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31 January 2025

German Economy Proposal on EU´s Tax Decluttering Initiative

Dear Ms. Köszeghy,

On behalf of the undersigned German business associations, we would like to extend our warm congratulations on your appointment as a member of Commissioner Hoekstra's cabinet responsible for tax matters. We wish you great success and strength in addressing the challenges and opportunities ahead.

Please allow us to express our sincere appreciation for the European Commission's intention to prioritize the competitiveness of the European economy during this legislative term. Over the past decade, a multitude of new regulatory measures has significantly complicated the corporate tax landscape limiting the advantages of the EU single market. These include, among others, automatic exchange of information, (public) country-by-country reporting, the Anti-Tax Avoidance Directive (ATAD), and minimum taxation (Pillar 2). Such complex regulations, often pursuing similar objectives, pose the risk of impeding cross-border activities and weakening Europe's competitiveness compared to other global markets.

In this context, we see significant opportunities to implement simplifications and reduce burdens, in line with the Commission President's commitment to reduce reporting obligations by at least 25% (and by 35% for SMEs). Commissioner Hoekstra's initiative to stress-test existing EU tax law is a significant step in this direction. We advocate for a comprehensive evaluation of current

tax regulations, with a focus on overlaps and unnecessary compliance costs. In particular, we see great potential in the ongoing evaluations of the Anti-Tax Avoidance Directive (ATAD) and the Directive on Administrative Cooperation (DAC). Beyond these measures, targeted actions could help to streamline the fragmented tax framework. Achieving a genuine level playing field should remain a shared guiding principle. Better alignment of tax policy with business realities, along with the simplification and modernization of the tax framework, would foster cross-border investments and significantly enhance the EU's global competitiveness. In this context, we would like to highlight specific proposals:

1. **Eliminate Inconsistencies**
   a) **Address overlaps and redundant rules**
      Example: Align CFC rules, hybrid mismatches and interest limitation in the ATAD and council conclusions on the EU list of non-cooperative jurisdictions with the GloBE rules.
      Benefit: No double taxation and any double reporting requirements for the same purpose.

   b) **Create a unified framework where necessary**
      Example: Harmonize definitions in the interest limitation and the calculations for exit taxation in the ATAD.
      Benefit: Less harmful goldplating

2. **Facilitate Targeted Administration**
   a) **Develop purpose-driven reporting**
      Example: Insure a fit-for-purpose test with a clear target: provisions that no longer serve a clear purpose should be eliminated.
      Benefit: Decluttering without diluting.

   b) **Simplify procedures for low-risk activities**
      Example: expand safe harbor rules based on CBCR data under Pillar II and lower significantly administrative obligations for tax neutral processes.
      Benefit: Ensure efficient implementation and lower unnecessary administrative burden.

3. **Consider best practices and develop pragmatic solutions**

Finally, we would like to point out that in addition to the planned initiative for the reduction of burdensome tax regulations it will also be necessary to implement business-friendly measures fostering business activities in the single market.

We remain committed to contributing constructively to this dialogue and stand ready to support further discussions on these matters. We would be grateful for any opportunity to discuss our proposals personally or in an online-meeting.

Yours sincerely,

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Annex

In September 2023, the German Federal Ministry of Finance established an independent expert commission tasked with developing concrete proposals for practical and politically feasible solutions for a modern and future-proof tax system. Experts from both practice and academia convened to explore approaches for further simplification and debureaucratization of corporate taxation, to examine potential improvements for reliable and predictable tax enforcement, and to discuss the consequences and opportunities for national legislation arising from international developments. In this context, they also addressed proposals for international tax law. The corresponding recommendations of the expert commission of the Federal Ministry of Finance (hereinafter referred to as the German expert commission) have been incorporated here.

