

## **EBF ADVOCACY PAPER ON THE TAX OMNIBUS**

### **I. A simpler and more coherent EU corporate tax framework**

The European Banking Federation (EBF) welcomes the Commission's renewed focus on enhancing competitiveness and supporting economic growth. EBF supports these efforts, as well as any future initiatives aimed at enhancing and simplifying the direct tax framework, which should, on the one hand, remove barriers to the functioning of the Single Market and incentivise investment and, on the other, contribute to reducing the overall tax compliance burden for taxpayers.

The EBF welcomes the draft Tax Omnibus package as an important step towards a simpler and more coherent EU corporate tax framework. EBF is particularly supportive of, inter alia:

- The proposed removal of thresholds for intra-EU dividend, Interest and Royalties Withholding Tax (WHT) exemptions and the abolishment of upfront authorisation procedures under Parent-Subsidiary Directive (PSD) and Interest and Royalties Directive (IRD)
- With regard to the Anti-Tax Avoidance Directive (ATAD), the abolishment of Controlled Foreign Corporation (CFC) rules for taxpayers that are in scope of the Pillar Two framework, the proposed reform of the interest deduction limitation rules and particularly the exclusion of interest from low risk third party loans from its scope and the removal of the many options for Member States, the extension of the list of financial undertakings and the abolishment of the imported mismatches rule from the hybrid mismatch provisions
- The proposed alignment of the Merger Directive with the EU legal framework for cross-border restructurings and the proposed tax neutrality for cross-border conversions.
- The procedural enhancements to the Dispute Resolution Directive

## Core EBF messages

EBF supports the overall direction of the Tax Omnibus. However, four priority issues must be addressed if the package is to deliver its competitiveness and simplification objectives:

1. **PSD/IRD implementation timeline:** the proposed implementation timeline for the PSD and IRD changes is too long. A materially shorter transition period is needed so that the competitiveness and simplification benefits can be realised sooner;
2. **Interaction between PSD/IRD and FASTER:** EBF supports integrating the PSD and IRD exemptions into FASTER, but the existing compliance and liability concerns for certified financial intermediaries under FASTER should first be resolved;
3. **IRD safeguard clause:** the proposed safeguard clause could create additional compliance and liability burdens for financial intermediaries, particularly for listed bonds and in the context of cross-border lending. EBF calls for an explicit exclusion for listed bonds and/or for intermediaries to be allowed to rely on payee self-certifications;
4. **Pillar Two simplification:** the Pillar Two simplification agenda remains unfinished. Key concerns include EU competitiveness, the insufficient simplification of the rules, the substantial compliance burden resulting from compliance requirements that are not aligned across Member States, and the absence of a Pillar Two dispute resolution mechanism.

These priorities, together with a number of further technical concerns and gaps, are set out in more detail below:

## II. Remaining concerns and gaps

### 1. Parent-Subsidiary Directive (PSD) / Interest & Royalties Directive (IRD)

- **PSD/IRD implementation deadline:** A significant part of the proposed simplifications to the PSD and IRD risks falling short of the objectives of competitiveness and simplification. In particular, the key WHT measures would apply only after eight years. Such an extended transition period would significantly delay the intended simplification benefits and would not be aligned with the proposal's competitiveness objectives. The transition period for the proposed WHT simplifications should therefore be significantly shortened to ensure that the competitiveness and simplification benefits are realised within a reasonable timeframe.
- **IRD safeguard clause:** The proposed safeguard clause in the IRD should not give rise to additional compliance and liability burdens for financial

intermediaries. The proposed measure does not constitute a simplification but rather a material tightening of the existing tax rules. Moreover, the proposal does not take into account the measures agreed within the ECOFIN Council in connection with the EU list of non-cooperative jurisdictions for tax purposes. Member States had already agreed to apply at least one tax defensive measure against listed jurisdictions. Introducing an additional Union-level rule without recognising the national measures already adopted on that basis would risk creating unnecessary regulatory duplication and additional compliance burdens. This could particularly be the case where the withholding tax route is chosen by the source State and banks are not in a position to obtain the information necessary to apply the proposed anti-abuse measure, notably information concerning the tax treatment of the interest recipient and the potential availability of Pillar Two relief. Particular concerns can be raised in this respect with regard to listed bonds and cross-border lending:

