



EU COMMISSION - CALL FOR EVIDENCE – OMNIBUS ON TAXATION

Dear members of the EU Commission, DG Taxud,

In-House Tax Forum (IHTF)¹ welcomes the opportunity to comment on the Omnibus on taxation initiated by the EU Commission. IHTF supports the Commission's objective of simplifying EU tax legislation, reducing administrative burdens, and enhancing legal certainty for businesses and tax administrations. The Omnibus approach presents an important opportunity to improve coherence across existing directives and reporting frameworks, while preserving the integrity and, most importantly, the competitiveness of the Single Market.

In particular, simplification should:

- Harmonize and simplify reporting and compliance obligations
- Increase consistency between EU tax directives and their application
- Provide clear guidance

1. Simplification and clear guidance

We encourage the EU Commission to develop simplification measures and safe harbors that should be applicable in all Member States. If however if that would not be feasible because unanimity cannot be found, the EU should make recommendations that can be adopted by Member States multilaterally, bilaterally or individually, so that at least some progress can be made in making the Single Market more competitive by reducing the administrative burden for businesses. We also encourage the EU Commission to publish guidance and best practices. Although these are non-binding they have some authority, which might help in discussions with national tax authorities. An example could be safe harbors in transfer pricing that can be adopted by Member States bilaterally. Safe harbors developed by a Member State individually risk to favor too much that Member State, making the safe harbor useless in practice.

¹ The In-House Tax Forum ("IHTF") is a non-profit organization based in Belgium, the heart of Europe, creating an informal network of in-house tax experts focusing on direct and indirect tax legislation and developments. The IHTF comprise tax experts from over 130 companies out of various industries.
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2. Evaluation of new and existing compliance obligations

IHTF is of the view that each new legislative initiative in the field of taxation should be accompanied by:

- a detailed and quantified plan how the initiative will be rolled out in each Member State, including training programs for tax authorities and information sessions for taxpayers, and what human and financial resources will be made available in the Member States to organize the new initiative;
- a study, considering costs and benefits, on how the new initiative will positively or negatively impact the competitive position of EU businesses with respect to non-EU businesses.

Existing compliance obligations should undergo a regular review by the EU Commission resulting in a publicly available report on whether the compliance obligation is efficient, necessary and effective. For example, if a set of data is collected from businesses, the report should demonstrate the use of the data by the tax authorities and the result in tax collections because of that use. Data that is not (sufficiently) used or for which the burden of gathering the data outweighs the result in tax collection, should no longer be collected.

Finally, the European Union should ensure that the obligations under EU legislation follow international developments and should not be more complex than what has been agreed under double tax treaties or multilateral instruments, aligning with OECD guidance. The European Union should also consider the position taken by the other leading economies (G-20), protecting the competitiveness of the European companies, and avoiding “gold plating”. There should be a general principle that the set of rules that provides the least complexity has priority for tax administrations and taxpayers. IHTF also encourages the EU to further harmonize international tax obligations, e.g. the TP local files could be harmonized and made uniform in the EU, of course, avoiding that the most stringent national standard becomes the norm. Apart from their content, it could be harmonized on how long benchmarks, local files etc. are valid and what are the triggering events to amend them earlier.

3. Simplifying the application of EU Directives

As in-house tax professionals we see that there is big gap between theory and its application in practice. Some of the examples below demonstrate that. As already mentioned above it is key that tax authorities and taxpayers are informed and educated. We are of the strong view that Member States should invest in a well-managed and good working tax authority. Best practices should be agreed upon within the EU and the EU Commission should supervise their application. Motivated and business-minded tax inspectors taking a risk based approach will ensure the optimal allocation of resources, reducing fraud and tax evasion, whilst increasing tax collection. It is more efficient to invest in the people on the ground to go after the right targets than to produce layers of complex anti-abuse legislation, impacting and burdening all taxpayers.