Proposals in detail:

I. Eliminate Inconsistencies

The introduction of the global minimum tax ensures that companies worldwide are subject to a baseline level of taxation. This development creates redundancies in anti-abuse regulations, leading to unnecessary duplication of compliance efforts. In this context, we fully support the Commissioner Hoekstra´s approach subjecting all relevant regulations to a comprehensive review. Unnecessary or duplicate provisions should be abolished, and overly stringent standards ("gold-plating") should be scaled back to the essential minimum:

1. Remove overlaps and redundant rules by aligning directives

Redundant regulations impose excessive compliance burdens on businesses and should be systematically evaluated and eliminated. In this context, existing defensive measures, such as controlled foreign corporation (**CFC**) **rules** and **interest limitation provisions** under the Anti-Tax Avoidance Directive (**ATAD**), should be reviewed in the context of the Global Minimum Corporate Tax. As part of this review, the German expert commission advocates for the complete **abolition of CFC rules**[1]. We fully

[1] Both Germany's controlled foreign corporation (CFC) rules and the internationally agreed minimum taxation independently ensure an appropriate minimum tax burden of 15 percent, resulting in overlapping systems. The coexistence of these two regulatory frameworks not only imposes double bureaucratic burdens on affected companies but also creates a risk of double taxation. This contradicts the international consensus among the member states of the Inclusive Framework, which aims to avoid double taxation through the introduction of a global minimum tax.

support this recommendation. If a complete abolition of CFC rules is not politically feasible, these rules must at least be eliminated for businesses already subject to the global minimum tax. For all other companies, CFC rules should be simplified, e.g. by using financial accounts as the starting point with a few adjustments for calculating the effective tax rate of controlled foreign companies similar to the mechanics of the Global Minimum Corporate Tax. The objective of the interest limitation rule also overlaps with that of the Global Minimum Corporate Tax. Therefore, the **abolition of the interest limitation rule for businesses subject to the minimum tax** should be considered and implemented through an amendment to the Anti-Tax Avoidance Directive (ATAD).

The rules on **hybrid mismatches** under Articles 9, 9a and 9b of the ATAD serve as one of many examples of extremely complex and barely practicable EU tax legislation. A rethinking and renegotiation of the ATAD is urgently needed in this context. It remains imperative to specify the residual abuse potential to justify retaining the anti-hybrid rules alongside the controlled foreign corporation (CFC) rules under Articles 7 and 8 of the ATAD and the minimum taxation. Given that the EU Minimum Tax Directive ensures at least a 15 percent tax burden even in cases of tax mismatches, it would be prudent to **forgo specific anti-hybrid rules altogether**. This recommendation, which originates from the German expert commission, is one that we, the undersigned business associations, fully support. At the very least, these rules should be narrowed by eliminating the application to imported mismatches[2], removing the extension to structured arrangements with third parties[3], and limit anti-hybrid rules to entities within the same group, connected by a controlling interest, instead.

Furthermore, the 2021 **Council conclusions on the EU list of non-cooperative jurisdictions** must be **revised** in light of the subsequently adopted minimum taxation rules. Here, too, we align with the recommendations of the German expert commission. The special sanctions for non-cooperative jurisdictions can be integrated into the minimum taxation framework by denying Safe Harbour provisions (see below). Any additional adverse tax consequences aimed at influencing the

[2] The provision imposes excessive compliance costs by requiring to verify the tax treatment of, not only the other party involved in the transaction, but also other parties further down in the transaction chain to ensure that no hybrid mismatches are involved. If not entirely repealed, it should be limited to those cases in which a controlling interest exists.

[3] Exclude "structured arrangements" (as defined in Article 2(11)) from the scope of the anti-hybrid rules, as the complexity and ambiguity of these rules create significant compliance burdens.

behavior of non-cooperative jurisdictions through the indirect burdening of taxpayers are disproportionate.

