

ETAF Statement

Omnibus on Taxation

Introduction

The European Tax Adviser Federation (ETAF) would like to thank the European Commission for the opportunity to provide feedback on the omnibus on taxation, to simplify and clarify the corporate tax Directives, namely Council [Directive](#) 2003/49/EC (the Interest and Royalties Directive - IRD), Council [Directive](#) 2009/133/EC (the Tax Merger Directive-TMD), Council [Directive](#) 2011/96/EU (the Parent-Subsidiary Directive - PSD), Council [Directive](#) (EU) 2016/1164 (the Anti-Tax Avoidance Directive - ATAD), as amended by Council [Directive](#) (EU) 2017/952 of 29 May 2017 (ATAD2), and Council [Directive](#) 2017/1852 (the Tax Dispute Resolution Mechanisms Directive-DRM Directive).

ETAF welcomes the initiative and fully supports the objective of “*simplifying the existing EU legal direct taxation framework and support the enhancement of competitiveness in the internal market, without undermining the important policy objectives of the Directives concerned*”. The goal is part of the broader [objective](#) of the Commission to reduce administrative burden and simplify implementation, specifically the target of reducing administrative burden by at least 25% for all businesses, and by at least 35% for SMEs, by the end of the mandate, without undermining the policy objectives of the initiatives concerned.

In the field of direct taxation, the Council approved the [Conclusions](#) that set a tax decluttering and simplification agenda on 11 March 2025, that are based on four principles to be applied to current and future tax initiatives, namely (i) reducing reporting, administrative and compliance burdens for Member States’ administrations and taxpayers, (ii) eliminating outdated and overlapping tax rules and, where relevant (iii) increasing the clarity of tax legislation and (iv) streamlining and improving the application of tax rules, procedures and reporting requirements.

Since the adoption of these Directives, the legal and economic environment has changed significantly. The current framework for cross-border taxation, therefore, needs to be reassessed. In particular, the interaction between the Directives and their national implementation has given rise to interpretative uncertainties and practical difficulties in their application. A direct tax Omnibus initiative should therefore review the existing framework and ensure that the Directives remain coherent, effective and fit for purpose in the current economic context.

Against this background, this statement identifies the issues with the aforementioned direct tax Directives and provides recommendations accordingly. Section I focuses on the ATAD in general, and with a focus on specific articles. Section II covers the interaction with the IRD, PSD and TMD, and Section III analyses the DRM Directive.

I. The Anti-Tax Avoidance Directive

The ATAD establishes rules on interest deductibility (article 4), exit taxation (article 5), the general anti-abuse rule (article 6), controlled foreign corporation rules (articles 7 and 8), and hybrid mismatches (articles 9 and 9a). Two structural problems run across all provisions. First, the minimum harmonisation standard in article 3 has produced fragmentation: a [2022 FISC study](#) found that options in the ATAD have given rise to divergent implementation across 27 national systems, generating compliance costs and legal uncertainty. Second, [Directive \(EU\) 2022/2523](#), the Pillar Two Directive, now overlaps with several ATAD provisions, creating risks of double taxation without additional anti-avoidance benefits. ETAF's [September 2024 statement](#) sets out the underlying diagnosis in full; this statement focuses on targeted recommendations.

(a) Article 3: minimum harmonisation standard

Article 3 ATAD states that the ATAD “*shall not preclude the application of domestic or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases*”. Thus, under such a provision, Member States can apply stricter domestic laws or tax treaty provisions to protect their corporate tax bases. The idea behind such an approach, as highlighted in the initial Commission [proposal](#) of 28 January 2016, is that the aims of the ATAD cannot be achieved through action taken by each Member State acting on its own. As the objective is to adopt solutions that function for the internal market as a whole and improve resilience to aggressive tax planning, the appropriate way forward was to coordinate initiatives at the EU level.

However, while this approach was also designed to ensure coordinated action at the EU level and to avoid the replication of fragmentation through unilateral Member State measures, it has, in practice, contributed to a degree of divergence in implementation across the EU. In fact, the minimum harmonisation design is repeatedly identified as a driver of fragmentation across 27 national tax systems, higher compliance costs, and legal uncertainty when overlapping regimes apply simultaneously. To illustrate, a 2022 FISC [study](#) found that “*the impact of the ATAD on Member States differs widely between different rules of the Directive and among Member States. Overall, the existing options granted in the ATAD give rise to a certain fragmentation*”.

The minimum harmonisation standard also creates competitive distortions. For example, Germany implemented the imported mismatch rule in article 9(3) ATAD in a stricter form than required, producing administrative burdens that exhaustive harmonisation would have prevented.

