductibility of R&D expenditures does not meet the requirements of a measure to prevent tax fraud, nor is the measure covered by the principle of subsidiarity. Additionally, the inclusion of a new set of rules does add additional complexity and this defeats the objective of administrative simplification. The inclusion of such guidelines on an incentive is therefore rejected.

Article 4 (5) lit c – exclusion of low-risk third-party loans

- The Tax Omnibus introduces the **obligation** to apply the interest limitation set at **30%** of a company's EBITDA and the de-minimis threshold of **EUR 3 Mio**. Furthermore, an obligation concerning the application/transposition of **carry forward** and **group escape rules** is introduced.

- The Impact Assessment of the EC states, that *the current interest limitation set at 30% of a company's EBITDA is determined in a way that should ensure that most third-party debt is deductible,* leading to the conclusion that the original aim of the interest limitation rule was already to limit excessive interest payments among entities which are associated enterprises and it was deliberately accepted that intra-group-interest was not tax-deductible in full terms. This leads to the conclusion, that the revised scope of the 30% threshold – which would only apply to intra-group financing –requires an evaluation in light of the changed circumstances.
  The Impact Assessments refers to recent data, which shows *that a 30% threshold would allow most groups to fully deduct their* ***third-party interest expenses****. As a result, there is no need to adjust the 30% threshold to retain its objective*.
- The conducted external study (WK11192/26) states that *the interest limitation rule's multiple carry-forward options (up to indefinite carry-forward of unused capacity) and group escape clauses mean that* ***many groups can manage to defer or avoid denial of deductions <u>in practice</u>.***

• The aforementioned carve outs which will become mandatory, lead to the question as why the Cion thinks the **thresholds are still fit for purpose** in combination with the exclusion of third-party debt.

Article 4 (5) lit d – indexation of de-minimis threshold

- The indexation of the de-minimis threshold leads to a new threshold for every year, which does not contribute to simplification. Consequently, companies must adhere to a different amount every year.
- A fixed threshold provides various advantages, this is also the reason as to why direct taxation files rarely include indexed thresholds. This would lead to the departure from currently static definitions of thresholds in direct taxation directives. Furthermore, we are questioning the added value.
- The purpose of the Tax Omnibus Directive should be simplification and decluttering. Adding further carve-outs, like the indexation of the threshold or a new exception for defence would in our opinion contradict the goal as it adds further complexity to the rules.
- We would like to know which threshold will be applicable for companies with fiscal years different to the calendar year.

Article 4 (5) lit g – carve out concerning defence products

- The purpose of the Tax Omnibus Directive should be simplification and decluttering. Adding further carve-outs, like the indexation of the threshold or a new exception for defence would in our opinion contradict the goal as it adds further complexity to the rules.

Article 4 (5) lit j <u>and</u> Article 4 (7) lit d– provisions on the maintenance or introduction of national measures

- While Austria supports the objective of ensuring that the ATAD standard is not undermined by national measures that would jeopardise the objective of preventing BEPS, AT strongly opposes the inclusion of a paragraph which generally prohibits Member States from maintaining or introducing measures in their national law.
- AT is concerned that the proposed "no-divergence" clauses would fundamentally alter the nature of the ATAD as a "minimum standard Directive". The ATAD was conceived as a minimum harmonisation directive, explicitly allowing Member States to maintain or introduce stricter national anti-abuse measures. The proposed provision would remove this flexibility by preventing Member States from maintaining or introducing more restrictive

national rules. AT is concerned that this would require Member States with well-established and effective rules to lower their existing level of protection against base erosion, thereby restricting their ability to address tax policy considerations.

- Furthermore, AT questions the necessity and proportionality of introducing a general "no-divergence" clause, as such an approach appears to go beyond what is necessary to achieve the objectives of the Directive and therefore raises concerns as regards to the principle of proportionality. Furthermore, we believe that a general "no-divergence" clause might also conflict with the principle of subsidiarity since Member Staes are in the most suitable position to decide on the necessity of potential additional measures.

Article 4 (7) lit b – CFC rules (financial undertakings)

- Referring to Recital 42 it is clear Member States are required to introduce such exemption for financial undertakings and an entity/pe.
- Deleting the „*or*" in the text of the Directive would make this more clear.

Article 4 (7) lit d – CFC rules (SMEs)

- CFC rules only apply to categories of income and do not apply if the foreign company carries on a substantive economic activity.
- Typically, SMEs do not have huge amounts of passive income, which exceeds one third or more of the income accrued (which will become mandatory with the Tax Omnibus).
- In the Impact Assessment accompanying the Tax Omnibus Directive (IA) it is stated that CFC rules are rarely in effect applied to SMEs. The rules have, however, deterrent effects.
- Therefore, we would like to ask if there is still a **necessity** for this **additional carve out** from the CFC rules, as Model A and Art 7 (3) become mandatory. The external study underlines that point by stating that the vast majority of SMEs in the EU, which are purely domestic companies, are mostly impacted by the Interest Limitation Rule. Furthermore, the IA mentions that CFC legislation is relevant to an extremely small population out of the overall number of SMEs.

Article 4 (7) lit d – CFC rules (Pillar II)

- We are interested in the choice of **wording** concerning groups which will be excluded from the scope of CFC Rules, as some groups will „*fall within the scope of*" Pillar 2, but will not be subject to the minimum tax itself (because of carve outs, safe harbour rules etc) and would be happy about further explanations on the wording used.
- Furthermore, we are interested why the condition *that "the entity or pe is subject to a qualified domestic top-up tax and no refund or direct or indirect financial benefit is granted in relation to that tax"* only applies to UPEs located in a jurisdiction with a qualified side-by-side regime and not to every MNE group. From our point of view these criteria (existing QDMTT and no refund or direct/indirect refund) should also be relevant for applying the CFC-exception to MNE groups that are not parented in SbS regimes.

Article 4 (9) – Imported Hybrid Mismatch rules

- As the external study on the ATAD shows, *"the Directive has changed corporate behaviour, mainly through a deterrent rather than corrective effect"*. In General, *"anti-avoidance measures are designed not only to detect and counter abusive arrangements, but also to discourage taxpayers from entering into such arrangements in the first place. As a result, successful deterrence often manifests itself through the absence of tax planning structures rather than through observable enforcement actions or tax adjustments. This challenge arises across several ATAD provisions, in particular with regards to CFC and* ***Hybrid Mismatch rules".***
- In our perspective this effect can be observed particularly when applying the regulations on hybrid mismatches. Therefore, we would argue against a deletion of the measure on **imported hybrid mismatches** as it serves a deterrent purpose.

V. DRMD

Article 3 – Complaint

- **Ad Art 3 (1):** We seek clarification as to whether it is intended that the proceedings under the DRMD potentially start on different dates within the 30 calendar-day submission window in the respective Member States concerned.
- **Ad Art 3 (4):** As regards the proposed amendment concerning the request of specific additional information, we would like to inquire how this paragraph generally relates to Art 17 penultimate paragraph. Is Art 17 in this regard considered to be *lex specialis* to Art 3 (4)?

Article 4 (2) [AT Addition]:

- We recently came across another issue concerning Article 4 (2). In this regard, we are wondering what happens in case the affected person only accepts the decision and provides evidence that action has been taken to terminate other proceedings within the prescribed timeframe of 60 days after the date on which the decision was notified to the affected person in one Member State but not the other Member State(s) concerned. What are the consequences of the affected person's inconsistent behaviour? Shall the agreement in such cases be implemented
  - either only in the Member State in which the approval requirements were met within the timeframe of 60 days, or
  - shall the agreement not be implemented in any of the Member States concerned?

  We suggest clarifying in Art 4(2) that each CA concerned should be informed that the affected person has accepted the decision and has provided evidence that action has been taken to terminate other proceedings (if applicable) within the prescribed timeframe in each Member State concerned. Consequently, our current understanding is that the decision should not be implemented in all Member States concerned until these conditions are fulfilled. We remain open as to whether the information on whether or not these conditions have been fulfilled should be exchanged directly between the CAs concerned before the decision is actually going to be implemented or whether, when notifying one CA, the affected person should provide a copy of the relevant documentation to the other CAs concerned (similar as proposed under Art 3 (4)).

Article 5 – Competent authority decision concerning the complaint

- **Ad Art 5 (1) – grounds for rejecting a complaint:** Concerning the grounds for rejecting a complaint, we would like to inquire whether the updated list is considered to be of illustrative or exhaustive nature. In that regard, from our perspective, the current wording of Art 5 (1) 1st sentence should be left unchanged *("The competent authority of a Member State concerned may decide to reject a complaint within the period provided for in Article 3(5) if:").*
- **Ad Art 5 (1) – relation between a deficiency, the possibility to remedy and a possible rejection of the complaint:** The current wording might create a conflict, since the CAs would be required to give the affected person the possibility to remedy any deficiency while for some of them, remedy might not be possible. For instance, when it comes to the requirement to submit the complaint within 30 calendar days in both EU Member States, the failure to do that would not constitute a rectifiable deficiency.

  We would like to underline that it should be clearly stated what is considered to constitute a deficiency, which deficiencies can be remedied, and conversely which deficiencies are not rectifiable and, should they occur, would directly result in a rejection of the complaint, with the possibility for the affected person to resubmit the complaint, provided that the three-year period set out in Art 3 (1) has not expired.
- **Ad Art 5 (1) – possible limitations to rejecting a complaint**: We would encourage a clear rule at what point in the process it is no longer possible to reject a complaint based on considerations of admissibility. Given that it is not mandatory for the competent authorities

of the Member States concerned to consult each other before deciding on admissibility (see explicitly the last sentence of Art 3 (5)), authorities might discover that complaints were not submitted with the same information to each authority (see newly included Art 5 (1) f) after having accepted the complaint. Is rejection based on Art 5 (1) f still possible once a complaint was accepted?

Article 8 – The Advisory Commission – Art 8 (5) – objection against an independent person:

- How do Art 8 (5) 2nd subpara and the new Art 8 (5) 3rd subpara relate to each other?
- Does this addition only relate to cases in which the CAs agree on how to solve the question in dispute fully aligned with the opinion of the Advisory Commission, or does this addition mean that an objection can only be raised until the final decision in accordance with Art 15 is adopted, disregarding whether the content of the final decision follows the opinion entirely or not?
- We believe that the wording of the proposed Art 8 (5) 3rd subpara should be more closely aligned with the existing wording in Art 8 (5) 1st subpara. Therefore, Art 8 (5) 3rd subpara should begin with the wording "Any competent authority concerned". Also, we believe it would be more appropriate to rely on the word "*may*" instead of CAs "*shall raise any objection (…)*".