2. Create a level playing field by harmonizing cross border relevant definitions and methods

In line with the recommendations of the German expert commission, Member States should strictly avoid exceeding the requirements of existing EU directives ("gold plating") and avoid further anti-abuse rules for lowering the risk of undermining the fundamental principle of freedom of movement. At the same time, the European Commission must prioritize and systematically enforce the uniform implementation of existing directives across the EU. This dual approach is essential to achieving the harmonization goals of simplification and the elimination of mismatches. Currently, divergent definitions and calculation methods in tax law are interpreted inconsistently among EU Member States, creating misalignment with international frameworks. To avoid further fragmentation within the EU internal market, we strongly recommend a harmonized application of the following directives across all Member States:

- **ATAD**

  In this context, we would also like to highlight the numerous contributions made by the individual associations signing this document (including through their European umbrella organizations) as part of the evaluation of the ATAD. These contributions include, among other things, the following proposals:

  - Common definitions of interests and net interest expense;
    A clearer and more specific definition of the term "interest" is needed, and the definition of net interest expenses should be aligned with GloBE rules for intra-group financing. A uniform definition within the EU, consistent with international frameworks, would enhance consistency and clarity for businesses operating across multiple jurisdictions. Furthermore we advocate for the introduction of a fixed allowance instead of a relatively freely interpretable threshold to ensure a clear and consistent reduction of burdens.
  - Provide a standardized method for determining market value in the area of exit taxation
    To eliminate ambiguity and reduce the administrative burden associated with exit taxation, it is essential that the scope of Article 5 be clarified, particularly

regarding intra-group transfers of functions. Additionally, the introduction of a common standard for determining the market value of assets in cross-border transfers would ensure uniformity across the EU and facilitate smoother implementation of exit taxation rules. This would provide businesses with much-needed legal certainty and reduce the complexity of cross-border transactions.

- Amend CFC rules (Articles 7 and 8) as follows:
  According to Art. 7 par. 3 of the ATAD Member States may opt not to treat a financial undertaking as a CFC if one third or less of its income from the specific categories of passive income comes from transactions with the taxpayer or its associated enterprises. Sometimes, a financial undertaking for regulatory or commercial reasons holds assets or carries out specific functions through separate controlled entities. The privilege foreseen for financial undertakings should be extended to these holding entities, similar to the approach taken by Art. 1.5.2 of the OECD GloBE Model Rules. Furthermore, transactions with these holding entities should not count towards the one-third threshold. Therefore, we suggest the following amendments:
  1. Extend the optional exemption under Article 7 paragraph 3 to entities controlled by financial undertakings and primarily performing investment functions for the controlling financial undertakings.
  2. Exclude transactions by a financial undertaking with entities controlled by it from the calculation of the one-third threshold for the optional exemption in Article 7 paragraph 3.

II. Facilitate Targeted Administration

1. Develop Purpose-Driven Reporting

In the past decade, an increasing number of tax reporting obligations have been introduced, many of which are not fully aligned and whose purpose remain unclear. However, the effort required for companies to prepare, maintain, and submit these reports is substantial and ongoing. Therefore, a **fit-for-purpose test** is required. Moreover, DAC provisions that **no longer serve a clear purpose should be eliminated**. For the Global Minimum Corporate Tax and the country-by-country reporting almost the same data has to be reported. The EU should campaign at OECD

level for the abolition of all reporting obligations that are only maintained because the states have agreed to them in the past. The EU should push at OECD level for abolishment of all reporting obligations that are only maintained because the states have agreed to them in the past. Regarding the EU-level reporting obligation for cross-border tax arrangements for instance, the **DAC6** hallmark catalog is overly broad, often unclear, and imprecisely worded, lacking clear definitions for essential terms. Therefore, the German expert commission advocates for a **review of the relevant hallmarks** to assess their relevance and the introduction of materiality thresholds. The undersigned business associations support this and recommend that, when evaluating the directive, its effectiveness in achieving its intended goal of uncovering new and previously unknown tax arrangements should be taken into account. If no significant results have been achieved in proportion to the high volume of reports, the regulation should be repealed. For any necessary DAC measures that remain, it is crucial to focus on simplifying processes without introducing any modifications to the criteria for reporting as that would increase complexity, costs and resource constraints for businesses. Simplification should remain the primary goal.