ETAF therefore recommends the following:

- **Promoting uniform implementation:** In the revision of the ATAD, priority should be given to exhaustive rules to increase the level of harmonisation, with opening clauses only where politically justified and technically necessary. This would limit implementation options, prevent overly burdensome national implementation, and promote more uniform application across Member States.

(b) SME exemption

The ATAD applies irrespective of taxpayer size. Large multinational groups predominantly deploy aggressive tax planning strategies. SMEs generally lack the international structures necessary to engage in arrangements targeted by the interest limitation rule (ILR), the controlled foreign company (CFC) rules, and hybrid mismatch rules, yet are required to review and assess the applicability of all three. Introducing a size-based threshold is a risk-based calibration of the framework, not a departure from its anti-avoidance objectives.

ETAF therefore recommends the following:

- **Introducing an SME exemption:** SMEs should be exempted from the ILR in article 4 ATAD, the CFC rules in articles 7 and 8 ATAD, and the hybrid mismatch rules in articles 9 and 9a ATAD, in line with the Commission's 35% burden-reduction target for SMEs. The exemption should be defined by reference to established revenue and size thresholds, applied on a group-wide basis, and accompanied by an anti-fragmentation clause to prevent artificial splitting of structures. SMEs generally lack the cross-border structures through which the targeted arrangements are deployed; the exemption is therefore without prejudice to any targeted rules against abusive use of SME structures.

(c) Article 4: interest limitation rule

The ILR limits deductibility of excess borrowing costs to 30% of EBITDA or EUR 3 million, whichever is higher. However, ETAF observes that its current design raises three key issues:

First, the rule applies indiscriminately to both intra-group and third-party financing, although the base erosion risks it is intended to address primarily arise from intra-group arrangements, such as debt loading and the use of intra-group loans to shift profits. Extending its application to third-party financing, therefore, goes beyond these core risk scenarios and may impose disproportionate compliance burdens without corresponding anti-avoidance benefits.

Second, the extensive optionality under article 4 has led to divergent national implementations, particularly as regards the EUR 3 million threshold, which remains subject to the minimum harmonisation clause and may be applied as a de minimis rule rather than a safe harbour. This undermines legal certainty and creates competitive disadvantages across Member States.

Third, the fixed EBITDA threshold may produce pro-cyclical effects during economic downturns, further constraining businesses precisely when financing is most needed.

ETAF therefore recommends the following:

- **Limiting the ILR to intra-group financing:** The ILR should be limited to intra-group financing. The principal abuse scenarios targeted by the rule (i.e., deliberate

debt loading in high-tax group entities, use of intra-group loans to inflate interest expenses, and financing of tax-exempt income through intra-group structures) all concern intra-group arrangements. Applying the rule to third-party financing produces disproportionate burdens without corresponding anti-avoidance benefits.

- **Making the EUR 3 million allowance mandatory:** The EUR 3 million allowance under article 4(3)(a) ATAD should be removed from the minimum harmonisation clause and made mandatory across all Member States. Implementation as a *de minimis* threshold should be expressly excluded, as should other options exceeding this standard.
- **Introducing an economic safeguard clause:** The Commission should explore introducing an economic safeguard clause that could increase the EBITDA threshold in exceptional circumstances such as recessions and economic crises, mitigating the pro-cyclical effects of the rule. Any such mechanism must be practicable in design and must not create new competitive distortions through broad Member State discretion; the Commission should therefore consider workable models carefully before prescribing detailed mechanics in the Directive itself.

(d) Article 5: exit taxation

Article 5(1)(c) ATAD triggers exit taxation where a company transfers its tax residence abroad, excluding it only where assets remain effectively connected with a permanent establishment in the former Member State. This does not cover situations in which assets are no longer attributable to a permanent establishment but remain fully subject to tax in the former Member State. A company owning domestic immovable property that transfers its place of effective management to another Member State whilst relinquishing its only permanent establishment retains source-state taxing rights under domestic law and applicable tax treaties. Subjecting it to exit taxation in these circumstances is disproportionate.

ETAF therefore recommends the following:

- **Targeted amendment to article 5(1)(c) ATAD:** Article 5(1)(c) should be amended to provide expressly that exit taxation does not apply where, following the transfer of tax residence, the assets concerned are no longer attributable to a permanent establishment in the former Member State but remain fully subject to tax in that Member State under its domestic law or applicable tax treaties. This corresponds to the typical case described by German tax advisers: for example, a company owning domestic immovable property that transfers its management seat abroad whilst relinquishing its only permanent establishment, where the assets remain fully subject to tax in the source state.