Article 10 (1) – The Alternative Dispute Resolution Commission

- From our perspective, the proposed amendment is not clear as for its relation to the next stages of the procedure after a decision of an Alternative Dispute Resolution Commission on the acceptance of the complaint has been delivered. Indeed, in case of the Advisory Commission, the Directive foresees that where none of the competent authorities has requested initiation of the MAP within 60 days of the date of the notification of the decision of the Advisory Commission, the Advisory Commission shall provide an opinion on how to resolve the question in dispute as provided for in Article 14 (1). It is not clear whether a comparable approach would apply if an Alternative Dispute Resolution Commission has dealt with the admissibility of the complaint, but the CAs have not engaged in the resolution of MAP within the prescribed time frame afterwards. It should be considered whether an Alternative Dispute Resolution Commission should provide an on-merits opinion in cases where CAs fail to initiate the MAP-stage. In this context, additional wording, which is similar to the two last sentences of Art 6 (2), could clarify the above-described issue either directly in Art 10 or as a cross-reference to Art 6 (2).

Article 16 (5) – Termination of other MAP/dispute resolution proceedings:

- Considering the proposed amendment to Art 10 (1), we believe that the wording *"when the complaint is rejected by all the competent authorities or the Advisory Commission"* should also include a reference to the Alternative Dispute Resolution Commission in Art 10.

Article 17 – Special provisions for individuals and smaller undertakings

- We would like to inquire what is encompassed by the phrase "*copy […] of the relevant information received from the affected person*." Is this equivalent to what is referred to in Art 17 as communications *("complaints, replies to a request for additional information, withdrawals and requests specified in Articles 3(1), 3(4), 3(6) and 6(1)")*?
- What are the consequences when an affected person does not "clearly state" that s/he makes use of the derogation provided? Especially the word "clearly" might be interpreted differently amongst Member States and should be deleted for the sake of clarity.
- If an affected person makes use of the special provisions in Art 17, which language is considered to be the required language to decide whether a complaint can be rejected (newly proposed ground of rejection in Art 5 (1) (e))?

Article 19a – Council Implementing Acts

- We would like to highlight that an empowering norm for Implementing Acts should not be drafted in an abstract and vague manner. Rather, such a norm should define clear and specific content requirements, as Implementing Acts should only specify an already agreed legal framework. Therefore, we have reservations regarding the proposed Art 19a.
- We believe that it could be beneficial to consider developing standard forms for complaints pursuant to Art 3. Apart from that, we do not see an immediate added value of adopting other Council Implementing Acts.
- Furthermore, since the DRMD already provides for a rather complete framework, we were wondering what exactly should be subject to Council Implementing Acts in accordance with the proposed Art 19a.

Article – 21 Review – EC Implementing Acts

- What is envisaged concerning the format and the conditions of the communication of the statistical data as referred to in Art 21?
- How would an anonymised publication of the statistical data on the Cion's website look like?

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POLAND

POLSKA

Comments by Poland on Omnibus XI (Taxation)

General remarks

Due to the fact that at this stage, we do not yet have a formulated government position on the proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU) 2017/1852, and (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU, we would like to note that the comments and questions below are of a very preliminary nature.

Furthermore, given the cumulative nature of the tax provisions covered by the directive, we would appreciate technical discussions that allow for a thorough examination of the proposed changes.

At the same time, given that the proposed changes will affect the right to tax — and, consequently, budget revenues — we would like to ask whether the Commission has conducted an impact assessment of these changes, broken down by Member State. If so, we would appreciate it if you could share the results of this impact assessment.

I. Parent-Subsidiary Directive (PSD) and Interest and Royalties Directive (IRD)

1. General remarks

In our view, the proposed changes go far beyond mere simplification, which in case of Poland will result in significant budget losses. However, the impact assessment of the proposed changes takes into account only the benefits resulting from reduced compliance costs. It does not take into account the budgetary implications of these proposals for individual Member States. We therefore call on the European Commission to present an impact assessment for all Member States that will also take into account the budgetary implications of expanding the exemptions under the PSD and IRD and the proposed procedural changes to these directives, including the benefits, which, according to the Commission, are expected to offset the resulting budgetary losses.

The proposal removes, under both the PSD and the IRD, the requirement to hold the minimum shareholding for at least two years. As a result, the exemption would also be available where the companies have not been linked by the required minimum shareholding for a two-year period.

In our view, the requirement to hold shares is easy to verify and does not pose any major problems. Therefore, we believe that repealing this requirement does not constitute a simplification but, in fact, amounts to a restriction on member states' right to collect withholding tax (WHT).
In our view, identifying the beneficial owner of the payments made and detecting abuse of withholding tax reliefs is the greatest challenge for tax administrations and payers. The provisions contained in the IRD Directive, along with the unclear scope of anti-abuse provisions in the PSD and IRD Directives, may have harmful consequences. In this regard, some progress can be made toward simplification to provide taxpayers with greater clarity, in accordance with the current case law of the Court of Justice of the European Union (CJEU).

Therefore, we propose considering changes in this direction. Furthermore, as part of a possible amendment to the FASTER Directive, measures to reduce the administrative burden on businesses could also be introduced.

The proposed changes to IRD and PSD could lead to an erosion of the tax base through artificial intermediary arrangements, as they are not consistent with the CJEU's case law in the "Danish cases" (CJEU judgments of 2019, C-115/16 and C116/16) and alter the rules governing the division of tax competences. We are also concerned about the procedural changes regarding the IRD and PSD, which will result in Member States losing the ability to conduct prior checks under the "pay & refund" mechanism to verify whether the conditions for applying the exemption are met. Consequently, this will lead to an increase in capital outflows from Poland through artificial tax structures located in other Member States.

2. PSD

We have concerns regarding Recital 10 of the proposal for a Tax Omnibus Directive, which suggests that the "subject to tax" requirement is not essential for dividend distributions under the PSD. In our view, this requirement remains a fundamental condition under Article 2(a)(iii) of the PSD, which requires the parent company to be subject to national corporation tax without exemption. Furthermore, the CJEU in the Wereldhave case (C-448/15) clarified that if the receiving company is exempt from tax, the PSD benefits should not apply as there is no risk of double taxation. Therefore, the proposal's approach appears to diverge from both the current text of the PSD and established CJEU jurisprudence, especially 'Danish cases' (the CJEU judgments from 2019, C-115/16 and C-116/16) were it was stated that dividends ought to be taxed at least once within the territory of UE. This may result in fundamental change of the rules governing the allocation of taxing powers of MS and in an increase of capital outflow from EU through artificial tax structures.

For similar reasons, we also oppose extending the scope of the PSD exemption to pension funds. Given the specific legal and tax circumstances surrounding pension funds, we believe that any rules regarding their treatment should be regulated separately under special legal provisions, rather than by expanding the scope of the PSD. Secondly, by analogy with the CJEU ruling in the Emerging Markets case (C190/12) concerning investment funds, we are concerned that granting this exemption would result in a de facto extension of the PSD exemption to pension funds from third countries under the free movement of capital.

3. IRD

We would like clarification on how the proposed "subject to tax" clause is intended to function in practice. First, the IRD Directive does not cover payments made to third countries, as they fall outside the scope of the Directive. Therefore, this clause is not necessary in such cases. Second, we have doubts as to how this provision is intended to function in structures involving an intermediary entity that is a resident of another Member State. In particular, it is unclear how taxing rights are intended to be allocated where a payment is made from one Member State to a recipient in another Member State that subsequently transfers the income to a third-country entity which is subject to a zero rate or not subject to tax. In such circumstances, it would be helpful to clarify which Member State would be entitled to deny the exemption under IRD or deny the deductibility of the payment levy withholding tax: the Member State from which the payment originates, or the Member State of the intermediary recipient from which the payment is subsequently made to the third country. Given that the existing anti-abuse framework already enables Member States to deny Directive benefits in abusive arrangements, it is not clear whether the proposed provision is intended merely to codify existing principles or instead to modify the allocation of taxing rights between Member States in structures involving third-country recipients.

II. FASTER Directive

We would also welcome clarification from the Commission regarding the proposed amendment to Article 11 of the FASTER Directive introduced by the proposal. In particular, we would appreciate an explanation of how this amendment is intended to affect the implementation of the FASTER Directive by Member States and the reasons underlying the proposed change. The settled in 2025 compromise text of FASTER Directive give an option to Member States to exclude such payments from the scope of the Directive due to risk of profit shifting. The proposed change seems to be unfeasible in the light of current structure of FASTER, especially the rules concerning the relief at source.

III. Tax Merger Directive (TMD)

“Division by separation" (Article 2 point (1)(b) of the proposal, amending Article 2(b) of Directive 2009/133/EC; with implications for Articles 8)

The neutrality rule for the shareholders of the companies participating in transactions within the personal scope of the Directive (Article 8 of the TMD) defers the taxation of shareholders on account of the receipt of securities. In a division by separation, however, the securities are received by the company being divided, not by its shareholders.

In light of the proposed inclusion of “division by separation” within the scope of the TMD, we would welcome clarification as to whether the operation is intended to remain tax neutral also at the level of the company being divided. In this type of a transaction, the company being divided transfers part of its assets and liabilities to the recipient company and, in return, receives securities in the recipient company itself.

If it is indeed the Commission’s intention that no taxation should arise at the level of the company being divided upon receipt of those securities, it may be necessary to reconsider the wording of Article 8 of Directive 2009/133/EC. As currently drafted, Article 8 establishes tax neutrality for the shareholders of the transferring or acquired company in respect of the receipt of securities of the receiving or acquiring company. On a literal reading, this provision it does not appear to cover a division by separation, where the securities are issued to and received by the company being divided rather than by its shareholders.

In this regard we would appreciate clarification as to whether the company being divided by separation is intended to benefit from the tax neutrality provided for in Article 8 of the TMD in respect of the receipt of securities in the recipient company. If so, could the Commission clarify whether an amendment to Article 8 is envisaged, given that its current wording appears to cover only shareholders receiving securities of the receiving or acquiring company?

IV. Dispute Resolution Mechanism Directive (DRM)

Poland generally supports targeted amendments to the Directive on tax dispute resolution mechanisms in the European Union. We believe that the amendments to the DRM Directive provisions are important to remove ambiguities and ensure consistent application across all Member States. Specific comments on individual proposals will be presented at a later stage of works.

