

# Deutsche Börse Group Response

## to the

### European Commission's Call for Evidence on the "Taxation Omnibus" Legislative Initiative

#### Summary

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Deutsche Börse Group (DBG), as a leading European market infrastructure provider and an internationally active group headquartered in the EU, welcomes the European Commission's Call for Evidence on the "Taxation Omnibus" initiative. We strongly support the objectives of simplifying EU tax legislation, reducing compliance burdens, and enhancing legal certainty for businesses operating across the Union.

The introduction of the OECD/G20 Pillar 2 framework represents a paradigm shift in international taxation. We believe this provides a critical and timely opportunity to conduct a "fitness check" on existing EU corporate tax directives, particularly the Anti-Tax Avoidance Directive (ATAD). A failure to streamline the interaction between new global rules and existing EU measures will result in a multi-layered system of unparalleled complexity, unproductive compliance costs, and a genuine risk of economic double taxation. This would not only undermine the EU's competitiveness but also divert corporate resources from investment and innovation into tax administration, contrary to the strategic goals of the Union.

This position paper highlights key areas where we see a strong case for legislative amendments to create a more coherent, proportionate, and business-friendly tax environment.

- Eliminating the overlap between ATAD's CFC rules and the Pillar 2 GloBE framework, which currently gives rise to dual compliance obligations and a genuine risk of economic double taxation on the same income stream.
- Conducting a broader 'fitness check' of ATAD in light of Pillar 2, including a critical review of anti-avoidance layering and the residual necessity of individual ATAD provisions.
- Introducing pragmatic Pillar 2 simplifications, specifically the formal recognition of low-risk ('white-flag') jurisdictions to eliminate duplicative GloBE calculations where the policy risk is demonstrably absent.
- Addressing the procyclical design flaws of the Interest Limitation Rule, which disproportionately restricts legitimate intra-group financing in high-interest environments.
- Enhancing the Single Market by modernizing the Parent-Subsidiary Directive and the Tax Merger Directive to reduce procedural fragmentation, align with updated company law, and deliver meaningful administrative simplification.

## *The Anti-Tax Avoidance Directive (ATAD): Overlap with Pillar 2 and the Need for a Broader "Fitness Check"*

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### 1. **Controlled Foreign Company (CFC) Rules**

- a. **Key Issue:** There is a significant overlap between the EU's CFC rules and the Pillar 2 Global Anti-Base Erosion (GloBE) rules. Both regimes can apply simultaneously to the same foreign income, creating a direct risk of economic double taxation and imposing a dual compliance burden. This complex overlap lacks any discernible added policy value, as the GloBE rules provide a more comprehensive and globally coordinated backstop against base erosion. This situation contravenes the Commission's simplification agenda and is incompatible with the principle of proportionality.
- b. **Recommendation:** We see a strong case for excluding entities covered by the Pillar 2 framework from the application of Member States' CFC rules. At a minimum, the CFC regime should be suspended where Pillar 2 applies to ensure that the global minimum tax can operate as the primary and sufficient anti-avoidance instrument as intended by the OECD/G20 Inclusive Framework.

### 2. **Broader "Fitness Check" of ATAD**

- a. **Key Issue:** Beyond the CFC rules, the introduction of a global minimum tax warrants a broader review of ATAD's necessity and proportionality. With Pillar 2 serving as a comprehensive backstop against profit shifting, several anti-avoidance layers within ATAD may no longer be necessary or could be significantly simplified. The continued fragmentation of rules due to various Member State options further adds to complexity.
- b. Therefore, we urge the Commission to use the Omnibus initiative to:
  - Review existing anti-avoidance measures within ATAD to determine if they still add value in a post-Pillar 2 environment.
  - Reduce fragmentation by limiting Member State options that lead to divergent applications of the rules across the EU.
  - Identify and implement meaningful simplifications that reduce compliance burdens for taxpayers without undermining core policy objectives.

## *Pillar 2 Simplifications: Advocating for a "White-Flag" Safe Harbour Approach*

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**Key Issue:** The complexity of the Pillar 2 calculations and reporting obligations is substantial. For groups operating in numerous jurisdictions, including those that are demonstrably low-risk, these compliance tasks are immense.

**Recommendation:** We strongly advocate for pragmatic simplifications within the EU's implementation of Pillar 2. Specifically, we support the formal recognition of low-risk or "white-flag" jurisdictions. Where a jurisdiction has implemented a qualifying domestic minimum tax and effectively meets safe-harbour conditions, businesses operating there should be exempted from duplicative calculations and reporting under the GloBE rules. This risk-based approach would allow tax administrations and businesses to focus resources where they are most needed, while remaining fully aligned with Pillar 2 policy objectives.