(e) Articles 7 and 8: controlled foreign corporation rules

The CFC rules are set out in article 7 (establishing the control and low-tax trigger) and article 8 (governing the computation and inclusion of CFC income) of the ATAD. As per recital 12, CFC rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then the parent company becomes taxable on this attributed income in its Member State of residence. Three main issues can be identified: fragmentation resulting from the options provided, overlap with the Pillar Two Directive, and inconsistencies in the definition and scope of passive income.

Firstly, article 7(2) ATAD offers a choice between model A (automatic inclusion of specified passive income) and model B (inclusion only for income lacking genuine substance). A [2026 cross-country study](#) found that Member States are split between these models, producing materially different CFC footprints. Optional low-profit and low-margin exclusions under article 7(3), together with variations in control thresholds (article 7(1)(a)) and tax-rate tests (article 7(1)(b)), compound the divergence.

Secondly, both the CFC rules and the Pillar Two Directive address low-taxed foreign profits and profit shifting, and ultimately pursue overlapping objectives: preventing tax avoidance by shifting income to low-tax jurisdictions. Although they differ in design, the CFC rules use a relatively low-tax benchmark and domestic tax rules, while the Pillar Two Directive applies a fixed 15% ETR and financial accounting income. Their functional overlap means that in-scope groups may face double inclusion. The Pillar Two Directive already ensures that in-scope groups pay a minimum effective rate of 15%. Where it applies, there is no longer any low-taxed income of a controlled subsidiary that the CFC rules need to address. The coordination mechanism in article 24(3) of the Pillar Two Directive, confirmed as mandatory by the ECJ in case [C-524/23](#), increases the subsidiary's ETR for Pillar Two purposes when CFC taxes are levied, but ATAD does not recognise Pillar Two top-up taxes in return. This asymmetry, combined with divergent thresholds and income computations, risks cumulative taxation of the same profits.

Thirdly, the passive income catalogue in article 7(2)(a) ATAD defines the income categories subject to CFC inclusion (e.g., income from financial leasing). Thus, passive income is defined positively: it clearly delineates which income the legislator considers passive, and all income not listed is considered active. The current minimum harmonisation standard allows Member States to substitute the passive catalogue with the active income catalogue, which requires constant legislative updating and creates competitive distortions. Additionally, ATAD provides that capital gains and dividends are classified as passive income, regardless of whether the company selling the capital gains or the distributing company is passive or active, or whether the passive income of the lower-tier company has already been subject to CFC taxation. From a systematic point of view, this is not coherent.

ETAF therefore recommends the following:

- **Abolishing the CFC rules for Pillar Two in-scope groups:** The CFC rules in articles 7 and 8 ATAD should, in principle, be abolished for corporate groups within the scope of the Pillar Two Directive, provided that anti-avoidance objectives are

preserved and interactions with non-EU jurisdictions are taken into account. Since both regimes ultimately pursue overlapping objectives (i.e., preventing tax avoidance through low-tax profit shifting) and the Pillar Two Directive already guarantees a 15% minimum effective rate for in-scope groups, the CFC rules are redundant for those groups and produce unjustified double taxation. Practical transitional rules must accompany abolition. A particular concern arises for groups with fluctuating revenues: to avoid requiring companies to maintain parallel CFC calculations at all times, a grace period or simplified flat-rate method should apply for the first year in which the CFC rules would become applicable again.

- **Mandatory tax credit mechanism as a minimum fallback:** If abolition is not adopted, a mandatory mechanism must be introduced allowing Pillar Two top-up taxes to be credited against domestic CFC taxation, building on article 8(7) ATAD. Austria has already amended section 10a KStG to allow a foreign QDMTT to be credited against Austrian CFC taxation; this approach should be codified at EU level.
- **EU-wide sequencing rules as an alternative minimum measure:** Where neither abolition nor a mandatory credit mechanism is adopted, EU-wide sequencing rules must be codified to establish a clear priority order, specifying how CFC taxes are attributed when calculating the jurisdictional ETR under the Pillar Two Directive, when a QDMTT takes precedence over CFC inclusion, and how the IIR applies where CFC taxation has already occurred.
- **Reducing CFC design options for groups remaining in scope:** For groups not within the Pillar Two scope, a significantly more harmonised CFC design should be achieved, for example by establishing a default standard method and strictly limiting permissible deviations from it. This would reduce the materially different CFC footprints produced by the current unconstrained model A/B choice, while retaining a degree of flexibility where technically justified.
- **Systematic review of the passive income catalogue:** The catalogue in article 7(2)(a) ATAD should be reviewed to ensure coherent and proportionate application. The treatment of dividends and capital gains as passive should be reconsidered where the income has already been subject to CFC taxation at a lower tier, or where the underlying company is itself active. The option to substitute the passive catalogue with an active income catalogue should be expressly excluded.

