



March 30, 2026

Re: Comment Letter on the Call for Evidence: Simplifying EU Rules on Direct Taxation - Omnibus

The National Foreign Trade Council (the “NFTC”) is pleased to provide written comments on the call for evidence on *Simplifying EU rules on direct taxation* (the “Call for Evidence”).

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value work in the European Union (“EU”) and the European Commission (the “Commission”) that strives to make business easier and faster in Europe, by reducing administrative burdens and simplifying implementation. We particularly welcome work that focuses on establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

General Comments

NFTC welcomes the opportunity to comment on the EU’s Call for Evidence on simplifying EU rules on direct taxation and feed into potential forthcoming legislation. This consultation is timely given the ongoing implementation of the Global Minimum Tax through the EU’s Pillar Two directive (Directive (EU) 2022/2523). There is a new and pressing need to reevaluate certain elements of the Anti-Tax Avoidance Directive in light of the Pillar Two Directive to remove duplication and unnecessary administrative burdens. Moreover, the Call for Evidence presents an important opportunity to review elements of the EU’s direct taxation framework that have become increasingly complex or fragmented over time.

NFTC therefore encourages the Commission to prioritize alignment between existing EU tax directives and the Pillar Two framework while simplifying procedures and clarifying anti-abuse rules to prevent double taxation and reduce administrative burdens.

Specific Comments

1. Aligning ATAD with Pillar Two Directive

a. Clarifying the Relationship Between ATAD and the Pillar Two Directive

The implementation of the Global Minimum Tax through the Pillar Two Directive ensures that multinational enterprise (“MNE”) groups are subject to a minimum effective tax rate of 15 percent in each jurisdiction in which they operate. Certain provisions of the Anti-Tax Avoidance

Directive (Directive (EU) 2016/1164 (“ATAD”)), which were designed to address low-tax outcomes, may therefore overlap with the Pillar Two framework. In the absence of clarification, this interaction could create unnecessary administrative burdens and potential instances of economic double taxation. To avoid such conflicts, ATAD should be amended to clarify that where taxpayers fall within the scope of the Pillar Two Directive and inconsistencies arise between the two frameworks, the provisions of the Pillar Two Directive prevail. Further work will be necessary to identify areas of inconsistency between the two frameworks. Introducing such a clarification in Article 1 of ATAD would ensure coherence in the EU corporate tax framework, provide legal certainty for MNE groups subject to the Global Minimum Tax regime, and reduce unnecessary administrative burdens.

b. Controlled Foreign Company Rules

The Controlled Foreign Company (“CFC”) rules contained in Articles 7 and 8 of ATAD were introduced to counter the shifting of profits to low-tax jurisdictions. However, the Pillar Two framework now ensures that the income of MNEs is subject to a minimum effective tax rate of at least 15 percent through mechanisms such as the Qualifying Domestic Minimum Top-Up Tax (“QDMTT”) and the Income Inclusion Rule (“IIR”), itself a variant of CFC rules. Where a jurisdiction has implemented a QDMTT that increases the effective tax rate of entities located in that jurisdiction to the Pillar Two minimum level, the policy objective of the CFC rules is already achieved. In these circumstances, the continued application of CFC rules could impose unnecessary administrative burdens or lead to double taxation. ATAD should therefore be amended to clarify that entities located in jurisdictions that have implemented a QDMTT in accordance with the Pillar Two Directive are excluded from the application of Articles 7 and 8 of ATAD. Further consideration should be given to the interaction of IIRs with CFC rules, and whether it is necessary or desirable to require Member States to maintain both sets of rules given the overlapping purpose and effect of such rules, as well as the excessive administrative burden imposed by requiring compliance with both sets of rules.

2. Anti-Abuse Provisions and the General Anti-Abuse Rule

Several EU tax directives contain anti-abuse provisions that differ in wording and interpretation, including those contained in ATAD, the Parent-Subsidiary Directive (Directive 2011/96/EU), and the Interest and Royalties Directive 2003/49/EC. These differences create uncertainty for taxpayers and may result in inconsistent application across Member States. Greater alignment and clarification of these provisions would therefore contribute to a more coherent and predictable legal framework. In particular, anti-abuse provisions should apply only where arrangements effectively result in the avoidance of corporate income tax or withholding taxes and lack valid commercial justification reflecting economic reality.

The General Anti-Abuse Rule (“GAAR”) contained in Article 6 ATAD would also benefit from clarification. In practice, uncertainty can arise where arrangements are considered non-genuine even though they do not result in the effective avoidance of corporate income tax or withholding taxes. This may lead to legitimate commercial structures being challenged despite the absence of any material tax avoidance outcome. Article 6 ATAD should therefore be clarified to ensure that the GAAR applies only where an arrangement effectively results in the avoidance of taxes and where the resulting tax benefit could not have been achieved through genuine commercial arrangements.