- Listed bonds: In many Member States, interest on listed bonds is generally not subject to domestic WHT, and issuers and custodians are not currently required to verify the beneficial owner of each interest payment. Under the proposed rules, WHT could nevertheless need to be levied, or an interest deduction could be denied, where the recipient is established in a jurisdiction that does not levy corporate income tax or applies a zero corporate tax rate, unless an exception applies. In practice, in the Member States concerned, issuers of listed bonds and custodians will generally not have access to information identifying the beneficial owner of the interest income or its tax status. Requiring them to obtain and to verify such information would therefore create a significant and disproportionate administrative burden. The EBF therefore recommends that listed bonds be explicitly excluded from the scope of the proposed rule.
- Cross-border lending: In several jurisdictions, interest payments to foreign lenders are generally made without WHT, and lenders and borrowers are not normally required to collect extensive documentation regarding the tax treatment of the recipient in order to make gross interest payments. Under the proposed rules, however, the WHT treatment or denial of interest deductions may depend on whether the recipient is established in a jurisdiction that does not levy corporate income tax or applies a zero corporate tax rate to the relevant income, unless an exception applies. This could require taxpayers and financial institutions to collect and retain extensive documentation regarding the recipient's tax residence and tax treatment, beneficial ownership, and the application of any relevant exceptions. The rules should therefore be clarified and simplified to avoid imposing disproportionate documentation and compliance obligations on ordinary commercial lending activities.

As a general recommendation in this respect, EBF suggests that, for the purposes of applying the IRD safeguard clause, financial intermediaries should be permitted to rely on self-certifications.

Legal certainty and consistent implementation across Member States would also be enhanced if the Commission were to provide a common list of jurisdictions that do not levy corporate income tax or that apply a zero tax

rate. Such a list would help ensure a harmonized and legally certain implementation of the safeguard clause across the EU.

Finally, it should be explicitly clarified that, for the purposes of applying the safeguard clause, “recipient” should not be understood as “beneficial owner”. This distinction is not sufficiently clear from the current draft text and should be addressed to avoid uncertainty as to the scope of the information and verification requirements applicable to financial intermediaries.

- **PSD and IRD inclusion in Faster and Safer Relief of Excess Withholding Taxes Directive (FASTER):** The inclusion of the PSD and IRD exemptions in FASTER is a logical measure, but it should be accompanied by first addressing and resolving the significant compliance and liability issues faced by Certified Financial Intermediaries (CFIs) under the current FASTER Directive. Articles 1 and 3 of the proposal clearly move towards a simplification of the legal framework, notably through the removal of minimum shareholding thresholds and the elimination of prior administrative procedures, with a shift towards taxpayer self-assessment and ex-post controls. The aim is to facilitate access to withholding tax exemptions for intra-EU flows, irrespective of participation levels and without ex-ante authorisation.

However, the operational requirements introduced under FASTER move in the opposite direction. CFIs are subject to enhanced due diligence obligations, including the collection and verification of the Registered Owner Declaration. The content of this declaration may also vary depending on Member State options, potentially including information on beneficial ownership and financial arrangements.

Unless these issues are addressed first, this could effectively reintroduce ex-ante complexity at the level of intermediaries, despite the removal of formalities at Member State level. This mismatch risks undermining the overall simplification objective by creating operational burdens, divergent practices across jurisdictions, and increased legal uncertainty for market participants.

- **Introduction of beneficial owner/ownership definition:** It would be of the utmost importance to introduce a common EU concept of “beneficial owner” / “beneficial ownership” for the purposes of applying the IRD, the PSD, and the FASTER Directive. In this context, it is worth noting that the term “beneficial owner” is already used elsewhere in EU law, e.g. in the anti-money laundering (AML) framework, and, via the related concept “controlling person”, under the automatic exchange of information framework where it is intended to reflect the AML definition. Ensuring consistency across these frameworks, where possible, would help avoid adding unnecessary administrative complexity.

As noted above, it would also be useful to ensure greater coherence between the concepts of “recipient” and “beneficiary”, notably regarding article 3 (b) (5) of the proposed Directive, given that information concerning the beneficiary may be more difficult for financial intermediaries to obtain.

- **PSD exemption:** The exemption for pension funds as provided for in the draft Tax Omnibus should be available to all regulated occupational pension providers, irrespective of how they are structured or organized. Furthermore, the Tax Omnibus should adequately reflect the realities of modern capital markets and investment structures, including collective investment entities.

