ATAD through Taxation Omnibus Lenses

EU Tax Focus, 18/2026 (17 August 2026)

Angelika Xygka | **IBFD EU Tax Law Study Group**

The author can be contacted at a.xygka@ibfd.org

Carla Valério | **IBFD EU Tax Law Study Group**

The author can be contacted at c.valerio@ibfd.org

Francesco de Lillo | **IBFD EU Tax Law Study Group**

The author can be contacted at F.deLillo@ibfd.org

1. Introduction

Faced with growing calls from European businesses for a simpler tax framework to reduce compliance costs and enhance competitiveness, the European Commission responded with the Tax Simplification Package.

This note, discussing amendments to the Anti-Tax Avoidance Directive (2016/1164) (ATAD) under the Taxation Omnibus Proposal, is part of a series written by IBFD's EU Tax Law Study Group, exploring and analysing the legislative changes proposed by the Tax Simplification Package.

It is worth mentioning that, in late June 2026, the Commission published its final report on the evaluation of the ATAD, covering the period from 1 January 2019 to mid-2025. The report asks a rather straightforward question: do the measures still respond to existing tax avoidance challenges?

The report concluded that tax avoidance has decreased in the European Union since the introduction of the ATAD as a minimum-standard anti-tax avoidance Directive in the European Union. At the same time, complying with the ATAD came with a steep cost, as EU-wide one-off compliance costs are estimated to be around EUR 25-27 billion, while recurrent costs (e.g. data collection, internal compliance checks, documentation) depend on the size and corporate complexity of taxpayers.

2. Impact of Taxation Omnibus Proposal on the ATAD

2.1 General remarks

While the ATAD was adopted in 2016 as a minimum-standard anti-tax-avoidance Directive, the Taxation Omnibus Proposal broadens its material scope by establishing, in a new chapter Ia, a common framework for the tax treatment of certain research and development (R&D) expenditure. This broader scope is reflected in the proposed new title: Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules on the tax treatment of research and development expenditure and against tax avoidance practices that directly affect the functioning of the internal market.

The proposed article 3 reaffirms that the ATAD is a minimum-standard Directive, while distinguishing between a minimum level of harmonization concerning the R&D framework and a minimum level of protection concerning the anti-tax-avoidance rules. With regard to chapter II (anti-tax avoidance rules), Member States remain free to apply domestic or agreement-based provisions safeguarding a higher level of protection for their corporate tax bases. With regard to chapter Ia (R&D allowance), Member States may maintain or adopt alternative domestic measures instead of the proposed allowance, provided that those measures treat qualifying expenditure more favourably.

Despite retaining a minimum-standard nature, the proposal also introduces elements of exhaustive harmonization, specifically regarding the interest limitation rule and certain aspects of the CFC rules (*see* sections 3.2. and 3.4.).

2.2. Interest Limitation Rules

The Interest Limitation Rules (ILRs) were conceived as anti-abuse rules aiming to discourage debt arrangements designed to minimize taxation. The ILRs are considered to be the most impactful rules of the ATAD, but there is always room for improvement, especially from the angles of avoiding fragmentation across Member States, making the rules more business friendly and simplifying their application in practice. The Taxation Omnibus Proposal aims to modernize the ILRs through a series of amendments: (i) changes seeking to reduce the number of implementation choices currently available to Member States; and (ii) changes introducing carve-outs and exclusions from the ILRs.

Reducing implementation choices

The proposal would make the 30% EBITDA cap mandatory across the European Union, so that Member States would no longer be able to apply stricter thresholds. Countries such as Finland, which currently applies a 25% threshold, and the Netherlands, which applies a 24.5% threshold, would be required to align with the 30% standard.

The EUR 3 million *de minimis* threshold would become mandatory. All Member States would have to allow taxpayers to deduct borrowing costs up to that amount. This would be relevant for countries such as the Netherlands, Portugal, Romania and Spain, which currently operate with a EUR 1 million threshold.

The group escape rule and the carry-forward mechanism for disallowed interest would also become mandatory across the European Union.

The proposal introduces also a new paragraph which aims to lock in the harmonization (paragraph 9). This provision would prevent Member States from maintaining or introducing rules within the scope of the ILRs that depart from the framework laid down in the Directive. In other words, after reducing the implementation choices, the Commission is also seeking to prevent future divergence.