3. Parent-Subsidiary Directive

The application of anti-abuse provisions under the Parent-Subsidiary Directive has in some cases resulted in the denial of dividend withholding tax exemptions where intermediate holding companies are present within a corporate structure, even where the same tax outcome would arise if dividends were paid directly to the ultimate shareholder. This situation may arise where a dividend is distributed through multiple EU entities that each meet the Parent-Subsidiary Directive's requirements but the intermediate entity is not considered the beneficial owner of the dividend. Where the Parent-Subsidiary Directive's conditions would have been satisfied if the dividend had been paid directly to the ultimate parent company, denying the exemption solely due to the presence of an intermediate EU entity does not reflect an instance of effective tax avoidance and does not indicate a non-genuine arrangement lacking valid commercial reasons. The Parent-Subsidiary Directive should therefore clarify that anti-abuse provisions should not apply in circumstances where the same withholding tax outcome would arise if the payment were made directly to the beneficial owner.

In addition, the definition of a parent company in Article 3(1) of the Parent-Subsidiary Directive should be clarified to confirm that it applies where a qualifying EU company holds at least 10 percent of the capital of a subsidiary either directly or indirectly. Explicit recognition of indirect holdings would better reflect common corporate structures within multinational groups and ensure that the Parent-Subsidiary Directive operates consistently across Member States.

4. Interest and Royalties Directive

Similar uncertainty may arise under the Interest and Royalties Directive where interest or royalty payments pass through intermediate EU financing entities. In certain circumstances, such arrangements have been challenged as abusive, resulting in the denial of withholding tax exemptions even where the final recipient would have qualified for the same exemption had the payment been made directly. Where the economic outcome of the transaction is equivalent to a direct payment to the beneficial owner, treating such arrangements as abusive may not reflect the Interest and Royalties Directive's intended objective of preventing tax avoidance. Article 5 of the Interest and Royalties Directive could therefore be clarified to ensure that anti-abuse provisions apply only where arrangements effectively result in the avoidance of withholding taxes. In particular, where the same withholding tax exemption would apply if the payment were made directly to the beneficial owner, the presence of an intermediate EU entity should not, in itself, give rise to a presumption of abuse.

5. DAC Reporting and the Pillar Two Framework

The reporting obligations introduced under the Directive on Administrative Cooperation (potentially tax-harmful cross-border arrangements) (Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU) ("DAC6") were designed to identify cross-border arrangements that may produce tax advantages. However, the introduction of the Pillar Two framework fundamentally changes this environment by ensuring that large MNE groups are subject to a minimum effective tax rate of 15 percent in every jurisdiction. As a result, many tax outcomes that DAC6 hallmarks were originally designed to detect are now effectively neutralized through the operation of the Global Minimum Tax rules and the associated GloBE reporting framework. In many cases, the Pillar Two framework already identifies and neutralizes

low-tax outcomes through the application of top-up taxes and extensive reporting obligations, reducing the policy rationale for overlapping disclosure requirements. Aligning DAC6 with the Pillar Two framework, such as by ensuring that arrangements involving entities subject to a QDMTT are not automatically considered to satisfy hallmarks based on tax advantages, would reduce unnecessary and burdensome reporting obligations and ensure that disclosure requirements remain focused on genuinely high-risk arrangements.

6. Administrative Simplification and Taxpayer Certificates

Administrative procedures related to cross-border taxation can also create unnecessary burdens for businesses operating within the EU. In particular, obtaining tax residency certificates and demonstrating beneficial ownership for intra-EU payments can require repeated submissions of similar documentation across multiple jurisdictions. The forthcoming implementation of the EU Directive on Faster and Safer Relief of Excess Withholding Taxes (“FASTER”) (Council Directive (EU) 2025/50 of 10 December 2024), which will introduce EU-wide digital tax residence certificates (“eTRC”) to be used across all Member States, represents an important step forward. Building on this framework, the EU should ensure that eTRCs are accepted across all Member States without additional formalities. In addition, the EU should consider introducing a standardized beneficial ownership certificate issued by the tax administration of the taxpayer’s Member State of residence confirming that the entity qualifies as the beneficial owner of dividends, interest, or royalties for the purposes of the relevant EU directives.

7. Cross-Border Tax Certainty and Dispute Prevention

The Call for Evidence may also present an opportunity to improve consistency in the application of international tax principles within the EU. Differences in Member State interpretations of transfer pricing rules and permanent establishment concepts can lead to unnecessary disputes and instances of double taxation. While OECD Transfer Pricing Guidelines provide an internationally recognized framework and are widely applied by Member States, their non-binding nature allows for divergent interpretations in practice. Previous efforts at the EU level, particularly the proposed but not adopted 2023 EU Transfer Pricing Directive, have sought to address this issue by promoting greater harmonization, but differences in interpretation persist and continue to give rise to the risk of double taxation. In this context, the EU should therefore consider measures to promote more consistent interpretation and application of OECD Transfer Pricing Guidelines across Member States as the common reference framework, including through common guidance and strengthened coordination mechanisms.

Conclusion

NFTC encourages the Commission to prioritize reforms that simplify existing rules while preserving the important policy objectives of preventing double taxation and onerous compliance burdens.

We are happy to answer any questions or clarify any of the comments raised.