The issue where we have significant concerns is the possibility of adopting Council Implementing Acts. In our view any changes to the text or interpretation of the DRM Directive should take form of amendments to the DRM Directive or non-binding guidance, depending on the nature of the issue. Some of the issues should be addressed via non-binding guidance since such issues require flexibility, and other issues that change the rules by amendment of the directive. With this respect we would like to note that the European Council in the conclusions adopted on 19 March 2026 called on the Commission to limit the use of delegated and implementing acts, which should focus on technical elements.[2]

The proposed provision enabling adoption of Council Implementing Acts is too general. Therefore, it is not clear what specific issues it is intended to address. In this regard a detailed assessment should be made.

Given the above, we have the following questions/requests for clarifications.

1. Since the justification for use of Council implementing acts in the impact assessment is quite general[3], we have the request to the EC to elaborate on the reasons for using the Council implementing acts (why targeted legislative amendments are not sufficient). We would appreciate if the reasons could be also explained based on the examples of issues to be covered by the implementing acts mentioned in the impact assessment, i.e.: (i) communication flow between competent authorities; (ii) the application of the simplified procedure for SMEs; and (iii) the interaction between procedures under the DRM and proceedings before national courts.

2. As mentioned above, the proposed provision enabling adoption of Council Implementing Acts is very general, while the impact assessment indicates only three examples of issues to be covered by the Council implementing acts. Therefore, we would like to ask the EC if the analysis of possible issues to be covered by such acts was made. If yes, we would appreciate if the EC could present other issues which are to be covered and provide justification for addressing such issues.

3. We would also appreciate if legal service could elaborate on the legal implications of using Council implementing acts. We are not sure what are the consequences, if as a result of adoption of implementing acts, the change of national law is required. How the deadline for such change (if any) will be determined and what will be the procedure to assess the compliance of changes with the EU law?

V. Anti-Tax Avoidance Directive (ATAD)

1. General remarks

Inconsistency between the recitals and the content of the proposal, and departure from the original purpose and function of the ATAD.

The proposal is presented as a simplification initiative that at the same time "maintains the highest standard of protection "for the internal market (Recital 5). In practice, however, a number of the solutions concerning the ATAD are not confined to simplifying the rules but lead to a significant softening of the anti-abuse mechanisms. This concerns in particular the mandatory de minimis threshold of EUR 3 million, the mandatory 30% EBITDA cap, the mandatory and time-unlimited carry - forward of exceeding borrowing costs, the mandatory group escape rule and the exclusion of low-risk third-party loans.

[2] Point 36 d) iii) of European Council conclusions dated 19 March 2026

[3] *For issues that are inherently more complex and where uniform application cannot be achieved without binding rules, Council implementing acts could be used as a more appropriate tool. This would concern cases in which interpretative difficulties cannot be resolved through targeted legislative amendments alone but require more detailed binding provisions to ensure consistent implementation across Member States.*

We consider that, in this respect the proposal departs from the assumptions and recommendations of BEPS Action 4, which was aimed primarily at limiting excessive indebtedness and protecting the tax base. We have concerns that implementation of all these solutions in the proposed form may create BEPS risks, as a locating the group's external debt in a selected jurisdiction, or financing tax-exempt income with debt. In our view, simplification should not lead to a weakening of the anti-abuse function of the ATAD.

Departure from the principle of minimum protection in favour of maximum Harmonisation.

In our view, the proposal, as regards the amendments to the ATAD, appears to depart from the original concept of this Directive and introduces an approach inconsistent with the directive's existing philosophy. To date, the ATAD has established a standard of minimum protection, under which Member States could apply more far-reaching measures in order to protect their tax bases. While this rule is retained in the proposed Article 3(2), the proposal simultaneously introduces provisions – the new Article 4(9) on the interest limitation rule and Article 7(8) on controlled foreign companies – that directly eliminate the ability of Member States to apply more far-reaching solutions better suited to their tax systems and to the problems they have identified, and thus better protecting their tax base. In our view this creates an internal contradiction: Article 3(2) permits a higher level of protection within Chapter II, whereas Article 4(9) and Article 7(8), being part of Chapter II, prohibit it.

We also have doubts whether solutions which to a significant extent lower the level of protection against BEPS and limit the ability of Member States to apply more restrictive measures protecting their tax base can be regarded as fully consistent with the declared objective of "simplification".

Instead of the declared simplification, the proposal appears to introduce solutions setting fixed boundaries within which Member States may apply measures serving to protect their fiscal revenues. As a consequence, if the proposed amendments to the ATAD were implemented, Member States would be restricted in their ability to establish autonomous solutions serving to protect their own tax systems, and thereby limited in shaping their own fiscal policy in the areas covered by the ATAD.

This leads us to the conclusion that the proposal may in fact alter the entire ATAD model – marking a shift away from the minimum-standard principle towards maximum harmonisation.

2. Interest Limitation Rule

Exclusion of "low-risk" third-party loans (Article 4 point (5)(c) of the proposal, introducing Article 4(2a) into Directive (EU) 2016/1164).

In our view, this solution depart from the foundations of BEPS Action 4 on which the interest limitation rule was based – the ratio-based rule was intended deliberately to cover also debt from external entities. We would like to point out that the OECD did not adopt a general assumption that loans originating from entities unrelated to the taxpayer do not give rise to BEPS. Moreover, we are concerned that even the addition of a safeguard defining the conditions under which financing qualifies as a low-risk third-party loan may not eliminate the possibility of using this provision for optimisation purposes. Financing from unrelated entities may be used for the taxpayer's own activity which is nevertheless not subject to tax, because it benefits from an exemption or relief. An asymmetry then arises: the interest reduces the ordinary CIT base, while the corresponding income is not taxed at all, or is taxed considerably more leniently.

In addition, excluding borrowing costs obtained from entities unrelated to the taxpayer will create incentives to replace equity financing with debt, since this method of raising capital is more advantageous for tax purposes. This may result in investors equipping companies with only the minimum amount of capital required by regulatory requirements, since it will be more advantageous to make up the shortfall with debt financing. Capital contributions are tax-neutral for the company receiving the contribution and, symmetrically, do not give rise to a tax cost on the investor's side, whereas raising external financing allows the taxpayer to generate a tax cost that effectively reduces its tax liability.

In the most extreme situations, the incentives thus created may lead to the withdrawal of capital from the company and the payment of the funds released in this way in forms alternative to a dividend, since the reduction in capital may be replaced by funds raised externally, while the interest on the capital so raised will be fully deductible. It appears that the application of the GAAR to such cases will not be effective and may in itself apply only to a very limited number of cases.

Mandatory de minimis threshold of EUR 3 million and its indexation (Article 4 point (5)(d) of the proposal, replacing Article 4(3) of Directive (EU) 2016/1164).

In our view, setting a threshold amount at EU level and preventing Member States from setting a lower threshold appears disproportionate to the objective of simplification.

We would further note that the fixed threshold is set without any connection to the size of the economy and the level of prices in a given State. A single nominal amount may produce very different fiscal effects across individual Member States. Poland has implemented a de minimis threshold, but at a considerably lower amount – PLN 3 million – and, from our perspective, this represents an optimal compromise between the financial needs of businesses and countering the erosion of the tax base. Against this background, we view the raising of the de minimis safe harbour to EUR 3 million and its mandatory application with some reservations, as this would in our opinion be a too far-reaching solution.

In this context, we also note that, as the European Commission points out, the introduction of a mandatory de minimis safe harbour of EUR 3 million together with a carve-out for low-risk third-party loans under the proposed amendments to the ATAD Interest Limitation Rules (ILR) would, de facto, amount to a carve-out for SMEs. While this approach may contribute to reducing administrative and compliance burdens for smaller taxpayers, the impact assessment accompanying the proposal appears to focus exclusively on these benefits. It does not, however, adequately address the potential budgetary implications for individual Member States resulting from a broader exclusion of taxpayers from the scope of the rules.

We therefore call on the European Commission to present a comprehensive impact assessment for all Member States that would also take into account the fiscal consequences of these proposed changes.

Mandatory group escape rule (Article 4 point (5)(h) of the proposal, amending Article 4(5) of Directive (EU) 2016/1164).

We have reservations about introducing the group escape rule as mandatory. In our view, this rule may lead to unequal treatment of taxpayers and to a distortion of competition on the market. It may, moreover, give rise to difficulties on the part of the tax administration, since the rule requires a financial analysis of the entire group and could therefore lead to insufficient oversight of the actual level of indebtedness of entities, and consequently to a risk of BEPS.

The solution proposed in the directive may also favour entities belonging to corporate groups over independent undertaking, which we find difficult to reconcile with the stated aim of supporting SMEs, as it is precisely the large, heavily indebted groups that would benefit most from it.

Carry-forward of exceeding borrowing costs and of unused interest capacity (Article 4 point (5)(i) of the proposal, amending Article 4(6) of Directive (EU) 2016/1164).

In our view, the introduction of a mandatory, time-unlimited carry-forward of exceeding borrowing costs appears problematic in the light of the limitation periods for tax liabilities and the related documentation-retention obligations resting on taxpayers. Implementing this regulation would require imposing more extensive obligations on taxpayers regarding the retention of tax documentation.

It may therefore turn out that taxpayers would be obliged to retain documentation for a potentially indefinite period – that is, for as long as the carry forward from a given period remains unsettled – which appears to run counter to the stated aim of simplification, which is the underlying reason for and justification of the implementation of the Tax Omnibus Directive.

Making it mandatory to allow taxpayers a time-unlimited carry-forward of exceeding borrowing costs and of unused capacity, considered together with making the EUR3 million safe harbour mandatory, may in our view, in practice, facilitate tax optimisation schemes. The majority of undertakings would obtain a guarantee that the debt they generate – even if it is clearly intended to shift profits – would ultimately be deductible, the only uncertainty being the point in time at which that deduction is finally made. In our view, such a state of affairs would be difficult to reconcile with the assumptions underlying the BEPS project, as well as with the original purpose of the ATAD and the function performed by that directive.

3. CFC

Exemption of groups within the scope of Pillar Two (Article 4 point (7)(d) of the proposal, introducing Article 7(6)(c) and Article 7(7) into Directive (EU) 2016/1164).

In our view, there are questions as to whether the automatic exemption from the controlled foreign company (CFC) rules of entities belonging to groups falling within the scope of Pillar Two is justified. The CFC rules and the Pillar Two framework are distinct tax regimes. Each is designed to address different policy concerns and relies on a different methodology for determining the tax base and the resulting tax liability.