EBF recommends in this respect that the PSD exemption be further extended to UCITS/AIFs alongside pension funds. Such vehicles play a key role in channeling savings into the real economy and are essential to the Savings and Investments Union. Excluding collective investment vehicles (CIVs) may create tax distortions between direct and indirect investment, undermine investment neutrality and result in unnecessary WHT leakage and refund procedures. Extending the exemption would improve capital market efficiency, reduce compliance costs, and support EU competitiveness, while preserving the existing anti-abuse safeguards.

## 2. **ATAD**

- **Proposed changes to the interest deduction limitation rule:** EBF strongly welcomes the exclusion of low-risk third-party loans and the extension of the list of financial undertakings. However, a number of issues should be further addressed:
  - **Cash pooling arrangements:** cash-pooling arrangements are an essential treasury tool for corporate groups. They enable groups to optimize liquidity, reduce external borrowing costs, and efficiently allocate surplus cash within the group. Under the proposed amendments to ATAD, genuine low-risk third-party loans may be excluded from the interest limitation rules. However, the exemption appears to apply only when the loan is obtained from an unrelated party and used for the borrower's own activities. This may create uncertainty for cash-pooling arrangements where a cash-pool leader borrows externally and on-lends funds to group companies, particularly in jurisdictions that do not apply the group approach/ad hoc consolidation rules provided for in Article 4(1), second subparagraph, of ATAD. If the exemption does not apply in such circumstances, the net position and use of funds of each participant may need to be analysed separately, creating a significant administrative burden that may be difficult to apply in practice. The Directive should therefore clarify that ordinary commercial cash-pooling and treasury arrangements do not fall outside the exemption solely because externally raised funds are on-lent within the group as part of a genuine treasury function.
  - **Leasing/factoring companies:** Certain financial service providers that do not currently qualify as "financial undertakings" under ATAD, but which provide funding in the ordinary course of their business, would remain subject to the EBITDA-based interest deduction limitation rule, despite not posing the same risks of excessive debt financing. EBF therefore recommends that the exclusion for "financial undertakings" be further extended to cover financial service providers that are subject to domestic regulation but are not within the scope of EU financial regulation, such as leasing and factoring companies. This would also help address the current unlevel playing field, whereby leasing and factoring activities may be subject to an additional tax compliance burden when funded by an affiliated bank, whereas the same activities carried out directly by a bank would not necessarily be subject to that burden.

- **Specific collective investment vehicles:** The definition of “financial undertakings” should also be extended to public collective investment vehicles that are subject to domestic financial regulation and/or supervision but that are not necessarily in scope of EU financial regulation. This would ensure a level playing field with comparable collective investment institutions that already qualify as financial undertakings.
- **CFC:** EBF would like to emphasise the importance of making the 50% ownership threshold under the CFC rules mandatory for all Member States, thereby narrowing the scope of these rules and promoting a more harmonised application across the EU.

EBF also notes that Model A for CFC rules has been retained as the sole mandatory option, whereas allowing a mix of both models A and B could give stakeholders the possibility not to be subject to CFC adjustments in the case of genuine transactions.

- **R&D allowance:** While EBF welcomes the proposal for an EU-harmonised R&D incentive scheme for tangible capital investments, its effectiveness in supporting the digital and green transition of the EU banking sector would be significantly enhanced if its scope were extended to cover intangible investments and operating expenditure.

### **3. Pillar Two simplification**

The Pillar Two simplification agenda has not yet been sufficiently addressed in the current draft proposal. While EBF appreciates that the Tax Omnibus has explicitly been positioned as an initiative aimed at delivering targeted enhancements and simplifications to the relevant EU tax directives, including addressing overlaps with Pillar Two, EBF is concerned that the competitiveness and simplification objectives have not yet been sufficiently reflected. Both objectives should be addressed as a matter of priority. In particular, the introduction of the Pillar Two Side-by-Side Package runs counter to the objective of strengthening EU competitiveness, while the need for genuine simplification of the complex Pillar Two ruleset and its significant associated tax compliance requirements remains outstanding. The proposed centralised DAC4/DAC9 group-level notification, as set out in the draft DAC recast Directive, is greatly welcomed. However, further steps could and should be considered to simplify the compliance burden for EU-established groups.

The European Commission could assume a stronger coordinating role to ensure consistent and uniform implementation of Pillar Two rules and compliance at all levels across the EU, including with respect to domestic minimum top-up taxes. Finally, EBF notes the current absence of a dedicated Pillar Two dispute resolution mechanism. Such a mechanism should be included in the proposed amendments to the Dispute Resolution Directive. Consideration could also be given to extending the scope of the Directive more broadly to cover disputes concerning EU Directives in the area of direct and indirect taxation.