Council Directive 2003/49/EC of 3 June 2003 - interest and royalty Directive and Council Directive 2011/96/EU of 30 November 2011 – parent subsidiary Directive

IHTF recommends the following:

- EU harmonized rules to demonstrate beneficial ownership, however, avoiding that today's most stringent national practice becomes the norm. Nowadays Member States apply divergent and unclear substance requirements. One of members reported that he once had to take a picture with his mobile phone of an office that houses 600 employees at the request of a tax authority. When (1) intercompany agreements supplemented by the (2) master file and (3) local file of a multi-national group sufficiently demonstrate the substance of the legal entity or permanent establishment receiving the payment, no additional documentation should be required unless the authorities can evidence that the aforementioned documentation is flawed.
- If another company is considered the beneficial owner but the parent-subsidiary or interest-and-royalty Directive would equally apply to that other company, it should be made clear that this would not trigger any negative consequences for the taxpayer.
- The status of beneficial ownership should not be denied because a certain formal requirement has not been met.
- The application of an exemption should not depend on an advanced attestation or decision with respect to evidence of beneficial ownership provided. There should be enough cooperation between tax authorities in the EU to safeguard the interests of national tax authorities, avoiding advanced attestations.
- Voluntary advance applications for attestations should be made possible to increase legal certainty for companies. The application and attestations should be a simple process. A beneficial ownership register accessible to the tax authorities of Member States should be considered.
- Update of the list of company forms in annex to the directives to incorporate the changes during the last years or even make the list more flexible by just referring to entities with legal status/personality in a member state or based on EU law.

Council Directive 2017/1852 of 10 October 2017 – tax dispute resolution mechanisms

Dispute Resolution

Companies still face a lot of issues trying to resolve tax disputes between EU Member States. It is clear that there should be more oversight from the EU Commission.

In practice, tax authorities do not always follow the best practices published by the OECD (OECD (2026), Manual on Effective Mutual Agreement Procedures (2026 Edition): Inclusive Framework on BEPS, OECD Publishing, Paris, <https://doi.org/10.1787/076ac4bd-en/>).

Especially we want to highlight Best Practice 8.



*Best Practice 8. Jurisdictions should ensure that the staff members in its competent authority function follow a treaty-first approach, to uphold the treaty in good faith (as described in **Best practice 2**) without regard to the revenue involved in a case, including:*

8.1 Handling and resolving the MAP case based on the merits of the case, without reperforming the audit at the MAP stage²².

8.2 Acting autonomously in MAP cases, without requiring approval outside the competent authority function.

8.3 Granting unilateral relief where appropriate.

8.4 Adopting a pragmatic, solution-oriented stance in bilateral discussions.

8.5 Proposing and accepting reasonable solutions.

8.6 Being principled and fair in positions taken in MAP.

8.7 Being willing to compromise where appropriate.

8.8 Ensuring that personnel transitioning from the audit/examination function to the competent authority function do not allow their previous experience to negatively influence their approach and mindset in MAP cases, receive specialised training on the required MAP mindset and are initially exposed to MAP cases by observing a few MAP cases being conducted by more experienced team members.

Our members reported the following examples:

- A MAP was filed in 2016 for the 2012 tax year. In 2021, a new audit was initiated for 2017 based on the same arguments as those underlying the 2012 case. The MAP was concluded in 2022, significantly exceeding the two-year timeframe envisaged under the Arbitration Convention. The resolution was not based on substantive tax analysis but rather on partial detaxation by each Member State. Member State B subsequently refused to grant its detaxation, treating it as part of a broader arrangement to close the local tax audit.
- Member State A issued a reassessment to Member State B on the basis that the local distributor was loss-making. A MAP was filed in 2017. In 2020, the competent authorities of Member States A and B sought to involve the competent authority of Member State C. As of 2026, however, the competent authority of Member State A continues to indicate that the fact pattern is unclear, despite the entity being a straightforward full-fledged distributor. Given that a reassessment had already been issued, one would reasonably expect Member State A to have a clear understanding of the relevant facts. Member State A has indicated that it intends to propose a resolution under which Member States B and C would grant detaxation, while it would not do so itself. This approach would not result in full relief from double taxation, as Member State A has explicitly stated that it does not intend to grant detaxation, as this would negate the outcome of its local audit.