In particular, the CFC rules are primarily aimed at addressing arrangements involving low-taxed foreign subsidiaries that lack sufficient economic substance and generate mainly passive income. Therefore the purpose of CFC rules is to counter the shifting of income to controlled entities established in low-tax jurisdictions and other structures used to avoid taxation in the jurisdiction of the controlling taxpayer.

By contrast, the Pillar Two taxation pursues a different objective. It is designed to ensure a globally agreed minimum level of taxation and to limit harmful tax competition by ensuring that income arising within a jurisdiction is subject to an effective tax rate of at least 15% at the jurisdictional level. The application of a top-up tax under the Pillar Two framework may be triggered by a number of factors, including low statutory tax rates as well as tax exemptions, incentives and other preferential tax treatments that reduce the effective tax rate below 15% at the jurisdictional level. As a result, the operation of the Pillar Two rules is not inherently linked to the existence of profit-shifting structures or arrangements lacking economic substance, which are among the issues typically addressed by CFC rules.

The two regimes also differ significantly in the way the tax base is determined. Under the CFC rules, the amount of income attributed to the controlling taxpayer is generally determined in accordance with the domestic tax rules applicable in the jurisdiction of that taxpayer. In contrast, the computation of the effective tax rate under the Pillar Two rules is based on financial accounting income, subject to a number of adjustments prescribed by the Pillar Two framework. As a result, Pillar Two and CFC rules rely on fundamentally different approaches to determining the relevant tax base, with the former being driven by financial accounting standards and the latter by domestic tax law.

The mere fact that a group falls within the scope of Pillar Two does not necessarily mean that each controlled foreign company will actually pay tax corresponding to the domestic CFC charge. Within the Pillar Two system, a key computational mechanism is jurisdictional blending, which allows capital groups to combine the income and taxes of all entities forming part of a given group and located in the same State, so the effective tax rate (ETR) is not calculated separately for each company but jointly for the entire jurisdiction. As a consequence, jurisdictional blending may allow low-taxed income to be offset against the tax of other entities in the same jurisdiction.

Accordingly, it should be recognised that the proposed exemption from the CFC rules for entities belonging to groups within the scope of Pillar Two may result in situations where low-taxed entities are not subject to an adequate anti-avoidance response. This is because the low level of taxation of a particular constituent entity may be offset through the jurisdictional blending mechanism by the taxes paid by other constituent entities located in the same jurisdiction. As a result, no top-up tax may arise at the jurisdictional level, even though the underlying risks that the CFC rules are intended to address may still remain present.

Therefore we propose considering changes in this direction and instead take into consideration another possible amendment to the CFC regime which might be to communize the information required for it and the global minimum tax to reduce compliance costs.

4. R&D

Additionally, we would further request clarifications on the following issues regarding the proposed amendments:

1. How does the Commission envisage the assessment of existing national R&D tax incentive regimes against the proposed minimum standard?

2. Could the Commission clarify to what extent Member States would retain the ability to introduce domestic anti-abuse or safeguarding measures in relation to the proposed R&D allowance?
In particular, would Member States be permitted to adopt rules intended to prevent abusive practices or to protect the tax base, where such rules may result in less favourable treatment than that provided for under the proposed minimum standard?

3. Could the Commission clarify the intended tax treatment of qualifying expenditure under the proposed R&D allowance?

In particular, is the proposal intended to provide:

a) an immediate deduction of expenditure on qualifying assets for general corporate income tax purposes as tax deductible costs,
b) an additional one-off deduction within the framework of an R&D tax incentive, while maintaining ordinary depreciation rules, or
c) a combination of both mechanisms?

The answer to these questions appears essential for assessing the budgetary impact of the proposal and its interaction with existing national R&D incentive regimes.

4. Could the Commission clarify whether expenditures relating to self-constructed assets, included labour costs, are intended to fall within the scope of the proposed R&D allowance?

If so, could the Commission explain how such expenditures should be determined and how this treatment is reflected in the current drafting of the proposal?

5. Could the Commission explain the analytical basis for limiting the proposed minimum standard to expenditure relating to qualifying tangible assets?

In particular, did the Commission assess whether limiting the scope of the proposed allowance to expenditure on qualifying assets provides an appropriate reflection of the overall cost structure of research and development activities across different Member States and sectors of the economy?

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PORTUGAL

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Omnibus XI (taxation)
Comments and Questions from Portugal

Preliminary comments

Portugal welcomes the Commission's efforts toward simplification, compliance costs reduction, modernization, and greater consistency across the EU tax framework. Portugal remains committed to engaging constructively throughout this process.

The comments submitted at this stage do not yet address all the concerns and questions that Portugal would like to see discussed throughout the process. Further technical and policy analysis is still ongoing. Portugal therefore reserves its position on matters not addressed in these preliminary comments.

As a general point and as an initial request to the Commission, many of the proposed amendments are likely to have direct effects on the tax revenues of each Member State and on the balance between source and residence taxation. Without prejudice to the internal analysis currently underway, Portugal would therefore like to understand the sources on which the Commission relied for its proposals in this specific respect. Portugal would also welcome any Member State-by-Member State data that the Commission may have on the expected effects on tax revenue collection, particularly regarding the impact of the general exemption for interest, royalties, and dividends, as a clearer understanding of these effects will be important for assessing the overall proportionality and implications of the proposal.

Interest and Royalties Directive (IRD) and Parent-Subsidiary Directive (PSD)

Portugal remains concerned by the proposed general exemption from withholding tax on qualifying intra-EU payments of interest, royalties, and dividends between eligible entities, without any minimum participation threshold or holding period. This would weaken the early detection of abusive arrangements and may result in significant revenue losses for several Member States, including Portugal. The Impact Assessment considered a "medium ambition" option that aligned procedures and scope without fully removing participation thresholds. Portugal would therefore like to understand why that option was not retained as the preferred baseline, given the significant risks for source States for which withholding tax remains an important enforcement tool.

Portugal is also concerned by the proposed removal of prior authorization and *ex ante* administrative verification procedures. If the system is to rely mainly on taxpayer self-assessment followed by *ex post* controls, how are tax administrations expected to detect abusive claims where the relevant information is not available at the time of payment? Portugal would also welcome clarification on how the Commission assessed the short- and medium-term budgetary impact on source States that currently rely on withholding tax mechanism as a significant collection, control, and enforcement tool.

Interest and Royalties Directive (IRD)

Under the 2003 Interest and Royalties Directive, the exemption at source is deliberately limited to payments between associated companies, defined by minimum ownership threshold and holding period. This design reflects the Directive's original rationale: to treat intra-group flows of interest and royalties within the Union more like domestic transactions, thereby avoiding juridical double taxation that might otherwise hinder the integration of corporate groups, without creating a general and unlimited exemption for all cross-border financing and IP licensing.

By removing the associated-company condition, the proposal fundamentally alters that balance. The withholding tax exemption would no longer be confined to stable group relationships but would instead extend to a much broader range of contractual arrangements involving unrelated companies, financial institutions, and service providers. This goes well beyond the original aim of facilitating group integration and begins to reallocate taxing rights more broadly from source States to residence States across a much wider range of transactions.

Portugal would welcome the Commission's position on five initial concerns raised by these amendments:

1. <u>Necessity and proportionality of the proposed extension:</u> the overall change does not appear strictly necessary to achieve a well-functioning internal market. The internal market objective is to remove unjustified barriers and discrimination, not to ensure that all interest and royalty flows within the Union are exempt at source regardless of the relationship between the parties. The current Directive for associated companies, in combination with bilateral tax treaties and EU non-discrimination law, already provides a robust framework to avoid double taxation and discriminatory treatment in arm's-length cases. Portugal would therefore welcome further clarification on the policy reasons to extend the exemption to non-associated companies, since such extension would go beyond the removal of clear obstacles and moves into the broader reshaping of the allocation of taxing powers between Member States.

2. <u>Impact on source-State enforcement and tax revenues:</u> this extension significantly increases the exposure of source States, especially capital-importing economies such as Portugal, to aggressive tax planning and to the practical limits of enforcement. Such extension would imply for tax administrations, including the Portuguese, a much heavier reliance on complex anti-abuse analysis, audits, and international cooperation to monitor structures that exploit the broader exemption, rather than being able to rely on the more objective filters built into the original associated-company regime.

   For these reasons, Portugal is concerned that removing the associated-company requirement does not simply "simplify" the existing Directive in line with the internal market objective leading instead to broad application of general anti-abuse mechanisms. It changes the nature of the Directive from a targeted instrument supporting group integration into a much broader mechanism for eliminating source taxation on interest and royalties, with significant implications for revenue, enforcement, and the balance of taxing rights within the Union.

3. <u>Shift from *ex ante* controls to *ex post* controls:</u> several measures presented as simplification for taxpayers would, in practice, transfer complexity, litigation risk, and operational burden to tax administrations. For Portugal, the concern is not only when taxation takes place, but also how securely and efficiently it can be enforced in a cross-border context.

   By way of example, this concern is reinforced by the proposed amendment to Article 1(3) of Directive 2003/49/EC. Under the current wording, the requirement that the payment be a "tax-deductible expense for the permanent establishment" creates a close link between amounts recognised as costs in the domestic corporate tax base and payments made by the permanent establishment that may qualify for exemption at source under the Directive. This provides a clear and rule-based screening mechanism: if a payment is not deductible under domestic law, it will generally fall outside the scope of the Directive's exemption.

By contrast, the proposed reference to an expense incurred "for the purposes of the activity of the permanent establishment" appears to require a broader and more fact-intensive assessment. Therefore, such criterion replacement weakens the screening mechanism, shifting from a legal deductibility test to a broader economic-purpose test. In practice, this may bring a larger category of payments within the exemption, even where they would not be deductible under domestic law, and shifts the main control point from the withholding stage to the audit stage.

Such a shift requires more complex factual assessments, increased reliance on audit activity, and more intensive use of already constrained human and technical resources, thereby increasing the risk of revenue loss. The more open-textured formula also leaves greater room for interpretative disagreement between taxpayers and the administration, as well as for disputes concerning substance, economic reality, and abuse, thereby increasing legal uncertainty.

The combined changes to paragraphs 7, 10, 11, 12, 13, 14, and 15 of Article 1 of the IRD remove clear *ex ante* filters and leave the exemption to be monitored primarily through audits and general anti-abuse rules. As a result, a significant part of the control framework becomes theoretical rather than effective. In theory, the source State can still deny the exemption and collect the tax later. In practice, however, proving that the payer should have identified the abuse, or successfully pursuing a non-resident recipient through cross-border mechanisms, is often too difficult, too slow, or too costly.