Introducing carve-outs

The proposal introduces a carve-out rule for low-risk third-party loans. Borrowing costs on genuine third-party financing used for a taxpayer's own activities would fall outside the ILRs' scope, provided the funds are not channelled elsewhere within the group.

A safeguard for profitability shocks has also been designed. Where a taxpayer's EBITDA falls by at least 50% compared with the previous period, the ILRs would not apply for that year. The idea is to ensure that companies are not further penalized when their profitability falls significantly.

In addition, the proposal introduces a temporary exclusion for certain defence-related borrowing costs and broadens the existing exclusion for long-term public infrastructure projects by reframing it as an exclusion for long-term public-benefit projects, potentially expanding its scope.

2.3. GAAR

Article 6 of the ATAD provides for a general anti-abuse rule (GAAR). In its current wording, it includes a reference to "corporate tax liability", which has created uncertainty regarding the scope of the GAAR, particularly as regards its application to withholding taxes and taxes arising under the Pillar Two framework. To address this uncertainty, the Commission proposes replacing the reference to "corporate tax liability" with "tax liability", thereby confirming that the GAAR applies to all direct taxes to which companies are subject, including withholding taxes and top-up taxes arising under the Pillar Two Directive.

2.4. Controlled Foreign Companies

The Taxation Omnibus Proposal also amends the controlled foreign company (CFC) rules, in line with its broader objective of reducing complexity, eliminating overlapping and unnecessary provisions, and promoting a more consistent application of existing rules.

The proposed amendments would reshape the CFC regime in several important respects, further harmonizing its application across Member States while considerably narrowing its scope.

Adopting a single CFC model

First, the proposal seeks to harmonize the CFC framework across the European Union by eliminating the current coexistence of two approaches for attributing CFC income to the parent entity, commonly referred to as Model A (or the entity approach) and Model B (or the transactional approach). Under Model A, the CFC rules target specified categories of passive income, whereas Model B focuses on income arising from non-genuine arrangements put in place to shift profits to the CFC jurisdiction.

The possibility for Member States to apply either approach has resulted in divergent national implementations, increased compliance costs and reduced legal certainty for cross-border businesses. The Commission considers Model A to be both more effective and easier to administer. By contrast, Model B often overlaps with transfer pricing rules and has provided limited additional value in practice, a concern that has already prompted some Member States, such as Belgium, to abandon the transactional approach in favour of the entity approach.

The proposal therefore abolishes Model B and establishes Model A as the single approach across the Union. However, given that the Taxation Omnibus Proposal does not affect the minimum-standard character of the ATAD rules, it remains unclear how this amendment would affect CFC regimes that exceed ATAD requirements by attributing all profits of the controlled entity, including active income, rather than only specified categories of passive income. Examples include France, Italy and Portugal.

Narrowing the CFC's scope of application

Furthermore, the proposal introduces additional simplifications through a number of exclusions from the CFC regime.

In particular, the currently optional exclusion of situations involving limited amounts of passive income would become mandatory, reflecting the view that the CFC rules should focus only on cases presenting a more meaningful risk of profit shifting.

Notably, small and medium-size groups, as well as micro, small and medium-size undertakings, would be excluded from the regime altogether. Given that only a small proportion of SMEs operate across borders, and even fewer have subsidiaries outside the European Union, this exemption is not expected to weaken anti-avoidance efforts. However, it should substantially reduce compliance costs and administrative burdens for both businesses and tax authorities.

Finally, the proposal addresses the interaction between the CFC rules and the global minimum tax regime. The Commission recognizes, in particular, the overlap between the CFC rules and the Income Inclusion Rule (IIR). Running the two systems in parallel may lead to economic double taxation and duplicative compliance obligations. To avoid these outcomes, the proposal provides a general exemption under which EU entities belonging to groups that fall within the scope of Pillar Two would not be required to apply the CFC rules to their foreign subsidiaries. In addition, a targeted exemption is available where the ultimate parent entity is located in a qualified side-by-side jurisdiction, provided that the low-taxed subsidiary is already subject to a qualified domestic top-up tax and does not benefit from related refunds or financial incentives.