(f) Articles 9 and 9a: hybrid mismatch rules

Like the CFC rules, the hybrid mismatch rules and the Pillar Two Directive ultimately pursue overlapping objectives: preventing base erosion through structures that exploit divergences between national tax systems. The Pillar Two minimum effective rate already neutralises the economic benefit of hybrid mismatch arrangements for in-scope groups. Maintaining the hybrid mismatch rules in parallel therefore produces unjustified administrative burdens without proportionate anti-avoidance benefit. The scope and proportionality of intra-EU hybrid mismatch rules should be reassessed in light of further harmonisation within the internal market.

In addition, article 9(3) ATAD, which denies deductions for payments that directly or indirectly fund deductible expenses giving rise to a hybrid mismatch, has been applied

by some national administrations to deny deductions where any expenses of the payee can theoretically offset any hybrid mismatch expenses, even without factual or economic connection. This interpretation goes beyond the purpose of article 9(3).

ETAF therefore recommends the following:

- **Abolishing hybrid mismatch rules for Pillar Two in-scope groups:** The hybrid mismatch rules in articles 9 and 9a ATAD should, in principle, be disapplied for corporate groups within the scope of the Pillar Two Directive, in order to avoid unjustified double taxation, while maintaining adequate protection against abuse in other cases. Because both regimes ultimately pursue overlapping objectives, and the Pillar Two minimum effective rate removes the economic benefit of hybrid mismatch arrangements for in-scope groups, parallel application is disproportionate and should be disapplied.
- **Clarifying the economic-link requirement in article 9(3) ATAD:** The Directive should be amended to clarify that a deduction denial under article 9(3) applies only where there is a genuine economic link -- a "wirtschaftlicher Zusammenhang" -- between the payment and the deductible expenses giving rise to the hybrid mismatch. Some national administrations, including under the German Federal Ministry of Finance letter of 5 December 2024, have taken the view that a deduction denial applies whenever the payee has any hybrid mismatch expenses that can theoretically be offset against any of its deductible costs, regardless of any factual or economic connection. This far-reaching interpretation goes beyond the purpose of article 9(3) and must be excluded by the wording of the Directive.

II. The Interest and Royalties, Parent-Subsidiary, and Tax Merger Directives

The IRD provides for a common system applicable to cross-border interest and royalty payments between associated companies by eliminating withholding tax (WHT) on such payments. The PSD establishes a common system of taxation applicable to parent companies and subsidiaries of different Member States, eliminating WHT on dividend distributions and requiring Member States to either exempt distributed profits or grant an indirect tax credit. The TMD provides for a common system of taxation applicable to cross-border reorganisations, enabling them to occur without immediate tax crystallisation. While these Directives collectively facilitate cross-border tax efficiency, their implementation reveals challenges that hinder uniform application across Member States.

(a) Exhaustive company lists in the annexes

Each Directive defines its scope of application, inter alia, by reference to an annex listing the company forms eligible to benefit from its provisions (see article 3(a)(i) in conjunction with the annex IRD, articles 1 and 2(a) in conjunction with annex I, part A PSD, and articles 1 and 3(a) in conjunction with annex I, part A TMD).

The ECJ has interpreted this legal-form requirement strictly, holding that the lists contained in the annexes are exhaustive and cannot be expanded through

interpretation. This was illustrated in case [C-247/08](#), which concerned a French parent company incorporated as a simplified joint-stock company (*Société par Actions Simplifiée*, or SAS). At the time of the dividend payment, the SAS was not included in the annex of the PSD, and Germany therefore argued that the company did not qualify as a “company of a Member State” within the meaning of the Directive. The Court examined article 2(a) PSD, which defines the concept of a company of a Member State, and held that the Directive applies only to companies taking one of the legal forms listed in the annex. As the annex contains an explicit list of legal forms and no general clause covering equivalent companies, the Directive cannot be extended by analogy to other companies, even if they are economically comparable.

The exhaustive nature of the annexes creates practical difficulties. As Member States introduce new corporate forms, these entities are not automatically eligible for the benefits of the Directives until the annexes are formally updated. As a result, a “lag period” is created, during which such companies may be excluded from the Directives’ scope, resulting in WHT leakage. For example, dividends or interest payments may remain subject to WHT at source despite the company being economically equivalent to listed forms.

