

Insurance Europe response to EC call for evidence on taxation omnibus

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Insurance Europe proposals for simplifying EU direct taxation rules

Insurance Europe welcomes the European Commission's initiative to simplify EU direct taxation rules. The priority should be to enhance legal certainty and reduce unnecessary administrative complexity. Specifically, a number of key Directives should be reviewed:

Parent-Subsidiary Directive (PSD)

- Practical experience shows that divergent national interpretations undermine the Directive's objective of eliminating double taxation. Proposals for amendments:
 - Articles 2 and 5 should be clarified to explicitly confirm that profit-related municipal taxes fall within the Directive's scope. The current wording covers 'withholding tax' and 'corporate tax' in general terms, but does not expressly address municipal-level profit taxes, leading to divergent national interpretations and inconsistent application of the exemption.
 - Under Article 1(2), Member States apply the General Anti-Abuse Rule using divergent and often inconsistent substance tests. This results in companies having to repeatedly demonstrate eligibility in multiple jurisdictions. To ensure legal certainty and reduce administrative burdens, Article 1(2) should be amended to introduce harmonised EU-level substance criteria and standardised documentation requirements.
 - The Directive should include a clear definition of 'beneficial ownership,' as the Directive itself does not currently contain one. In the absence of such a definition, Member States rely on CJEU case law, most notably the *Danish Cases* (C-116/16 and C-117/16), which link beneficial ownership to the requirement of genuine economic activity and a prohibition of conduit or pass-through structures, and *Nordcurrent* (C-228/24), which extends the anti-abuse test to non-conduit subsidiaries and requires tax authorities to examine the full factual context over time. A definition is therefore necessary to avoid inconsistent national interpretations.
 - The Directive should expressly confirm that indirect holdings held through tax-transparent partnerships fall within the scope of Article 3(1). Because the Directive refers only to shareholdings held by 'companies of a Member State' listed in Annex I, it remains unclear

whether participations held via partnerships, often not classified as 'companies' under the Directive, satisfy the minimum holding requirement.

- The Directive should expressly confirm that partnerships that opted to be treated as corporations are eligible for the Directive's benefits.
- The Directive should also ensure the effective elimination of withholding taxes on dividends covered by the PSD, as persistent domestic-law or administrative obstacles continue in practice to undermine the objective of relieving intra-EU profit distributions from double taxation.
- It is important to introduce procedural simplifications, as the Directive currently contains no rules on administrative processes such as the validity of tax residence certificates or the format of exemption claims. In this context, existing EU solutions such as the e-TRC provided for under the FASTER Directive do not appear to be sufficient in practice, notably due to threshold-related limitations and processes that rely on financial intermediaries. Explicit provisions enabling longer-validity residence certificates, clearly indicating the EU Member States for which the certificate is valid, and standardised, fully digitalised procedures would streamline compliance and ensure a more uniform application across Member States.

FASTER Directive

- **Equal treatment of occupational pension institutions regulated under Solvency II:** The narrow reference to formal IORP status in Article 11(3)(a) of the FASTER Directive unintentionally excludes certain occupational pension institutions from access to fast-track procedures for dividend payments exceeding EUR 100,000.
 - Fast track access under Article 11(3)(a) should be clarified to ensure that occupational pension institutions which fulfil the substantive conditions for registration or authorisation under Article 9(1) of the IORP Directive are not excluded solely because they are supervised under the Solvency II framework. Given the equivalence of prudential and supervisory requirements, such institutions should be treated on an equal footing with formally registered or authorised IORPs for the purposes of the FASTER fast-track procedures.
 - To ensure effective and uniform application in practice, access to fast-track procedures for Solvency II regulated pension institutions should be supported by clear and verifiable documentation. This could be achieved through either an EU level list or recognition mechanism, or through formal statements of comparability issued by the competent national supervisory authority. To ensure the effectiveness of this approach, Member States should provide a clear and accessible process for issuing such statements of comparability where the relevant conditions are met. Such documentation would provide withholding agents with the legal certainty required to apply fast track relief without the need for complex legal assessments.

ATAD and interaction with Pillar Two

- The interaction between ATAD and the Minimum Taxation Directive results in duplicative and burdensome compliance processes. To avoid parallel calculations and ensure coherence with the GloBE framework, Controlled Foreign Company rules (Articles 7-8, ATAD) should be further harmonised across the EU, including as regards substance-based thresholds and criteria, and aligned with GloBE methodologies, including exemptions for MNE groups already subject to the global minimum tax and the use of financial accounting as the starting point for CFC calculations.
- Transactions by a financial undertaking with entities controlled by it should be excluded from the calculation of the one-third threshold for the optional exemption in Article 7 paragraph 3. Otherwise, legitimate structures would be captured by the CFC rules. For example, one such legitimate structure would be an insurance company that invests via its own fund in real estate companies. If the fund finances the real estate companies it holds by way of loans, the interest earned by the fund on those loans would be counted toward the one-third threshold. Applying the one-third threshold would be overreaching in this case.

- Hybrid mismatch rules (Articles 9, 9a, 9b) should be narrowed to ensure they remain targeted and proportionate, removing overly complex elements such as 'structured arrangements' and imported mismatch rules that impose excessive and often impracticable due-diligence burdens.
- Finally, the interest limitation rule (Article 4) should also be reassessed in light of Pillar Two, including moving from an earnings-based limitation to a more focused thin-capitalisation approach targeting shareholder debt, as effective minimum taxation already constrains aggressive leverage strategies.

