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1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

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Directorate-General for Taxation and Customs Union
SPA3 08/015
B-1049 Brussels
Belgium

Via Online Submission

RE: Omnibus on Taxation Call for Evidence

Dear Sir or Madam:

The European Commission ("EC") published a Call for evidence entitled "Omnibus on taxation" (the "Omnibus") on 16 February 2026. The EC intends to propose a legislative Omnibus in the second quarter of 2026 to streamline, enhance, and clarify corporate tax directives, including the interest and royalties directive, the tax merger directive, the parent-subsidiary directive, the anti-tax avoidance directive, and the tax dispute resolution mechanisms directive. The Omnibus is part of the EC's political guidelines, which have set the objective of making business easier and faster in Europe, by reducing administrative burdens and simplifying implementation. The Omnibus continues the work on the "tax decluttering and simplification agenda" approved by the Council of the EU in March 2025.

The Omnibus requests feedback from interested stakeholders on the Call for evidence no later than 30 March 2026. I am pleased to respond to the request on behalf of Tax Executives Institute, Inc. ("TEI").

About TEI

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 55 chapters in Europe, the Middle East & Africa ("EMEA"), North and South America, and Asia. TEI, as the preeminent association of in-house tax professionals worldwide, has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our more than 6,000 individual members represent over 2,800 of the leading companies in the world.[1]

[1] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986 (as amended). TEI's EC transparency registration number is 52413445902-12. TEI's EU Transparency register number is 52413445902-12.

TEI Comments

The EC's primary anti-abuse legislation to combat aggressive tax avoidance is the anti-tax avoidance directive ("ATAD"). However, a dense network of tax-governance instruments supplements and surrounds ATAD, including:

(a) The Pillar Two, 15% global minimum tax, aimed at eliminating most profit shifting incentives.

(b) DAC6: implementing real time disclosure of cross-border arrangements.

(c) DAC7 & DAC8: tax reporting for online platform and crypto-asset transactions.

(d) Public country-by-country reporting ("CbCR"): mandatory public reporting of profit allocation and taxes paid by jurisdiction.

(e) Extensive exchange of information mechanisms, including on rulings, financial accounts, and beneficial owner registries.

(f) Court of Justice of the European Union ("CJEU") tax jurisprudence, including robust beneficial ownership requirements and an anti-abuse doctrine.

Essentially ATAD is designed to target many tax avoidance risks Europe is already protected against. Yet ATAD's rigid structures remain in place.

The OECD's introduction of the Pillar Two global minimum tax ("GMT") represents the most significant structural reform to international corporate taxation since the advent of its base erosion and profit shifting ("BEPS") Project. The GMT fundamentally reshapes the rationale for many ATAD measures by ensuring that multinational group profits bear a minimum effective tax rate regardless of where such profits arise. Because Pillar Two neutralises the incentives for rate-based profit shifting and ensures a high level of global coordination, the parallel application of ATAD results in duplication, an unnecessary administrative burden, and mismatched rules that operate on different tax bases. A coherent European tax framework would avoid layering anti-avoidance rules like ATAD on top of a GMT.

1. <u>The Interest Limitation Rule ("ILR")</u>

The EC adopted the ILR to address the BEPS Action 4 concern of multinational groups artificially allocating debt to high tax jurisdictions thereby reducing the tax base in those jurisdictions. The fixed ratio rule, limiting net interest deduction to 30% of EBITDA, was intended to cap excessive, tax motivated leverage.

ATAD Article 4's interest limitation rule imposes significant practical tax compliance burdens and reduces business investment efficiency within the EU. The rule restricts interest deductibility

even in situations where the interest is paid to third-party lenders without any tax motivated structuring. Moreover, Member States have inconsistently implemented Article 4. The definition of EBITDA, the treatment of carry forwards and carry backs, the availability of exceptions, the application of the *de minimis* threshold, and the use of the group escape clause vary substantially, creating a fragmented regulatory landscape.

The GMT's implementation further questions the continued need for Article 4. The minimum tax regime already addresses the core policy concern underlying Article 4, but in a more globally coherent, mechanistic, and proportionate manner. TEI therefore believes that Article 4 is redundant for groups within the scope of Pillar Two and should either be repealed or fundamentally recast.