Portugal would welcome further clarification on how the Commission assessed the administrative and operational implications of this shift for tax administrations, particularly in terms of audit capacity, litigation risk, and revenue protection.

4. <u>Interaction with the FASTER framework:</u> Portugal is also concerned about the asymmetry between speed and control. The FASTER framework was designed mainly for financial market flows, especially income from listed securities intermediated through certified financial institutions. In that context, simplification and standardisation serve an understandable market objective. However, from the perspective of a source-State tax administration, the risk is that once those procedures become the mandatory route for in-scope cases, the administration may be required to make decisions within a tighter and more standardised framework even where it suspects that the legal entitlement to relief is more complex than the process assumes. This increases the risk that tax may be relieved or refunded before sufficient scrutiny has taken place.

   This is particularly relevant for Portugal because a significant share of outbound capital income is paid to non-resident recipients, and withholding tax remains one of the few straightforward instruments available to tax such flows at source. If relief must be processed under a more standardised EU procedure while several domestic or Directive-based control mechanisms are simultaneously weakened, Portugal faces a greater risk that problematic cases will not be filtered out in time and will need to be addressed only later through audits, information exchange, and litigation. In practice, this is more costly, more uncertain, and less effective than preventing undue relief in the first place.
   For that reason, Portugal's concern is that simplification in the FASTER context should not inadvertently reduce the source State's ability to verify entitlement in real time, especially where the surrounding legal framework is simultaneously removing other formal safeguards. From Portugal's perspective, the addition of paragraph 17 to Article 1 risks creating a procedural environment in which relief becomes easier to obtain and harder to police, increasing pressure on audit capacity, anti-abuse enforcement, and cross-border administrative cooperation.

   Portugal would therefore welcome further clarification on how the Commission assessed the interaction between the proposed amendments and the FASTER framework, particularly regarding the ability of source States to verify entitlement to relief in a timely and effective manner.

Portugal would also welcome clarification on the information that source States may require under the FASTER procedures, the circumstances in which a relief procedure may be suspended where there are indications of abuse, and the allocation of responsibility where relief is subsequently found to have been granted incorrectly.

5. <u>Combined effect of the proposed measures</u>: Portugal would welcome further information on whether, and how, the Commission assessed the combined effects of these measures together with the other measures in the Proposal, as well as their interaction with double tax treaties.

   For example, the new Article 5(3) appears to take the Directive beyond its original focus of eliminating double taxation within the EU and towards imposing a minimum response in relation to certain third countries. However, if CFC rules for SMEs are weakened, imported mismatch rules are removed, and prior controls at source are simplified, what assurances does the new paragraph 3 provide that the result will not amount to merely formal protection against abusive payments? Furthermore, in structures that use tax treaties to obtain low withholding tax and no taxation in the third country, does the Commission consider that the new paragraph 3 can operate as an additional anti-abuse instrument even where treaty benefits cannot be denied under the Principal Purpose Test?

   Portugal would also welcome clarification on why Article 5(3) relies on a zero nominal tax rate rather than effective taxation, how the provision applies where a nominally positive rate is combined with an exemption for the relevant income, and how the mandatory response is intended to interact with Member States' obligations under double tax treaties.
   Portugal would therefore welcome clarification on how the Commission assessed the overall interaction of these measures and whether the safeguards introduced by Article 5(3) are expected to provide an effective response to the risks that may arise in cross-border structures involving third countries.

Parent-Subsidiary Directive (PSD)

The current Parent-Subsidiary Directive is expressly intended to ensure fiscal neutrality and eliminate the economic double taxation of profits distributed as dividends by a subsidiary in one Member State to its parent company in another Member State. Extending the Directive to qualifying cross-border corporate irrespective of the existence of a "parent-subsidiary" relationship, where a sufficient level of ownership creates a direct economic link between the distributing and the receiving company. Rather, it would become a tax policy choice with much deeper implications for the allocation of tax bases within the EU. The regime was designed for group structures, not for any company lacking a relevant corporate link, and that design limits the benefit to situations in which there is a meaningful risk of economic double taxation within the same group. In practice, such an extension would be less about neutrality and more about shifting all or almost all taxation to the State of residence of the recipient. That is a policy choice about where fiscal sovereignty should lie, not simply a technical requirement of the internal market.

This envisaged change would substantially broaden the benefit, opening the door to aggressive tax planning structures in which it is sufficient for the recipient to be a company in another Member State, thereby significantly increasing the potential for profit shifting to jurisdictions with lower taxation of corporate dividends. Also, it may affect tax competition among Member States, favouring States with broad participation exemption regimes.

Furthermore, it changes the balance between combating abuse and protecting the free movement of capital, because if the benefit applies to any cross-border business relationship, the challenge of distinguishing genuine structures from arrangements designed solely to exploit the regime increases exponentially.

In this context, Portugal would welcome further clarification from the Commission's position:

1. Why a general extension of the Directive to all cross-border dividend payments was considered necessary to preserve the internal market.

2. How the Commission assessed the impact of this measure on the allocation of taxing rights between source and residence Member States.
3. Whether alternative options capable of reducing administrative burdens while preserving the parent-subsidiary character of the Directive were considered. And

4. How the potential effects of this measure on tax revenues, tax competition and anti-abuse enforcement were taken into account in the Impact Assessment.

Dispute Resolution Mechanism Directive (DRMD)

Portugal recognises the legitimate aim of ensuring consistent application and notes that the Impact Assessment describes implementing acts as covering three operational areas: communication flows between authorities, the simplified SME procedure, and the interaction with national court proceedings.

Portugal nevertheless remains concerned that a broadly worded empowerment could extend to core substantive aspects of the regime that affect taxpayers' rights and should therefore remain within the legislative text itself. In particular, Portugal considers it important to narrow Article 19a so that implementing acts are expressly limited to the three operational areas identified in the Impact Assessment and explicitly exclude core substantive elements such as access conditions, admissibility, notification rules, time limits, and the design of the dispute resolution phase.

Anti-Tax Avoidance Directive (ATAD)

a) Research and development allowance

The introduction of a research and development regime in ATAD creates risks for tax administrations. Although the proposal allows Member States to maintain or implement domestic measures instead of adopting the rules set in Chapter IA (and definitions in Article 2(1)(a) to (c)), this option is conditional upon such measures treating eligible expenses more favourably (Article 3).

However, as no cost-benefit analysis has been conducted - an assessment that would inevitably depend on the type of entity and its lifecycle stage - we have no terms for this comparison and the proposal does not clearly reflect whether national benefits can coexist with the EU framework. Indeed, the operative provisions do not clearly explain how national regimes are expected to coexist with the new EU framework in practice, nor how the required comparison between national and EU measures should be performed.

Portugal would therefore welcome further clarification on:

1. the methodology that Member States should apply when determining whether a domestic regime is "more favourable" than the Directive's research and development allowance.

2. whether national R&D regimes may continue to coexist alongside the EU framework without requiring a comparative assessment for each specific measure. And

3. whether greater legal certainty on this point could be provided in the operative provisions or recitals of the Directive.

b) Interest Limitation Rule

Amendment to Article 4(3):

Portugal is still assessing the budgetary impact of making the EUR 3 million safe harbour mandatory and fixing the interest limitation threshold at 30% EBITDA. In this context, Portugal also sees enforcement and control challenges that must be carefully weighed.

In the current ATAD framework, the safe harbour could be reduced to a value lower than the amount set in the Commission's proposal. In theory, it could even be reduced to zero, which in practice would imply that the safety limit was treated as optional.

This understanding took into account the notion that Member States look at the size of their economy when determining the amount of interest deductibility. From this perspective, regarding the application of these rules, and considering the mandatory application of the €3,000,000 threshold set out in Article 4(3), Portugal is still assessing the budgetary impact of making the €3 million safe harbour mandatory. However, we highlight that this change, given the current limit of €1 million, entails a substantial increase that require careful consideration.

Portugal would welcome further information on how the Commission assessed the impact of making the safe harbour mandatory, particularly for Member States currently applying lower thresholds and relying on the interest limitation rule as an important anti-base erosion mechanism.

Portugal would also welcome clarification on the new rule allowing the full deduction of exceeding borrowing costs where the taxpayer’s EBITDA decreases by at least 50% compared with the preceding tax period. In particular, Portugal is concerned about its potential budgetary effects, cliff-edge outcomes and the risk of artificial timing or allocation of income and expenditure between tax periods.

Addition of paragraph 2a to Article 4 – Low-risk third-party loan carve-out:

Portugal understands the objective of excluding genuine third-party financial arrangements from the scope of ILR. However, the proposal carve-out removes a control mechanism that currently helps prevent aggressive tax planning and one should consider the ability of tax administrations to verify that qualifying loans remain genuinely independent from group financing structures. Therefore, notwithstanding the specific anti-abuse safeguards already provided for in Article 4(2a)(a) and (b), Portugal considers that these may not be sufficient to ensure the traceability of funds and to prevent back-to-back arrangements or similar schemes designed to recharacterize intra-group debt as non-associated borrowing.

In particular, Portugal would like to draw the Commission's attention to certain situations that, in our view, could allow taxpayers to circumvent the intended scope of the carve-out:

- A loan formally granted by an unrelated third-party lender could nonetheless be secured, guaranteed, or otherwise collateralized, directly or indirectly, by a deposit of cash, financial instruments, or any other asset held by an associated enterprise, a permanent establishment, or an entity of the same consolidated group for financial accounting purposes, within the same or an interconnected financial institution, therefore effectively allowing the group to backstop the loan while it retains the formal appearance of independent third-party financing.

- A borrowing entity could receive funds qualifying as a low-risk third-party loan without maintaining a dedicated account for the disbursement and use of those funds, and without being able to demonstrate to the competent tax authorities, through a comprehensive cash-tracing report, that the funds were directly and exclusively allocated to its own operational business activities, therefore making it difficult to verify whether the loan proceeds were, in substance, redirected to serve intra-group financing purposes.

- A loan could meet the low-risk criteria at inception but cease to do so at a later point during the tax period (for instance, once a guarantee or collateral arrangement of the kind described above is put in place), while the carve-out continues to apply for the remainder of that period as if the criteria were still met throughout.

In light of the above, Portugal would like to ask the Commission whether it considers the current anti-abuse safeguards in Article 4(2a)(a) and (b) sufficient to address these risks, or whether additional guidance or anti-abuse provisions may be necessary to ensure that the low-risk third-party loan carve-out cannot be used to recharacterize what is, in substance, intra-group debt.