Merger Directive

- The Merger Directive (Directive 2009/133/EC) does not explicitly clarify which effective date - legal, accounting or tax - should apply for tax purposes in a cross-border merger. Legal certainty would be improved by expressly stating that references to mergers in the Directive relate to the effective date applicable for tax purposes in cross-border reorganisations.
- Moreover, practical challenges in partial divisions, particularly the allocation of shared or functionally important assets between the transferred part and the remaining entity, should be clarified to ensure consistent tax treatment across jurisdictions. Functionally important assets used by both the transferred and the remaining part of the business (as is often the case for IT) should be allowed to be allocated to the transferred part of the business by granting a contractual right of use.

DAC 6

- Reporting obligations under DAC 6 create significant administrative burdens and legal uncertainty. The Commission should assess whether parts of DAC 6 - or the Directive as a whole - have become redundant and could be repealed or fundamentally simplified to avoid duplicative reporting and reduce compliance costs. A simplification could, among other things, entail dropping the Main Benefit Test (which is, in reality, a subjective assessment) and operating solely with a few narrow, objective criteria, where reporting would be required in all cases if certain simple factual conditions were met.
- Given the introduction of the global minimum tax, the likelihood of abusive cross-border arrangements has materially decreased. If DAC 6 is not repealed, it would therefore be appropriate to substantially streamline DAC 6, including introducing exemptions for groups already within the Pillar Two framework or considering targeted revisions that remove unnecessary overlap with the GloBE rules.

Minimum Taxation Directive

- Further simplification of the Minimum Taxation Directive is crucial for achieving the objectives of the Taxation Omnibus and for ensuring a proportionate and administratively workable implementation of the global minimum tax.
- In light of practical implementation challenges, targeted technical refinements to the provisions could be considered. These should include allowing greater acceptance of reporting packages as they are prepared in the accounting processes already established by the MNE groups.
- Additional simplifications could include excluding immaterial entities from GloBE computations (Chapter I and Chapter III definitions and scoping rules), and developing a whitelist of high-tax jurisdictions to reduce unnecessary top-up tax testing and compliance work.
- Further simplification efforts should also focus the unrestricted use of deferred taxes, supported by proportionate EU-wide penalty caps.
- While the OECD package agreed on 5 January 2026 represents a welcome step, including the Simplified ETR Safe Harbour, a one-year extension of the Transitional CbCR Safe Harbour and a work programme for additional simplifications, important implementation challenges remain, particularly for regulated insurance groups, including in relation to investment entities and the limited practical simplification that the new permanent safe harbour may offer.
- Against this background, the European Commission should include targeted EU-level simplifications of the Minimum Taxation Directive as part of the Omnibus simplification initiative, with a view to improving administrability, legal certainty and the competitiveness of European businesses, and to informing the EU's contribution to forthcoming international discussions on Pillar II.

Accompanying text/summary (notably in light of the 4000-character limit in the consultation format)

Insurance Europe welcomes the European Commission’s initiative to simplify EU direct taxation rules. Greater legal certainty and reduced administrative burdens are essential for ensuring that the EU tax framework remains efficient, competitive and proportionate. The attached annex sets out detailed technical proposals; the key recommendations are summarised below.

Parent-Subsidiary Directive (PSD)

Interpretation divergences continue to undermine the Directive’s objective of eliminating double taxation. Clarifications are needed to confirm the inclusion of profit-related municipal taxes (Articles 2 and 5), harmonise the application of the anti-abuse rule under Article 1(2), introduce a definition of beneficial ownership consistent with CJEU case law, confirm the treatment of participations held indirectly through partnerships under Article 3, ensure the effective elimination of withholding taxes on dividends covered by the PSD, and establish procedural simplifications such as longer-validity residence certificates and digitalised processes.

FASTER Directive

Given that Solvency II entails prudential and supervisory requirements at least equivalent to those under the IORP framework, Article 11(3)(a) of the FASTER Directive should be clarified to ensure consistent and equal treatment of occupational pension institutions regulated under Solvency II that fulfil the substantive conditions for IORP registration or authorisation under Article 9(1) of the IORP Directive. Such clarification would support the objectives of simplification and legal certainty under the Taxation Omnibus initiative, without extending the scope of the FASTER Directive.

ATAD in interaction with Pillar Two

The coexistence of ATAD and the Minimum Taxation Directive results in duplicative and disproportionate compliance burdens. CFC rules (Articles 7-8) should be aligned with GloBE methodologies, hybrid mismatch rules (Articles 9, 9a, 9b) narrowed to remain targeted, and the interest-limitation rule (Article 4) refocused on shareholder debt in light of Pillar Two.

Merger Directive

The Directive should clarify which effective date applies for tax purposes in cross-border mergers and address practical issues in partial divisions, including clear rules for allocating shared or functionally important assets.

DAC 6

Reporting obligations create heavy administrative burdens and overlap with Pillar Two. DAC 6 should be repealed or significantly streamlined, including exemptions for groups subject to Pillar Two.

Minimum Taxation Directive

Targeted refinements are needed to make implementation more proportionate and workable. These include the simplification of rules for investment entities, allowing for the unrestricted use of deferred taxes, enabling greater reliance on financial accounting data, excluding non-material entities, creating a whitelist of high-tax jurisdictions.

Final remarks

Finally, to enhance legal certainty and reduce the risk of double taxation, rulings and other mechanisms allowing for early tax certainty should be further harmonised across the EU. The EU should also review whether existing dispute prevention and resolution tools are sufficiently effective and accessible in practice for cross-border business structures.

Full technical explanations and proposed drafting clarifications are provided in the attached annex.



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