If Article 4 is retained, TEI recommends:

(a) Requiring all Member States to establish the group escape clause. This will eliminate distortions caused by differing balance sheet profiles and ensure interest deductions are not unduly restricted where a multinational group's consolidated leverage is demonstrably sustainable; and

(b) Abolition of third-party debt restrictions to simplify the system and enhance financing flexibility.

2. Controlled Foreign Company Rules

The Controlled Foreign Company ("CFC") provisions in ATAD Articles 7 and 8 are designed to prevent artificial profit shifting to low tax jurisdictions. However, the subsequent adoption and implementation of the GMT fundamentally alters the policy landscape. Pillar Two operates as a global, jurisdictional CFC system by imposing a minimum effective tax rate on the profits of multinational groups, regardless of where those profits arise. When a jurisdictional effective tax rate falls below 15 percent, top up taxes apply. Therefore, the CFC legislation's objectives are fulfilled by the Pillar Two architecture.

Applying both CFC rules and Pillar Two's GMT produces significant duplication, unnecessary complexity, and, in some cases, double taxation. CFC taxation requires income calculations based on domestic tax rules, whereas Pillar Two requires the computation of "GloBE income" based on financial accounting standards. The need for taxpayers to perform duplicative income calculations under two different regimes imposes an operational burden disproportionate to any incremental tax integrity benefit. Moreover, the implementation of CFC rules across the EU is highly inconsistent, with varying control thresholds, tax thresholds, income attribution models, and exemptions. This inconsistency undermines the Omnibus's harmonisation objective and contributes to legal uncertainty. TEI therefore encourages the EC to evaluate whether ATAD's CFC rules should continue to apply to groups that fall within the scope of Pillar Two, and to consider repealing these rules for such groups.

3. Anti-Hybrid Mismatch Rules

ATAD 2 introduced measures to combat hybrid mismatches. While the ATAD 2 rules were sensible in the immediate post-BEPS era, the tax environment has evolved considerably. Market practice, changes in financial sector governance, DAC6 disclosure obligations, public CbCR, and domestic anti-abuse measures have eliminated many hybrid arrangements. Pillar Two adds yet another layer of hybrid neutralisation by ensuring that any hybrid outcome depressing a jurisdictional effective tax rate below 15 percent triggers top-up taxation. Consequently, many aspects of ATAD 2 duplicate protections provided by the GMT.

Moreover, the interactions between ATAD 2 and Pillar Two create new complexities. Adjustments under ATAD 2 affect the domestic tax base but often do not translate into higher covered taxes under Pillar Two because the GloBE system is accounting rather than tax based. This disconnect results in double taxation, where a deduction is denied under ATAD 2, but the denied deduction does not increase the GMT effective tax rate. Since the Pillar Two system already addresses the underlying concerns more directly, TEI recommends that the EC consider abolishing ATAD 2 where the Pillar Two regime applies.

If the EC retains ATAD 2, TEI recommends reducing complexity for taxpayers engaged in ordinary business activities by clarifying payments from one EU Member State to another cannot give rise to an imported mismatch in the first Member State (the Member State of the payor). In addition, the final Omnibus Directive should clarify a chain of unrelated payments does not create an imported mismatch if there is no economic connection between the transactions.

4. General Anti-Abuse Rules

a. ATAD and the Parent-Subsidiary Directive ("PSD")

The General Anti Abuse Rule ("GAAR") in ATAD Article 6 and in PSD Articles 1(2)–(3) are intended as backstops for situations not covered by more specific anti avoidance rules. However, the backstops' application varies significantly across the EU, giving rise to uncertainty for taxpayers engaged in cross-border business operations. Domestic GAARs, anti-abuse rules in EU directives, DAC6, CFC rules, blacklist measures, and Pillar Two's effective tax rate requirements already provide extensive protection against artificial arrangements. The EU has multiple GAARs, or GAAR-like instruments, but not a single unified standard. Taxpayers therefore face:

(i) overlapping interpretations;

(ii) inconsistent application across jurisdictions;

(iii) multiple legal standards for "abuse;" and

(iv) unpredictability in cross-border arrangements.