<u>Amendment to Article 4(5) – Mandatory group escape rule:</u>

With Portugal exercising the discretion not to adopt this group carve out, the introduction of its mandatory enforcement raises concerns with the application of this rule as it allows groups to massively withdraw equity capital from the subsidiary (replacing it with intra-group debt) up to the exact limit of the total Equity Escape exemption.

In particular, Portugal notes that the group escape rule may create incentives for groups to alter the financing structure of subsidiaries by replacing equity with intra-group debt up to the limits permitted by the exemption. Portugal would therefore welcome further clarification on how the Commission assessed the potential interaction of the proposed rule with the objectives of preventing excessive debt financing and protecting national tax bases.

Portugal notes that Article 4(5) also provides for a group ratio rule, under which the taxpayer may deduct exceeding borrowing costs by reference to the ratio between the group's exceeding borrowing costs vis-à-vis third parties and its consolidated EBITDA.

Portugal would welcome clarification on how the Commission assessed the risk of allocating a disproportionate share of the group's interest deduction capacity to entities located in higher-tax Member States and on the safeguards against the multiple use of the same group capacity. The wording of Article 4(5), according to which the taxpayer "shall be given the right to either" mechanism, also requires clarification. Portugal would like to understand whether Member States must make both mechanisms available, whether they may choose which mechanism to implement, and whether taxpayers may elect annually between the equity escape and the group ratio rule.

On the other hand, §(a)(ii) requires that assets and liabilities be valued using the same method as the consolidated accounts (e.g. IFRS or national standards), with groups based outside the EU that differ profoundly from European rules when valuing intangible assets, impairments or leases.

Given the technical complexity of these assessments, Portugal would welcome further clarification on the safeguards, guidance, and implementation timelines that the Commission envisages to help tax administrations in applying the group escape rule in a consistent and reliable manner.

c) CFC Rules

Amendment to Article 7 (3)

Article 7(3) replaces the discretion previously granted ("may choose not to treat") with a binding, mandatory prohibition ("shall not treat"). This means that the "one-third safe harbour" clauses now become an automatic, uniform right for companies across the European Union.
Portugal, when transposing the CFC rules into the Corporate Income Tax Code, chose not to incorporate the one-third tolerance rule for global passive income, due to operational and enforcement risks.

Therefore, Portugal remains concerned that the mandatory application of this rule may create risks regarding fraud and aggressive tax planning with "Surgical" portfolio adjustment, artificially "feeding" that subsidiary with genuine commercial operations, such as the resale of goods or operational services that yield low economic margins.

As long as operational revenue accounts for 67% of the total, the 33% derived from pure passive income remains completely shielded and tax-free at the parent company level.

Portugal would therefore welcome further clarification on how the Commission assessed the risk that artificial adjustments to the composition of income could be used to access the mandatory safe harbour without a corresponding increase in substantive economic activity.
As regards Point (b), that introduces a specific, mandatory rule for financial undertakings, there is a risk of arbitrage via fictitious unrelated companies as it is easy for those undertakings to structure transactions so that funds appear to originate from third parties (via widely held investment funds, securitization vehicles, or intermediary insurance companies), while concealing the fact that the ultimate beneficial owner remains the group itself.

Portugal would therefore welcome clarification on the safeguards that the Commission considers sufficient to prevent the use of intermediary entities, investment structures, or comparable arrangements to circumvent the intended scope of the provision.

Amendment to Article 7(6)(a) and (b)

Portugal strongly supports compliance simplification for SMEs. However, Portugal remains cautious about a blanket substantive exemption of SMEs from the CFC and hybrid mismatch rules and our preference would be targeted procedural relief, for instance on documentation and reporting, without removing SMEs from the scope of the anti-abuse framework. Could the Commission explain the evidence supporting a full substantive exemption rather than such procedural simplifications?

From Portugal's perspective, fully removing these entities from the scope of CFC rules on the sole basis of company size creates a normative blind spot that can foster artificial fragmentation of groups, the use of SMEs as conduit entities and international tax arbitrage focused on passive income. Therefore, it may reduce the effectiveness of anti-abuse rules in circumstances where the underlying risks remain present.
From a systemic perspective, such an exemption breaks with an anti-abuse framework based primarily on material criteria (nature of income, substance, jurisdiction) rather than formal criteria (size), thereby weakening the capacity of Member States to keep pace with evolving aggressive tax planning models in smaller scale structures.

Amendment to Article 7(6)(c)

As regards the proposal to remove entirely from CFC rules large groups subject to Pillar Two, Portugal underlines that the interaction between CFC and Pillar Two was originally conceived in terms of coordination rather than substitution.

Portugal's technical preference is for a model in which the Qualified Domestic Minimum Top Up Tax (QDMTT) is fully taken into account in the application of CFC rules via a tax credit mechanism, ensuring that:

- local tax (including QDMTT) has priority and is respected.

- any additional CFC related tax functions only as a complementary instrument to protect the tax base of the jurisdiction of the parent entity.

- if, after local tax and CFC tax (with QDMTT credited), the effective tax burden remains below 15%, the Pillar Two would continue to perform its residual role whenever the overall effective taxation remains below the agreed minimum level, and the residual top up tax would apply.

Within this framework, a complete carve out of Pillar Two groups from CFC rules would weaken control over the relocation of passive income (patents, interest, financial income) to low tax jurisdictions, as long as the group secures the 15% minimum level, with a potentially negative impact on Member States' tax bases.

Portugal would therefore welcome further clarification on the reasons supporting a complete exclusion of Pillar Two groups, rather than a coordination mechanism between the two regimes.

<u>Amendment to Article 7(6) and (7))</u>

With regard to the "side by side" package, under which CFC rules would not apply to subsidiaries whose UPE is located in jurisdictions with an equivalent regime, Portugal stresses that material risks similar to those identified for Pillar Two remain relevant.

Even where the subsidiary is subject to QDMTT in its jurisdiction of residence and there is a prohibition on refunds or indirect benefits that neutralise that tax, there is still a residual risk of passive income relocation and of the use of complex structures in a context of asymmetry between different regimes.

Portugal considers that any conclusion on the non-application of CFC rules in such situations must be fully aligned with the rules and logic of Pillar Two, so as to avoid the "side by side" regime becoming a de facto shield for structures where formal minimum taxation coexists with a substantial weakening of anti-abuse control.

Portugal would therefore welcome further clarification on how the Commission assessed these interaction risks when developing the proposed rules.

<u>Amendment to Article 7(8)</u>

Portugal notes that the provision preventing Member States from introducing or maintaining rules that deviate from the new framework represents a qualitative change compared with the "minimum harmonisation" model that traditionally characterised the original ATAD.

In practice, this development would require Portugal to amend the Corporate Income Tax Code so as to remove the application of CFC rules to SMEs and to groups covered by Pillar Two/side by side, even where the relevant subsidiaries are located in jurisdictions included on national lists of tax havens or privileged tax regimes.

Portugal is concerned that this approach may substantially reduce Member States' flexibility to respond to specific risks affecting their tax bases, particularly in areas traditionally regarded as sensitive from a tax policy and anti-abuse perspective.

Such a constraint significantly reduces Member States' room for manoeuvre in protecting their tax bases in areas traditionally regarded as sensitive, where differing exposures and risk profiles justify a degree of additional normative flexibility, provided that it remains compatible with EU law.

d) Imported Mismatches

Portugal considers that the proposed deletion of the imported mismatch rules in Article 9(3) ATAD also raises issues of coherence within the wider EU anti avoidance framework.

The Impact Assessment itself explicitly acknowledges that Pillar Two "does not rectify the underlying differences in how financial instruments, entities, or transfers are treated under national tax rules". In this context, the removal of Article 9(3) appears to weaken one of the few targeted instruments that directly addresses the cross-border transmission of hybrid outcomes originating in third countries.

Portugal would therefore welcome clarification from the Commission on two specific points:

- how the deletion of Article 9(3) is justified in light of the BEPS findings, which originally identified imported mismatch structures as a concrete and significant source of base erosion.

- what evidence is available to demonstrate that other instruments currently in force effectively and adequately replace these rules, particularly in cross border third country scenarios.

Portugal also notes that the absence of reported cases since the transposition of the ATAD imported mismatch rules should not be interpreted as proof that such schemes no longer exist or that the provision is redundant. Rather, this pattern is consistent with the deterrent function of specific anti hybrid rules.

Indeed, prior to the implementation of the ATAD provisions, similar structures were typically addressed, if at all, through general anti abuse provisions, which rely on broader and less objective tests. The introduction of a dedicated imported mismatch rule provided clear, objective criteria and legal certainty, both for tax administrations and for taxpayers, thereby making aggressive planning more easily identifiable and less attractive *ex ante*.

From Portugal's perspective, the most plausible reading of the available experience is that Article 9(3) has helped to discourage the use of imported mismatch structures by increasing legal risk and compliance visibility, not that the underlying risk has disappeared. Removing this specific tool without compelling evidence of functional equivalence from other measures could therefore create renewed incentives for such planning, particularly in complex third country arrangements.

In addition, the deletion of Article 9(3) risks undermining the internal consistency of the EU anti abuse architecture. While other ATAD provisions, such as CFC rules, interest limitation and the GAAR, play complementary roles, they do not specifically target imported hybrid outcomes arising in third country contexts. Eliminating this tailored safeguard would therefore create a gap precisely in the area where Pillar Two is not designed to address underlying mismatches, weakening the overall effectiveness and credibility of the EU's coordinated response to aggressive tax planning.

Portugal would therefore welcome further clarification on how the Commission assessed the consequences of removing this targeted safeguard, particularly given its own acknowledgement that Pillar Two is not intended to address the underlying tax mismatches that Article 9(3) was designed to counter.

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ROMANIA

ROMÂNIA

General remarks

- Romania supports the legislative simplification process in the field of direct taxation — as part of the effort to reduce administrative burdens and enhance competitiveness within the European Union — while simultaneously maintaining a high level of protection against fraud, evasion, and tax avoidance.

- We are currently analyzing the impact of these provisions on the national legal framework. The comments provided are preliminary, given that the measures proposed under the Omnibus package are currently being assessed from a fiscal and budgetary perspective.