Updating the annexes is also a lengthy process. As the Directives were adopted under article 115 of the Treaty on the Functioning of the European Union (TFEU), they do not confer delegated powers on the Commission to amend the annexes. Consequently, adding a new company form requires a full legislative amendment, based on a Commission proposal and adopted by the Council acting unanimously under the special legislative procedure.

ETAF therefore recommends the following:

- **Deleting the exhaustive lists and replacing them with automatic eligibility:** Part A of Annex I to the PSD, the annex to the IRD, and Part A of Annex I to the TMD should be deleted. All companies subject to corporate income tax in the relevant Member State should automatically qualify.

(b) Misaligned participation thresholds

The PSD and IRD apply different participation thresholds to determine when companies qualify as “associated”. Under article 3(b)(i) IRD, a participation of at least 25% is required, whereas under article 3(1)(a)(i) PSD the threshold is 10%.

The PSD originally required a 25% participation threshold, but this was progressively reduced through subsequent amendments to extend the Directive’s benefits to a wider range of corporate group structures. By contrast, the IRD, adopted in 2003, retained the 25% threshold, reflecting a political compromise reached during the legislative negotiations. Unlike the PSD, this threshold has never been reduced, resulting in a persistent misalignment between the two Directives.

This divergence creates practical distortions in corporate group structures. A group may qualify for PSD benefits for intra-group dividend distributions, while failing to qualify for IRD benefits for intra-group interest or royalty payments. As a result, taxpayers may be obliged to structure transactions differently depending on the type

of payment, maintain additional documentation to demonstrate compliance with different participation thresholds, and face inconsistent tax treatment within the same group structure, which can be disproportionately burdensome for SMEs.

ETAF therefore recommends the following:

- **Harmonising participation thresholds:** The IRD threshold should be reduced to 10%, aligned with the PSD, so that all corporate group structures qualifying for dividend relief also qualify for interest and royalty relief.

(c) Documentation burden and procedural simplification under the PSD

Under the current framework, companies seeking PSD dividend exemption must provide extensive evidence that distributions were not structured abusively, that profits were already taxed at the subsidiary level, and that dividends were correctly applied. This documentation is often duplicative of information already held by tax authorities and must be submitted separately to each national administration. The general anti-abuse rule (GAAR) in article 1(2)-(3) PSD imposes standing documentation obligations on all companies regardless of any indication of abusive structuring, overlapping with obligations under ATAD, the IRD, and the TMD.

ETAF therefore recommends the following:

- **Abolishing the standing GAAR documentation requirements under the PSD:** The standing documentation obligations in article 1(2)-(3) PSD should be abolished. Trust in compliant businesses should be the default. This does not constitute a blank cheque: in cases of suspicion or audit, companies must still provide full documentation. Standing obligations that penalise all compliant businesses for the conduct of the few are disproportionate and must be removed.

(d) Procedural simplification under the IRD

Two specific issues arise beyond annex lists and participation thresholds. First, article 1(4) IRD requires companies to demonstrate beneficial ownership as a routine condition; the evidentiary burden is disproportionate to the practical risk. Second, article 3(b) IRD limits the association concept to direct holdings, excluding interest and royalty payments between a parent and indirect subsidiaries without anti-avoidance justification.

ETAF therefore recommends the following:

- **Simplifying the beneficial ownership requirement:** A company should be treated as the beneficial owner under article 1(4) IRD if it receives the payment for its own account. Evidence may be requested only where there are justified doubts in the specific case.

- **Extending the association concept to indirect holdings:** Article 3(b) IRD should be amended to allow indirect holdings to be taken into account when determining association. The current restriction means that, for example, interest payments from a parent company to its indirect subsidiary (a grandchild entity) fall outside the Directive's scope without any compelling anti-avoidance justification, removing the exclusion of such economically equivalent arrangements.

(e) Scope of the TMD

Beyond exhaustive annex lists, the TMD applies solely to opaque capital companies listed in Annex I Part A; transparent entities are addressed only in recital 8 in the specific context of qualification conflicts. As transparent entities are increasingly engaged in cross-border activities, this exclusion is increasingly difficult to justify.

ETAF therefore recommends the following:

- **Extending the TMD to transparent entities:** Annex I Part A of the TMD should be deleted and replaced with a functional eligibility criterion. Member States should then be given the option to include tax-transparent entities -- at least nationally significant partnership forms -- as eligible acquiring or transferring entities within the meaning of the TMD. In addition, the concept of a "partial business" in article 2(j) TMD should be clarified to provide greater legal certainty, including guidance on the degree of organisational autonomy required, the minimum scope of assets to be transferred, and confirmation that the EU definition prevails where it conflicts with a national concept.