In addition, it is unclear what problem the ATAD GAAR addresses. Instead, the ATAD GAAR appears to act as a last line of defense. That is, it exists due to the worry that some taxpayer, somewhere, is getting away with something, which the GAAR can then be used to combat. TEI recommends the EC rescind the EU-level GAAR entirely.

b. The EU Merger Directive

TEI recommends revising EU Merger Directive Article 15(a) to harmonize the principal purpose test ("PPT"), which varies across ATAD, PSD, and the Merger Directive. The Merger Directive uses the term "principal objective," generally interpreted as requiring tax avoidance be the dominant purpose, consistent with the CJEU's earlier case law (notably Leur-Bloem, C-28/95, and Foggia, C-126/10). ATAD and the PSD, on the other hand, use "main purpose or one of the main purposes," arguably a lower and broader threshold similar to the OECD's PPT standard under BEPS Action 6. The differences between these "principal" tests can be material in mixed-motive reorganisations, resulting in complexity and creating uncertainty.

TEI therefore recommends changing the wording of Article 15(a) as follows:

> A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Articles 4 to 14 where it appears that one of the operations referred to in Article 1:
>
> (a) has as its ~~principal objective or as one of its principal objectives~~ **main purpose or one of the main purposes** tax evasion or tax avoidance; the fact that the operation is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its ~~principal objective or as one of its principal objectives~~ **main purpose or one of the main purposes**….

5. The Omnibus's Simplification Objective

a. The PSD

The PSD is essential to the EU single market. However, its practical application is burdensome because of divergent national interpretations and inconsistent procedures. The main practical challenges taxpayers face complying with the PSD include:

(i) Divergent interpretations of anti-abuse rules and beneficial ownership (e.g. the Member State interpretation of the CJEU's "Danish case," but also the optional beneficial ownership holding period).

(ii) Substantially differing procedures to obtain withholding tax relief or exemption under the PSD among Member States, which can impose disproportionate administrative burdens, including:

a) Varying requirements for obtaining tax residence certificates;

b) Use of local language forms; and

c) Unnecessary annual renewals.

To boost the competitiveness of the single market TEI recommends the EC abolish withholding taxes for intra-EU payments. This would simultaneously and substantially reduce compliance costs and enhance legal certainty.

If abolishing intra-EU withholding taxes cannot be accomplished, TEI recommends limiting the requirements to benefit from the PSD's single-market approach to the bare minimum, *i.e.*, the corporate legal form and a standardized certificate of residence. Companies waste too much time complying with the fragmented requirements in various Member States under the PSD.

b. The Interest and Royalties Directive

The Interest and Royalty Directive ("IRD") applies to a limited number of transactions because of its narrow "associated enterprise" definition. In modern corporate structures with centralized services such as a treasury center of excellence, the narrow definition of "associated enterprise" permits Member States to levy withholding taxes on intragroup interest payments merely because the group chose to centralize its treasury services in a specialized subsidiary. While a corporate group may reduce such a withholding tax under an applicable tax treaty, treaty utilization increases the compliance burden and therefore hinders the effective operation of the EU single market.

In addition, Members States inconsistently apply the IRD. The IRD's procedural requirements for accessing an exemption vary significantly and are often disproportionately burdensome, particularly in relation to proof of tax residence and beneficial ownership. Businesses are discouraged from relying on the IRD, which may influence how groups structure their EU operations.

The IRD will benefit from a more consistent and simplified approach across Member States, including greater reliance on information already held and exchanged by tax authorities. The associated enterprise definition should be broadened and, more generally, withholding tax treatment of intra-EU payments should be simplified (or abolished, as recommended above). In sum, the EC should take action to establish a more effective, proportionate, and business-friendly framework.

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TEI appreciates the opportunity to comment on the Omnibus. Please do not hesitate to contact Ralf Thelosen at rthelosen@citco.com or Benjamin R. Shreck of TEI's Legal Staff, at bshreck@tei.org or + 1 202 464 8353 should you have any questions regarding TEI's comments.

Respectfully submitted,

Walter B. Doggett

Walter B. Doggett
International President
TAX EXECUTIVES INSTITUTE