1) Aspects related to the Taxation of Non-Residents (Directive 2003/49/EC (Interest and Royalties/IRD), Directive 2011/96/EU (Parent Companies and Subsidiaries/PSD), Directive (EU) 2025/50 (FASTER))

- We are currently analyzing the impact of these provisions from a fiscal and budgetary perspective.
- According to the information provided by the department responsible for macroeconomic analysis, extending the scope of entities eligible for withholding tax exemptions on dividend, interest and royalty payments may have a negative impact on Romania's budget revenues.
- Romania expresses reservations regarding the proposed extension of the withholding tax exemption on dividend, interest and royalty payments between companies established in Member States, irrespective of the level of participation held or the duration of the holding period. These reservations are primarily related to concerns about the potential impact on budget revenues.

IRD Directive

- Further clarifications are needed regarding the application of Article 1(11). In particular, the concept of "self-assessment" should be clarified. Specifically, in the case of Romania, the directive is currently applied at the level of the income payer and the tax administration does not carry out any administrative procedure or require prior authorization. Accordingly, the beneficial owner shall submit the certificate of tax residence and the declaration attesting to the fulfilment of the required conditions in order to benefit from the withholding tax exemption, without the involvement of the tax authorities. Thus, in our case, would the application of Paragraph 11 no longer entail submitting these documents to the payer by the payment date, with any verification of fulfillment of the conditions taking place after the payment of income?

We have a similar question for the application of the withholding tax exemption for dividend payments to non-resident companies under the PSD Directive.

- Further clarification is needed on the application of Article 5(3), including illustrative examples covering various scenarios involving interest and royalty payments to third jurisdictions.
- We propose amending Annex I, Part A ("List of companies referred to in Article 3(a)"), point (w), as follows: " w) companies constituted under Romanian law;".

PSD Directive

- We propose removing the phrase "and meet the requirements set out in Article 3" from Article 4(1) and (2), given that Article 3 is being repealed.
- Further clarification is needed regarding the application of Article 4(3) in relation to the 10% holding requirement, given that this condition has been removed following the repeal of Article 3.
- We propose amending Annex I, Part A ("List of companies referred to in Article 2(a) (i)", point (w), as follows: " w) companies constituted under Romanian law;".

2) Aspects Related to Tax Mergers – (Directive 2009/133/EC (on Tax Mergers))

- We support the updating of the scope of relevant transactions, recognising that mergers, demergers, transfers of assets and exchanges of shares involving companies from different Member States should be able to take place without immediate taxation, thereby avoiding obstacles to the proper functioning of the internal market.
- We propose amending Annex I, Part A ("List of companies referred to in Article 3(a)"), point (w), as follows: " w) companies constituted under Romanian law;".

3) Aspects related to amendments concerning the fight against tax avoidance under the ATAD — Directive (EU) 2016/1164

ATAD - Interest limited Rule

-Mandatory application of the deductible cap for excess debt costs, set at 30% of the EBITDA calculation basis

- Romania applies the limitation on the deductibility of exceeding borrowing costs at a level corresponding to 30% of the taxpayer's EBITDA. In this regard, the proposed provision is acceptable.

-Mandatory application of the de minimis threshold of 3 million euros and automatic indexation

- Romania expresses reservations regarding the mandatory application of a de minimis threshold of EUR 3 million, in view of its potentially significant budgetary implications. This concern stems from the fact that the thresholds currently applied under the national framework are EUR 1 million and EUR 500,000, respectively.
- We can support the implementation of the proposed mechanism for updating the de minimis threshold.

-Introduction of a sectoral exemption for defense

- In principle, considering a sectoral exemption is justifiable. The proposal requires further analysis and assessment.

-**Introduction of an exemption from the interest rate limited for loans granted by third parties and for companies subject to Pillar 2 rules**

- In principle, the proposal could be supported, but require further analysis and assessment.

-**Mandatory application of the group rule**

- In principle, the proposal could be supported, but requires further analysis and assessment from a fiscal and budgetary perspective.

ATAD – Rules on Controlled Foreign Corporations (CFCs)

-Introduction of an exception to the CFC rules for companies subject to Pillar 2 rules

- Romania could be open to considering the introduction of an exemption from the CFC rules for entities subject to the Pillar Two rules.

-**Introduction of an exception to the CFC rules for small and medium-sized groups**

- The proposal is currently under review.

-Proposed mandatory application of the CFC rules—Model A and the elimination of Model B

- Romania is, in principle, able to support the proposal concerning the mandatory application of Model A under the CFC rules, as this model is already applied under the national tax framework.

ATAD – Hybrid mismatches

-Elimination of the rule on imported mismatches

- Romania can support the proposed amendments concerning the rules on hybrid mismatches.

- **Changes in the area of research and development**

- Romania has reservations at this stage, as the measure could have a significant impact on the tax base. Under the national tax framework, fixed assets are depreciated through tax depreciation over their normal useful life, and a preliminary assessment indicates that the proposed approach may have substantial budgetary implications.
- The national tax system already provides for additional deductions for research and development expenditure, including expenditure related to technological equipment, within the existing budgetary framework.

4) Aspects related to Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union

- Romania considers that the Omnibus package offers a useful opportunity to clarify further aspects that have demonstrated the need for closer alignment with the national legal frameworks of the Member States, including in relation to the interaction with the OECD Mutual Agreement Procedure (MAP). This is particularly relevant in light of the legislative measures adopted at national level to implement recommendations arising from the OECD peer review process.

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SLOVENIA

SLOVENIJA

Subject: Follow-up questions regarding the proposed Tax Omnibus Directive

Following the meeting of the Antici Group on 13 July 2026 concerning the proposed Tax Omnibus Directive in the area of direct taxation, Slovenia would appreciate receiving the European Commission's written clarification on the following questions relating to the proposed amendments.

1. IRD – Permanent establishment as payer

Article 1(2) of the Omnibus proposal amends Article 1(3) of the IRD as follows*: "A permanent establishment shall be considered the payer of interest or royalties only insofar as those payments represent an expense incurred for the purposes of the activity of the permanent establishment in the Member State in which it is situated."*

- Could the Commission confirm whether the expression "*an expense incurred for the purposes of the activity of the permanent establishment*" should be understood as referring to an expense incurred by or through the permanent establishment in the Member State concerned?
  In this regard, Slovenia would welcome further clarification, as the phrase "*for the purposes of the activity*" may be open to different interpretations.

2.IRD – Additional safeguard: Article 5(3) (withholding tax or denial of deduction)

- Could the Commission confirm that the obligation laid down in Article 5(3) is intended to be alternative, meaning that a Member State may apply either:
  - withholding taxation of the payment; or
  - denial of the deduction of the corresponding expense,

but is not expected to apply both measures simultaneously?

- Furthermore, what is the rationale for providing Member States two alternative approaches instead of only one?
- In the interest of simplification, would it be possible to prescribe a single approach rather than maintaining two options?
- In addition, could the Commission elaborate on the necessity and practical application of this safeguard? In particular, in situations where a payment passes through multiple intermediaries, it may be difficult or even impossible for the source Member State to establish the relationship between the payer and the ultimate beneficial owner.

- Furthermore, Article 5(3) refers to situations:

"where a nominal corporate tax at a zero rate applies to interest and royalty income".

- Could the Commission clarify whether this wording is intended to cover only situations where a 0% nominal corporate income tax rate is explicitly provided for in the relevant legislation, or whether it should also encompass situations where, for example the income is:
- fully exempt from taxation; or
- entirely excluded from the corporate tax base?

- Finally, where a Member State opts to apply withholding tax under Article 5(3), how should the provision operate where the applicable Double Tax Convention provides for a 0 % withholding tax rate in respect of the beneficial owner?

3. Procedural aspects and interaction with FASTER

- Could the Commission clarify whether Slovenia's understanding is correct that no specific procedural framework is envisaged under the proposal for the purposes of the IRD and PSD beyond the procedures established by the FASTER Directive?
- If so, is it correct to assume that the procedural framework established by the FASTER Directive would apply only in situations involving financial intermediaries and cross-border relief procedures?
- Furthermore, would this imply that the procedures established under the FASTER Directive would, in practice, become mandatory for the application of the relief of excess withholding tax on interest provided under the IRD only in case when a Member State chooses to apply Chapter III of the FASTER Directive also for interest paid for publicly traded bonds issued by a resident in its jurisdiction and only for such type of interest income?

4.Scope of the Annex

- With regard to the Annex, could the Commission clarify whether entities that are subject to corporate income tax (CIT), but operate at least partly on a not-for-profit basis while simultaneously carrying out taxable economic activities (for example, entities operating in the social economy sector), could potentially fall within the scope of the IRD/PSD for the purposes of the Annex?

5.Determination of domestic top-up tax, MNE group status and SbS

It is understood that the definitions of domestic top-up tax and MNE group refer to the Pillar Two Directive, while the definition of SbS relies on the relevant OECD framework.

- Could the Commission confirm whether the determination of the relevant status is to be carried out by each Member State under its domestic procedures?
- If so, to what extent do Member States retain discretion regarding the methodology and evidence used for such determination?

6. Interaction with tax defensive measures under the Code of Conduct

- Could the Commission clarify how the proposed rules (IRD – denial of withholding tax and ATAD – CFC) are intended to interact with the tax defensive measures developed under the Code of Conduct (Business Taxation) in relation to non-cooperative jurisdictions?
- While the Directive constitutes binding EU legislation and the Code of Conduct is formally a soft-law instrument, both may ultimately be reflected in Member States' domestic legislation. How should the relationship between these two frameworks be understood and applied in practice, particularly where their effects may overlap?

7. Merger Tax Directive – proposed new Article 14a

- Could the Commission clarify if the proposed new Article 14a of the Merger Tax Directive could in any way interact with the exit taxation provisions contained in ATAD?

8. ATAD – R&D-related expenses

- Could the Commission clarify how the proposed new points (-1), (-1a) and (-1b) of Article 2 of ATAD are intended to interact with the Interest Limitation Rule? As we understand it, the Interest Limitation Rule seeks to limit excessive debt financing, particularly within multinational groups. However, the proposed provisions appear to provide preferential treatment for debt financing of R&D activities compared with equity financing.
- Could the Commission elaborate on the policy rationale for this approach and explain how it aligns with the objectives of the Interest Limitation Rule?