2. Targeted procedures for obviously low risk activities

- Simplify obligations for low-risk entities, such as national groups without cross-border activity[4], and **expand safe harbor rules based on CBCR data under Pillar II**.
  The regulations of the Global Minimum Tax are extensive and highly complex. Efficient implementation is only possible with simplifications—so-called Safe Harbours, which allow for the simplified demonstration of an effective tax burden of at least 15 percent, thereby avoiding the need for a complex calculation of the effective tax rate for each country. The currently most significant Safe Harbour is the CbCR Safe Harbour, which, for a transitional period of three years, allows MNEs to use information they already collect in their CbC reports to avoid calculating pillar 2 effective tax rates for their operations in lower-risk jurisdictions. However, the CbCR Safe Harbour can only be applied temporarily in fiscal years that begin on or before December 31, 2026, and end before July 1, 2028. After that, its application will no longer be possible due to its time limitation. The OECD/G20 Inclusive Framework plans to develop permanent regulations over the next few years. In the long term, the members of the OECD/G20 Inclusive Framework foresee the introduction of a permanent Safe Harbour to ensure that no supplementary tax is imposed if the effective tax rate in a country, according to a

[4] Under the Minimum Tax Law, large German national groups without foreign residency currently face extensive reporting obligations, even though there is no possibility of profit shifting to low-tax jurisdictions due to the company structure.

simplified calculation, is at least 15 percent; the exact details are still open. The stabilization of the simplification rule is essential for effective implementation. However, if the permanent Safe Harbours are only formulated and adopted shortly before the expiration of the current transitional measures, this will lead to significant avoidable uncertainty for taxpayers. Therefore, it is important that the European Commission advocates for the timely formulation of permanent Safe Harbour regulations at the OECD level. This would save training efforts in countries where the temporary safe harbour rules are initially applied and eliminate many potential sources of errors. For large scale domestic groups, a simplified reporting in the Global Information Return should be allowed permanently. For example, only jurisdictional data rather than by-entity data could be required.

- **Lower significantly administrative obligations for tax neutral processes** such as relocation of manufacturing tools within the EU by certain vehicle manufacturers (so-called OEMs).
  Ongoing monitoring requirements[5], expanded reporting obligations[6] and registration requirements[7] occur even if the activity ends up in tax neutral ways. Against this background, it is proposed to significantly reduce the administrative burden by eliminating transfer reporting, freeing companies from registration requirements, and/or introducing a centralized EU reporting system, thus streamlining regulatory obligations for automobile manufacturers.

III. Consider best practices and develop pragmatic solutions

Increase the **flexibility of corporate financing** through a **reform of the interest limitation rule** (Article 4 ATAD). In the course of renegotiating the ATAD, efforts should be made to ensure that **double taxation** resulting from Article 4 of the ATAD **is avoided**, especially if the control of financing arrangements cannot be limited to the consistent application of the arm's length principle. If the limitation on interest deductibility is retained, it should be scaled back to focus on shareholder-related financing and the prevention of abuse. In this

[5] Companies must ensure that no further taxable transactions occur in the affected countries. If they do, additional declarations are required, and retroactive adjustments to other settlements may be necessary. On top: Transfer Reporting: A variety of documents is required, which varies greatly between EU countries and can be difficult to obtain.
[6] In some countries, special obligations such as real-time reporting or SAF-T reporting apply, resulting in IT adjustments and maintenance costs—even when no relevant revenues are generated.
[7] Registration Requirements: The automobile manufacturer must be registered for tax purposes in both countries for the relocation. In cases where no further transactions occur in these countries, this results in unnecessary and cumbersome registrations and subsequent de-registrations.

context, we agree with the proposals of the German expert committee. Specifically, the rule should be limited so that only the portion of the interest expenses exceeding 30 percent of EBITDA that is related to shareholder loans is excluded from deductibility, rather than the entire financing expense. Whether the use of debt financing for foreign operations, particularly the capitalization of foreign subsidiaries ("fat capitalization"), requires an interest limitation rule at all should be decided based on an evaluation of the global minimum tax's impact on the financing structures of international companies. A coherent solution to this issue would ultimately require international coordination regarding the allocation of debt positions within corporate groups.