III. The Tax Dispute Resolution Mechanisms Directive

The DRM Directive follows a tripartite procedure consisting of the complaint phase (article 3), the Mutual Agreement Procedure (MAP) phase (article 4), and the dispute resolution phase (articles 5–16). Under article 3, the taxpayer submits a complaint to the competent authorities (CAs) of the Member States concerned. If all Member States accept the complaint, the MAP under article 4 is initiated, during which the CAs must seek to resolve the dispute within two years, extendable by one year.

If no agreement is reached, the taxpayer may request dispute resolution before an advisory commission under article 6(1)(b). Pursuant to articles 6(3) and 14(1), the commission must be established within 120 days and deliver its opinion within six months. Following this, the CAs have six months to reach an agreement (article 15(1)), failing which the commission's opinion becomes binding (article 15(2)).

However, as noted in the Commission's 2024 [implementation report](#), none of the complaints have advanced to the dispute resolution stage so far. Evidence on the application of the Directive remains limited, and not all Member States have yet accumulated sufficient experience with its rules. Based on the 2024 [Special Report](#)

by the European Court of Auditors (ECA), and as observed by ETAF members, certain unclear definitions and gaps are leading to fragmented interpretations across the Member States.

(a) Interpretative divergence on key definitions (articles 1-2 and 16(7))

Several key concepts in the Directive remain undefined or broadly defined. Most notably, the DRM Directive does not define the central concept of a “dispute”, which creates unnecessary legal uncertainty regarding admission to the dispute resolution procedure. The definitions of “affected person” (article 1(d)) and “double taxation” (articles 1-2 and 16(7)) also remain open-ended. This lack of precision may lead to divergent interpretations among Member States, creating legal uncertainty and, in some cases, litigation. An example is the pending Case [C-497/25](#), in which the Latvian administrative court has requested a preliminary ruling on the interpretation of “double taxation” under article 2(1)(c). The case illustrates the uncertainty surrounding this concept, for example whether it requires actual taxation by two Member States, if it also covers potential taxation or includes both juridical and economic double taxation. Such ambiguities may ultimately deny taxpayers access to the dispute resolution mechanism.

ETAF therefore recommends the following:

- **Defining the term “dispute”:** A dispute should be defined as existing as soon as at least two Member States tax, or intend to tax, the same subject matter of taxation, giving rise to actual or potential double taxation.
- **Clarifying the term “double taxation”:** The concept should be clarified in article 2 to explicitly encompass situations where taxation in multiple Member States creates a genuine risk of double taxation, reflecting the object and purpose of the Directive.
- **Clarifying the term “affected person”:** The concept should be defined as any natural or legal person for whom actual or potential double taxation exists, with proof deemed furnished as soon as two Member States attribute the same subject matter to their taxing jurisdiction. Affected persons should be permitted to be represented by persons authorised under applicable national law to represent parties before fiscal courts.

(b) Time limit and submission requirements (article 3(1) and (2))

Article 3(1) requires complaints within three years of the “first notification of the measure resulting in, or which will result in, a dispute”. It is frequently unclear which measure triggers the period. The obligation to submit complaints simultaneously to all affected Member States and to provide translations imposes multiple parallel filing obligations incompatible with the once-only principle.

ETAF therefore recommends the following:

- **Clarifying the starting point of the three-year period:** Article 3(1) should specify that the three-year period begins from the measure that creates the jurisdictional conflict in relation to a prior measure taken by another Member State, that is, from the second in time of the two relevant measures. Where doubt exists as to which measure constitutes the trigger, the later measure should be treated as the starting point.
- **Abolishing multiple parallel filing obligations:** The obligation to file simultaneously with all Member States and to provide translations should be abolished. Complaints should be submitted to the CA of the Member State where the taxpayer is resident and involved. Translation obligations should rest with the authorities, which can now use digital translation tools.

(c) Procedural language and single-state filing (articles 3 and 17)

The current obligation to submit complaints in the official language of each Member State concerned creates significant translation costs and delays, disproportionate to the administrative efficiency the requirement serves. In addition, article 3(1) requires simultaneous parallel filing with the competent authority of every Member State involved; the single-state filing simplification in article 17 is available only to individuals and smaller undertakings, leaving larger businesses subject to a procedurally burdensome multi-filing regime.