- In a joint audit involving Member States A, B, and C, Member State C withdrew after obtaining the relevant information and subsequently issued a significant reassessment to Member States A and B. A Mutual Agreement Procedure (MAP) has been pending since 2024. Member State C has indicated that it is unlikely that Member States A and B will maintain the same position in the MAP as in the joint audit, on the grounds that C is no longer bound after its withdrawal. While this position may be legally correct, the tax authorities of Member States A and B had clearly adopted a position based on the established facts. From the taxpayer's perspective, this raises legitimate concerns as to whether tax administrations can be expected to act coherently and consistently across joint audits, tax litigation, and MAP proceedings.
- Member State A issued a reassessment to Member State B on the basis that the local distributor was loss-making. A Mutual Agreement Procedure (MAP) was initiated in 2016 and concluded in 2023, but only after the taxpayer accepted partial relief from double taxation, with no corresponding adjustment in Member State B and a 75% adjustment in Member State A.

The above cases demonstrate not only the need for a more timely resolution but also of an effective resolution of double taxation under the supervision of the EU Commission.

Dispute Prevention

Not only dispute resolution is important, it is also important that there is an EU framework for dispute prevention with a clear process and timelines.

Our members reported the following examples:

- One unilateral and one bilateral Advanced Pricing Agreement (APA) on transfer pricing in three different EU Member States. The unilateral APA started 20 months ago and there is still no sight on when a decision will be made although the facts are not overly complicated. The bilateral APA started 15 months ago and the authorities have not yet started discussions on the matter, raised questions or scheduled a meeting with the taxpayer.
- Another member reported a unilateral APA on a business restructuring that is already being discussed for 24 months although the tax authorities have not raised any important concerns.
- A bilateral APA was filed between two Member States in 2023. Despite multiple extensive questionnaires, the tax authorities continue to consider the fact pattern unclear. A profit split is applied on the basis that the activities are highly integrated and cannot be objectively valued; however, the authorities' concerns relate to the split of those integrated activities. Meanwhile, the years 2022–2024 are under tax audit in one Member State, and there is no indication of whether or when the bilateral APA will be concluded.

Lengthy and complex dispute resolution and prevention processes result in significant professional fees for external advisors and require substantial time commitments from internal tax teams. The examples above illustrate that taxpayers seek tax certainty to ensure that the



correct amount of tax is paid and that income is not taxed more than once. Bilateral and multilateral APAs are pursued to provide such certainty and to avoid protracted tax audits and subsequent double taxation procedures.

In the framework of dispute prevention, IHTF also encourages the EU to develop safe harbors, e.g. in transfer pricing; that can be bilaterally or multilaterally adopted by EU Member States.

Council Directive 2016/1164 of 12 July 2016 – ATAD

IHTF recommends the following:

- The interest limitation rule in article 4 should be abolished if the lender is established in a jurisdiction that has implemented a Qualifying Domestic Minimum Top up Tax (QDMTT) in accordance with the Pillar 2 rules, and the loan agreement is at arm's length. There should be no need for an EBITDA or other interest limitation mechanism. In practice such limitation mechanisms are complex and hamper businesses to structure their financing in the most optimal economic way.
- The CFC rules laid down in article 7 and the hybrid mismatch rules laid down in article 9 to 9b should not apply to companies subject to the Pillar 2 rules, in order to avoid increasing tax compliance and complexity for such companies. The rules of Pillar 2 sufficiently discourage companies from using these mechanisms to reduce their tax burden. Furthermore, there is still the GAAR principle that might apply to arrangements set up with the sole aim to avoid taxes.

General Anti-Abuse Rule (GAAR)

Article 5 of the interest and royalty directive, article 15 of the merger directive and article 6 of ATAD mention a general anti-abuse rule that applies if the main purpose of one of the main purposes is obtaining a tax advantage. IHTF is of the view that the threshold for applying these rules to companies subject to Pillar 2 should be higher in a sense that the GAAR would only apply if the sole purpose of the arrangement is to avoid taxes. This higher threshold will avoid disputes and legal uncertainty for companies already subject to the heavy compliance obligations of Pillar 2.

Furthermore, to ease the burden for taxpayers,

- countries that have implemented a QDMTT under Pillar 2, should not figure on an EU or national blacklist; and
- companies subject to Pillar 2 should be exempt from DAC6 reporting.