2.5. Hybrid mismatches

According to the explanatory memorandum, the application of the imported hybrid mismatch rule under article 9(3) of the Amending Directive to the 2016 Anti-Tax Avoidance Directive (2017/952) (ATAD 2) has given rise to significant complexities for both tax administrations and taxpayers.

For this reason, the Taxation Omnibus Proposal removes this rule from the anti-hybrid mismatch provisions.

2.6. R&D allowance

The Taxation Omnibus Proposal introduces an EU-wide minimum-standard expenditure-based corporate tax incentive in the form of an R&D allowance, intended to support investment and innovation and strengthen the competitiveness of the European Union. If adopted, this allowance would become the first binding EU measure of its kind.

Specifically, the R&D allowance would allow taxpayers to deduct from their taxable base capital expenditure on plant, machinery and other tangible assets that are used to carry out R&D activities or to provide facilities for conducting such R&D activities (the qualifying expenditure). In order to clarify the nature of these activities, the proposal introduces a definition of R&D that includes three types of activities – basic research, applied research and experimental development – and that closely follows the OECD Frascati Manual definition of the term.

The allowance may be claimed in full in the tax period in which the qualifying expenditure was incurred, or in any of the four subsequent tax periods.

In order to fully benefit from this regime, the taxpayer must use the qualifying expenditure wholly and exclusively for R&D for a continuous period of at least 3 years, beginning no later than 1 year after the end of the tax period for which the allowance was first claimed. If the taxpayer fails to fulfil these conditions, the allowance is not granted or, if it has been already granted, is withdrawn and included in the taxable base.

Another notable safeguard concerns situations in which a taxpayer ceases to own, demolishes or otherwise disposes of assets in respect of which the R&D allowance has been claimed. In such cases, the disposal value must be taken into account for tax purposes. If the disposal value exceeds any unclaimed allowance, a balancing charge arises. The charge is equal to the lower of (i) the amount by which the disposal value exceeds the unclaimed allowance; or (ii) the allowance already claimed. This mechanism helps to ensure that the benefit of the allowance reflects the taxpayer's actual R&D investment.

3. Concluding remarks

If adopted as proposed, Member States will have to transpose the amendments by 31 December 2028, with most measures applicable from 1 January 2029, except for the EUR 3 million *de minimis* threshold, which would apply as of 1 January 2032.

The proposed measures have the potential to simplify the existing rules and increase the competitiveness of the European Union. In the authors' view, the majority of the proposed amendments would likely have a positive impact, helping reduce compliance costs and tax disputes. It is, however, anticipated that the new chapter on the R&D allowance may prove more contentious, as it seeks to introduce a common EU framework in an area that has traditionally remained within the competence of the Member States. Moreover, while generally the proposed measures would benefit EU businesses, they may also entail an immediate budgetary impact for Member States, making it difficult to predict whether consensus can ultimately be reached during the legislative process.

IBFD References:

- EU tax law developments are reported on the daily IBFD Tax News Service page.
- For more details on the harmonization of corporate taxation in the European Union, *see* C. Valério & D. Arsenovic, Direct Taxation, Global Topics IBFD.
- For an overview of legislative initiatives at the EU level on direct tax matters, *see* the EU Direct Tax Law Initiatives Tax Dossier.
- R. Vlasceanu & C. Valério, Less Red Tape, Same Transparency? Assessing the DAC Recast, EU Tax Focus 17/2026 (20 July 2026).
- On the Taxation Omnibus and (some comments on) the DAC Recast Proposals – An interview with Benjamin Angel, EU Tax Focus 15/2026 (30 June 2026).
- O. Popa, Simplifying the "Older" Corporate Taxation Directives: Can the Omnibus Deliver on Such a Complex Task?, EU Tax Focus, 13/2026 (26 June 2026).
- O. Popa, Navigating the Complexity of EU Rules in Direct Taxation: Legislative Clutter, Institutional Initiatives and Steps Toward a Sustainable Framework, 66 European Taxation 8 (2026), Journal Articles & Opinion Pieces IBFD.
- M.E. Roche, Complexity, Tax Systems and the European Union's Competitiveness: The EU Tax Decluttering and Simplification Agenda Paradox, 66 European Taxation 6 (2026), Journal Articles & Opinion Pieces IBFD.