ETAF therefore recommends the following:

- **Accepting English as an additional procedural language:** All competent authorities should be required to accept complaints and submissions in English as a procedural language alongside their official national language. The lack of uniform acceptance of English in dispute resolution proceedings generates unnecessary complexity and translation costs for cross-border businesses, particularly in technically complex cases such as transfer pricing disputes.
- **Extending single-state filing to all taxpayers:** article 17 of the DRM Directive already permits single-state filing for individuals and smaller undertakings, with the receiving authority transmitting the complaint to other competent authorities. This simplification should be extended to all taxpayers without restriction. Such an extension would eliminate the disproportionate administrative burden of simultaneous parallel filings across multiple Member States while preserving full information symmetry for all competent authorities concerned.

(d) Fast-track mechanism for straightforward transfer pricing disputes

Transfer pricing disputes account for a significant share of cross-border double taxation cases and, under the current DRM Directive framework, must proceed through the full MAP procedure even when the underlying adjustment is straightforward and clearly justified. The fast-track mechanism presented in the 2023 [proposal](#) for an EU Transfer Pricing Directive, whereby tax authorities may grant a corresponding adjustment within approximately six months without initiating a formal MAP, provided

the adjustment is clearly justified or results from a joint audit, would substantially reduce the duration and resource cost of resolving such cases for both taxpayers and administrations.

ETAF therefore recommends the following:

- **Introducing a fast-track lane for straightforward transfer pricing disputes:** The DRM Directive should be amended to incorporate a fast-track resolution mechanism for transfer pricing disputes where the adjustment is clearly justified, for example, based on a joint audit or an uncontested comparable. Competent authorities should be required to grant a corresponding adjustment within six months without the need to initiate the full MAP procedure. This would increase tax certainty, reduce prolonged litigation, and free administrative resources -- both at the level of tax authorities and of taxpayers -- for genuinely complex cases.

(e) Digitalisation and permanent arbitration body (articles 6 and 7)

The current procedure requires postal transmission of documents and imposes deadlines that do not reflect digital processing speeds. The advisory commission mechanism under article 6 depends on agreement between all parties on composition and mandate, which has proved unachievable in practice.

ETAF therefore recommends the following:

- **Establishing a permanent independent arbitration body:** The advisory commission procedure in article 6 of the DRM Directive should be replaced by a permanent independent arbitration body. Where CAs fail to reach an agreement in the MAP within 12 months, the complaint should be automatically referred without further request. The arbitration body should issue a binding decision within six months of referral. This would incentivise timely MAP resolution, build institutional expertise and a publicly accessible database of decisions, and provide taxpayers with an effective dispute resolution mechanism.
- **Strengthening the rights of affected persons:** Affected persons should have greater transparency as to the status of the procedure at all stages, the opportunity to comment on positions exchanged by CAs, and a right to be heard before the arbitration body.
- **Suspending late-payment interest and penalties:** Once a complaint has been accepted, no late-payment interest or penalties should accrue in respect of the amount affected by double taxation from submission until the final decision on the merits.

Conclusion

The corporate tax Directives examined in this statement were designed for a different legal and economic landscape. The introduction of the Pillar Two Directive has created overlaps that warrant careful recalibration; the minimum harmonisation standard has led to divergent national implementation, with real costs for businesses; and the DRM Directive has not yet delivered the effective dispute-resolution mechanism that taxpayers need. The Tax Omnibus Package is a welcome opportunity to address these issues in a coherent and proportionate way.

ETAF's recommendations, set out in detail above and summarised in the Annex, are guided by consistent principles: harmonise exhaustively where anti-avoidance objectives permit; eliminate redundancy where Pillar Two already provides adequate protection; calibrate procedural obligations to actual risk; and make dispute resolution genuinely effective. Taken together, they would reduce compliance costs and legal uncertainty without compromising the policy objectives the Directives were designed to serve.

ETAF's members work with these frameworks daily and bring practical insight into where reform would make the greatest difference. ETAF looks forward to engaging constructively with the Commission throughout the legislative process.

Notes

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About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is set as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15 December 2015. It represents more than 215,000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.