## **The Interest Limitation Rule: Addressing Procyclical Effects and Group Financing**

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**Key Issue:** The design of the ATAD Interest Limitation Rule (ILR) has proven to be a significant concern, particularly for large, internationally active groups with legitimate cross-border financing structures. The rule's procyclical nature is exacerbated in a high-interest environment, potentially restricting commercially necessary financing. Furthermore, its mechanics give limited consideration to legitimate and economically justified intra-group financing arrangements, which are essential for the efficient allocation of capital within the Single Market.

**Recommendation:** We recommend a review of the ILR to better address its procyclical effects and its impact on legitimate group financing. This could include refining the definition of "exceeding borrowing costs" or enhancing the equity-escape clause to better reflect genuine business operations.

## **Parent-Subsidiary Directive (PSD)**

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**Key Issue:** While the Parent-Subsidiary Directive aims to eliminate double taxation of profit distributions within the EU, its effectiveness is significantly undermined by divergent national implementation and procedural requirements. Differences in documentation standards, timing requirements, and administrative practices across Member States create legal uncertainty and discourage the practical use of the Directive. In addition, access to withholding tax exemptions or relief under the Parent-Subsidiary Directive often involves administratively heavy and non-harmonised procedures, including advance clearance requirements or extensive documentation obligations. In some cases, these procedural hurdles are so complex that groups opt for relief under bilateral tax treaties instead, contrary to the Directive's original purpose.

**Recommendations:** We encourage the Commission to use the Omnibus initiative to:

- streamline and harmonise procedural requirements for accessing PSD benefits across Member States;
- reduce unnecessary documentation and pre-approval obligations; and
- enhance legal certainty by clarifying the interaction between the PSD and national anti-abuse provisions.

A more consistent and efficient application of the PSD would materially reduce administrative burdens and better support cross-border investment within the EU. A digitally enabled, harmonised EU-wide withholding tax relief system would be the ultimate goal to truly modernise the framework."

## **Tax Merger Directive (TMD)**

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**Key Issue:** The scope of the Tax Merger Directive is no longer fully aligned with the EU company law merger framework. This misalignment creates uncertainty as to whether certain cross-border reorganisations qualify for tax neutrality, even where they are clearly recognised under company law. As a result, tax considerations may unnecessarily constrain legitimate business restructurings. For internationally active groups, legal and operational reorganisations are a regular feature of business development, integration activities and efficiency measures. Unclear or outdated rules under the Tax Merger Directive

undermine tax neutrality and may result in unintended tax costs, thereby reducing the attractiveness of the EU as a location for cross-border restructuring.

**Recommendations:** We recommend that the Omnibus initiative:

- realigns the scope of the Tax Merger Directive with the corresponding company law merger rules;
- clarifies the application of tax neutrality to modern cross-border reorganisation forms; and
- ensures that tax considerations do not become an artificial barrier to economically justified restructurings within the Single Market.

### ***The Tax Dispute Resolution Mechanisms Directive (TDRM)***

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**Key Issue:** Although the TDRM Directive was designed to ensure effective resolution of cross-border disputes, practical experience shows that inconsistent admission criteria, divergent national interpretations and procedural hurdles continue to limit its usability. As a result, taxpayers still face prolonged periods of double taxation in cases where disputes should be resolvable through a predictable mechanism.

**Recommendation:** We support targeted amendments that:

- clarify and harmonise admission criteria;
- ensure consistent application across Member States; and
- strengthen the effectiveness and timeliness of binding dispute resolution.

An improved TDRM framework would materially enhance tax certainty and support the proper functioning of the internal market.

### ***Conclusion***

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Deutsche Börse Group believes the Taxation Omnibus initiative is an excellent opportunity to align the EU's tax framework with the new global reality defined by Pillar 2. We strongly support the Commission's simplification and harmonization agenda.

By addressing the overlaps between ATAD and Pillar 2, introducing pragmatic safe harbours, and refining the Interest Limitation Rule, the Commission can foster greater legal certainty, reduce compliance costs, and significantly enhance the competitiveness of European businesses. In addition, improvements to the Parent-Subsidiary Directive, the Tax Merger Directive and the Tax Dispute Resolution Mechanisms Directive would further reduce fragmentation, enhance tax neutrality and strengthen legal certainty for cross-border business activities within the EU. We stand ready to provide further input and support in this important legislative process.