- Furthermore, could the Commission provide any analysis or evidence supporting the view that such measures would effectively stimulate R&D investment within multinational groups, given that innovative activities are often developed by start-up companies which are subsequently acquired by larger multinational groups?
- Do we understand correctly the new Article 3a(4) of ATAD related to R&D that the taxpayer (not the MS) may choose both the amount and the tax period in which to claim the tax allowance.
- Could the Commission elaborate on the policy rationale underlying the design of the R&D allowance? In particular, was the intention of the proposal for the allowance to operate independently of IFRS/accounting standards? It appears that, in certain areas, the allowance seeks to regulate matters that are already addressed under accounting standards, such as the treatment of disposals. At the same time, in other respects it departs from established accounting concepts, for example regarding the carrying amount of an asset (i.e. it is generally comprised of acquisition cost less VAT together with directly attributable costs). We would welcome further clarification on whether such departures are driven by specific tax policy objectives. In general, alignment with accounting standards, where possible, would promote simplicity, reduce compliance costs and administrative burdens, and enhance legal certainty for both taxpayers and tax administrations.
- Could the Commission provide further clarifications regarding the last sentence of Article 3c(1) and the second subparagraph of Article 3c(2)? In our view, provision of Article 3c(1) deviates from accounting principles and introduces unnecessary administrative burdens for both taxpayers and tax administrations. We also think that situations where the "failure to meet the condition does not result from force majeure or circumstances beyond the taxpayer's reasonable control" is insufficiently clear and may lead to inconsistent application and interpretation.
- In addition, the claw-back mechanism in Article 3c(2) add complexity and legal uncertainty, thereby undermining the objectives of simplification and reducing the predictability of the tax framework, so we generally discourage the inclusion of such approach.
- Could the Commission elaborate on the interaction or coexistence between direct government grants and the R&D allowance?
- Our understanding of accounting standards is that the costs related to the basic and applied research are already deductible expenses (also for tax purposes), just the cost of experimental development is for accounting purposes booked as a "capital expenditure" on the balance sheet. We are wondering what was the rationale for including the basic and applied research in "capitalisation costs" in the new R&D allowance provision?

9. DRM – objections relating to an independent person of standing

- Could the Commission explain how it envisages that the rule proposed in paragraph 5 of Article 8 on the objections relating to an independent person of standing would operate in practice? The rule provides that the competent authorities shall raise any objection relating to an independent person of standing at the latest before a final decision pursuant to Article 15(1) is agreed by all competent authorities. Any objection raised after that moment shall have no effect on the final decision so agreed.

- How is it envisaged that the competent authorities would verify whether the condition of independence holds for a period of 12 months after the decision of the Advisory Commission was delivered, if any objection must be filed before a final decision. We understand that retaining independence after the decision is delivered is essential for the transparency and independence of the procedure.

10. DRM – the possibility of Council implementing acts

We would like to ask the Commission for a clarification on how this possibility would operate within the limits set by the Treaties and ensure that Member States retain full control over the adoption of any binding measures. We understand that acts adopted under Article 291 of the TFEU are legally binding instruments intended to ensure uniform conditions for the implementation of Union law. Therefore, in our view a careful assessment needs to be made to ensure that powers of Member States on the adoption of any binding measures in the field of taxation are not diminished and that procedural autonomy of Member States, especially as regards proceedings before national courts, is preserved.

- In this respect, could the Commission elaborate on how the adoption of implementing acts laying down procedural rules, especially on interaction between procedures under DRM and proceedings before national courts (point 19a(d) is in line with the Treaties.

The above questions are without prejudice to any additional comments or questions that Slovenia may wish to raise at a later stage. Further questions may be submitted following a more detailed analysis of the Omnibus proposal.

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SLOVAKIA

SLOVENSKO

Written comments/questions by Slovakia on Omnibus XI

1. With respect to the external study to evaluate the ATAD, will this be shared with the Member State delegations and if so, when?

2. Have impact assessments been made with respect to individual Member States? If yes, can they be shared with Member State delegations?

3. Regarding the expected total savings of 7.9 billion EUR, over what period of time has it been calculated?

4. With regard to the R&D tax incentive, we are concerned about the budget impact particularly on small Member States. Have you analyzed the impact with respect to individual Member States?

GAAR:

The underlying principle of a general anti-abuse rule is already reflected in the Slovak tax framework. Therefore, Slovakia is generally supportive of further clarification and reinforcement of the application of GAAR at EU level, provided that legal certainty and a consistent interpretation across Member States are maintained.

DRMD:

We have comment on the proposed amendments with regard to Council implementing acts. We are not currently proposing any additional changes that we consider necessary to improve the functioning of the DRMD.

The Slovak Republic supports ensuring the uniform and effective application of the DRMD. The scope of the proposed implementing acts should be limited exclusively to technical and administrative aspects (e.g. common communication rules, common templates), which should be clearly defined in the DRMD.

In this regard, Slovakia does not support a broad or open-ended empowerment to adopt implementing acts. In our view, such an approach is not appropriate and could reduce legal certainty.

We also consider that matters which are not purely technical or procedural in nature (e.g. the interpretation of the first notification, the interaction between procedures under the DRMD and proceedings before national courts) should be addressed directly in the DRMD.

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FINLAND

SUOMI

Directive proposal for simplification of ATAD
Written comments by Finland – 24.7.2026

In this communication, we will focus only on ATAD's comments. We will return to other topics later when our experts return from summer holidays.

ATAD

R&D allowance:

- According to the article 3c "qualifying expenditure for which the allowance is claimed shall be used wholly and exclusively for research and development". Does this mean that if a plant or a machinery is used partly for example for quality control, then none of the expenditure is qualifying?

- Does the scope of the definition of qualifying expenditure include also buildings and structures? In article 2 (definitions) is only mentioned "plant" and "providing facilities for carrying out research and development".

- In article the 3b, it is stated that the qualifying expenditure shall not include expenditure incurred for the acquisition of land etc., except where the expenditure relates to a building or structure already constructed on the land. This implies that the buildings and structures are included in the definition, but does it include construction costs as well?

- According to the article 3a "the allowance shall be claimed in the tax period in which the qualifying expenditure is incurred, or in any of the four subsequent tax periods" and "no claim for the allowance may be made after expiry of the fourth tax period following the tax period in which the qualifying expenditure was incurred". Does this mean that the taxpayer can't claim the allowance after 5 years of the period when the expenditure is incurred at all? When is the expenditure of, for example a machinery which is constructed, incurred? When the cost arises or when the machinery is put to use?
- Can taxpayer decide how much he wants to claim the allowance and in which taxable year (1+4 y)? Can taxpayer decide not to claim allowance in a taxable year, even if he has unclaimed qualified expenditures?

- According to the article 3 c "Where a taxpayer ceases to own, demolishes or otherwise disposes of an asset linked to qualifying expenditure in respect of which that taxpayer has claimed the allowance, the disposal value of that asset shall be brought into account for tax purposes. If the disposal value exceeds any unclaimed allowance, a balancing charge shall arise." Does this mean that the disposal value is taxable only, when it exceeds any unclaimed allowance?

AIFs:

- We note that it seems that alternative investment funds would no longer be included in the definition of a financial undertaking. We would be interested to hear more information on this removal.

GAAR:

- It would be good to understand what kind of taxes the extended scope of the GAAR could cover. We note that the term “tax liability” is quite wide.

Interest limitation rule:

- In the article 4 (1) the amount of deductible exceeding borrowing costs is suggested to change so, that the amount “is equal to” 30 percent instead of “up to”. What is the purpose of the change? Is it still possible to deduct exceeding borrowing costs less than 30 percent of EBITDA?

- Do we understand correctly that due to the indexation mechanism, EUR 3.000.000 limit will/might change every year? Who is responsible for counting the formula (taxpayer, tax administration)? Is there any maximum amount for the indexed deductible exceeding borrowing costs or is the purpose that the amount is increasing gradually?

- Article 4 (2a) includes the definition of “a low-risk third-party loan”. Is it possible to fund intragroup share purchase (or other assets) with, for example, bank loan? Does it still fall in the definition of “a low-risk third-party loan”?

- It is stated in the indexation formula that “Where: I_y is the indexed amount applicable from 1 July of calendar year y until 30 June of calendar year y+1.” and “I_(y-1) is the indexed amount applicable from 1 July of calendar year y-1 until 30 June of calendar year y.” Why is the indexed amount applicable 1.7. - 30.6. and not the whole calendar year 1.1. – 31.12. which is a typical fiscal year for the enterprises? Does taxpayer apply, for the whole fiscal year, the indexed amount of deductible exceeding borrowing costs which is applicable when the fiscal year ends?

- According to article 4 (4a) Member States shall exclude exceeding borrowing costs incurred on loans used to fund defence products or other products for defence purposes. Do we understand correctly that loans can be used to fund purchase and manufacturing of defence products? For exception to apply, do the seller and the buyer of defence products have to locate in the Union? What does “defence purposes in critical capability areas” mean and is it applied only in relation of “any income arising from defence products or other products for defence purposes”?

- With respect to long-term public infrastructure project exclusion, it is stated that the proposal clarifies the operation of the optional exclusion in line with common EU priorities, by referring to long-term public-benefit projects instead of infrastructure. Is the intension to extend the scope of the exclusion? The definition of the concept of a long-term public infrastructure project is very broad and open, and the content of the concept is very open to interpretation. Replacing the concept of long-term infrastructure with the concept of “public benefit project” possibly extends the scope of application and removes certain questions of interpretation. In our view, however, the change does not remove the problem of interpretation of the concept of public interest (or benefit). Today it is up to each Member State to define what it considers to be projects of public infrastructure. Is the situation the same with the consept of public benefit? How is the new wording intended to clarify this concept? Could this change of wording be explained more broadly?

- With respect to carry-forward, do we understand correctly that member states could still choose between allowing for indefinite carry forward of non-deductible interest expense (i.e. option a) and carry forward of both non-deductible interest expense and unused interest capacity (i.e. option c)? [Initially we think that allowing for both options would be a reasonable approach].

Imported mismatch rule:

- We are concerned that removing the imported mismatch rule opens the possibilities to avoid remaining rules. Instead of removing the imported mismatch rule, would it be possible to clarify the rule?

• Scope of the ATAD:

- Could commission also elaborate on the relationship between the wording of article 3 paragraph 2 ("Chapter II shall not preclude the application of domestic provisions or agreement based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases".) and the proposed article 4 paragraph 9. ("For the purposes of this Article, Member States shall not maintain or introduce, in their national law, any provisions with a subject-matter that falls within the scope of this Article if they lay down rules that diverge from those laid down in this Article".).

- We would also like to understand whether the proposed paragraph 9 would impact on how interest limitation rules can be applied to entities not in scope of the directive (e.g partnerships)? Similarly with respect to the CFC rules, we would like to understand how this effect the application of CFC rules to persons not in scope of the directive (e.g. individual).