Annex: summary of ETAF recommendations

| Issue | Concerned articles | ETAF recommendation |
|--|--|--|
| Article 3 ATAD: minimum harmonisation standard producing fragmentation | Article 3 ATAD | Promote more uniform implementation across Member States by prioritising more exhaustive EU rules, limiting implementation options, and allowing targeted opening clauses only where politically justified and technically necessary. |
| SME exemption: disproportionate compliance burden | Articles 4, 7-8, 9 and 9a ATAD | Exempt SMEs from the ILR (article 4), the CFC rules (articles 7 and 8), and the hybrid mismatch rules (articles 9 and 9a) |
| ILR: overbroad scope; mandatory allowance not guaranteed; pro-cyclicality | Article 4 ATAD | Limit the ILR to intra-group financing; make the EUR 3 million allowance mandatory and remove it from the minimum harmonisation clause; introduce an economic safeguard clause to mitigate pro-cyclical effects |
| Exit taxation: article 5(1)(c) ATAD captures situations involving no loss of taxing rights | Article 5(1)(c) ATAD | Amend article 5(1)(c) to provide expressly that exit taxation does not apply where, following a transfer of tax residence, the assets remain fully subject to tax in the former Member State under its domestic law or applicable tax treaties |
| CFC rules: optionality and fragmentation; overlap with Pillar Two Directive producing unjustified double taxation; inconsistencies in the passive income catalogue | Articles 7 and 8 ATAD | Abolish CFC rules for Pillar Two in-scope groups, with practical transitional rules. Fallback: mandatory tax credit mechanism. Minimum alternative: EU-wide sequencing rules. For remaining in-scope groups: adopt a single standard method, replacing the model A/B choice; review the treatment of dividends and capital gains as passive income; exclude the option to substitute the passive catalogue with an active income catalogue |
| Hybrid mismatch rules: overlap with Pillar Two Directive producing unjustified parallel application; overly broad interpretation of article 9(3) | Articles 9 and 9a ATAD | Abolish hybrid mismatch rules for Pillar Two in-scope groups; clarify that a deduction denial under article 9(3) requires a genuine economic link between the payment and the hybrid mismatch expenses |
| Exhaustive company lists in Directive annexes: lag periods, discrimination against unlisted forms | Annexes to the IRD, PSD and TMD | Delete Part A of Annex I (PSD/TMD) and the annex to the IRD; replace with automatic eligibility for all companies subject to corporate income tax in the relevant Member State |
| Misaligned participation thresholds between the IRD and the PSD | Article 3(b)(i) IRD; article 3(1)(a)(i) PSD | Reduce the IRD threshold from 25% to 10%, aligned with the PSD |
| PSD: disproportionate standing GAAR documentation obligations | Article 1 PSD | Abolish the standing GAAR documentation obligations under article 1(2)-(3) PSD; full disclosure to remain required only where abuse is specifically suspected |
| IRD: disproportionate beneficial ownership requirement; exclusion of indirect holdings | Articles 1(4) and 3(b) IRD | Treat a company as the beneficial owner under article 1(4) IRD if it receives the payment for its own account; extend the association concept in article 3(b) to indirect holdings |

| Issue | Concerned articles | ETAF recommendation |
|---|---|--|
| TMD: exclusion of tax-transparent entities | Articles 1 and 3(a) TMD | Allow Member States to recognise tax-transparent entities, including nationally important partnership forms, as eligible acquiring or transferring entities within the meaning of the TMD |
| DRM Directive: undefined key concepts ("dispute", "double taxation", "affected person") | Articles 1-2 and 16(7) DRM Directive | Define "dispute" as existing as soon as at least two Member States tax, or intend to tax, the same subject matter of taxation; clarify "double taxation" to encompass situations creating a genuine risk of double taxation; define "affected person" as any person for whom actual or potential double taxation exists, with proof deemed furnished as soon as two Member States attribute the same subject matter to their taxing jurisdiction |
| DRM Directive: unclear complaint period trigger; multiple parallel filing obligations | Article 3(1) and (2) DRM Directive | Clarify that the three-year complaint period begins from the measure creating the jurisdictional conflict; abolish the obligation to file simultaneously with all Member States and to provide translations |
| DRM Directive: absence of digitalisation; advisory commission mechanism inoperative in practice | Articles 6 and 7 DRM Directive | Fully digitalise all procedural steps; reduce the acknowledgement deadline to two weeks; replace the advisory commission with a permanent independent arbitration body issuing binding decisions within six months of automatic referral; strengthen the rights of affected persons throughout the procedure; suspend late-payment interest and penalties from submission until the final decision on the merits |
| DRM Directive: procedural language barriers; disproportionate multi-jurisdiction filing obligations | Articles 3 and 17 DRM Directive | Require all competent authorities to accept English as an additional procedural language; extend the single-state filing simplification in article 17 to all taxpayers, with the receiving authority responsible for forwarding the complaint to all other relevant authorities |
| DRM Directive: absence of fast-track mechanism for straightforward transfer pricing disputes | Articles 4-6 DRM Directive | Introduce a fast-track resolution mechanism for clearly justified transfer pricing adjustments (e.g., from joint audits), requiring a corresponding adjustment by the competent authority within six months without initiating the full MAP procedure |