Position paper on European Commission's proposals for a Taxation Omnibus and DAC recast

Our reference:	LPC-TAX-26-058	Date:	26-10-2026
Referring to:			
Related documents:			
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Pages:	8	Transparency Register ID no.:	33213703459-54

Insurance Europe views on European Commission's proposals for a Taxation Omnibus and DAC recast

Insurance Europe welcomes the European Commission's Taxation Omnibus and the proposal for a recast of the Directive on Administrative Cooperation (DAC) as important steps towards a simpler, more coherent, and more competitive EU taxation framework.

In particular, the proposed expansion of the scope of the Parent-Subsidiary Directive and the Interest and Royalties Directive, including the removal of minimum shareholding requirements and prior administrative authorisation procedures for the application of withholding tax exemptions and the introduction of a derogation from the subject-to-tax requirement for pension institutions, are expected to help reduce withholding tax barriers and facilitate cross-border investment. The proposed coordination between Controlled Foreign Company (CFC) rules and the Pillar Two global minimum tax framework, as well as measures aimed at reducing duplicative reporting obligations, are also welcome.

At the same time, there is scope for further improvements and clarifications, which would help ensure that the proposals deliver meaningful simplification in practice. In particular, greater legal certainty, further alignment with Pillar Two, and additional reductions in duplicative compliance obligations would help strengthen competitiveness while maintaining the effectiveness of the EU tax framework.

Taxation Omnibus

1. Strengthen cross-border investment by expanding the scope of EU withholding tax relief provisions

Insurance Europe supports the proposed expansion of the Parent-Subsidiary Directive (PSD) and the Interest and Royalties Directive (IRD), including the removal of minimum shareholding requirements and prior administrative authorisation procedures for the application of withholding tax exemptions and the exemption from the subject-to-tax requirement for pension institutions, including IORPs.

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- The proposed extension of the withholding tax exemption to pension institutions should adequately reflect the diversity of pension provision across Member States. In particular, life insurance undertakings managing occupational or retirement pension assets should also benefit from the exemption where they perform an equivalent economic function to pension institutions. This would help ensure neutral treatment of comparable pension activities irrespective of the regulatory framework or legal form of the provider.

- To further support the objectives of the Savings and Investments Union (SIU) and facilitate cross-border investment, the scope of the proposed amendments should also be extended to collective investment undertakings, including UCITS, ELTIFs and AIFs. Investment funds play an essential role in channelling household, pension and institutional savings into productive investment across the European economy. Excluding such vehicles from the revised framework would risk maintaining unnecessary withholding tax barriers and undermine the objectives of simplification, tax neutrality and capital market integration.

- In addition, further legal certainty is needed with respect to the application of the PSD and IRD. In particular:
    - a harmonised EU definition of "beneficial ownership" should be introduced and applied consistently across the PSD, IRD and FASTER framework;
    - anti-abuse rules and substance requirements should be applied more consistently across Member States;
    - the treatment of indirect holdings through tax-transparent entities should be clarified; and
    - companies should continue to have the option of seeking advance confirmation from tax authorities where greater legal certainty is needed.

- Finally, the proposed eight-year transition period for the envisaged withholding tax simplifications appears excessively long and risks delaying the competitiveness and simplification benefits that the proposals are intended to deliver.

2. Enhance coherence between ATAD and Pillar Two

Insurance Europe welcomes the proposal to exempt taxpayers within the scope of Pillar Two from the application of CFC rules. The Commission rightly recognises that both regimes pursue similar objectives and that the concurrent application of both frameworks may result in overlapping calculations, duplicative reporting obligations and potential economic double taxation.

- The proposed exemption should be complemented by further measures to improve coherence between the two frameworks. In particular, further clarification is needed regarding:
    - the determination of control in indirect holding structures;
    - the calculation of CFC income and the application of the low-tax test, including in cases involving mixed active and passive income;
    - the calculation of CFC income and the interaction with existing accounting and reporting systems;
    - the treatment of taxes paid under fiscal unity and other group taxation regimes when assessing the effective tax rate of a group entity;
    - the treatment of dividends, share disposals and income connected to insurance and investment activities;
    - the treatment of financial undertakings, including insurance and asset management activities; and
    - the operation of substance-based exemptions, including for third-country entities.

- Insurance Europe also considers that the ownership threshold for the application of CFC rules should be harmonised across Member States and that a mandatory 50% threshold would contribute to greater consistency and legal certainty.

- More broadly, the Taxation Omnibus should be used as an opportunity to address remaining competitiveness concerns arising from the interaction between EU legislation and the Pillar Two framework, including through the introduction of an appropriate dispute resolution mechanism.

- Finally, moreover, genuine economic activity should be treated consistently in the context of CFC rules regardless of whether it is carried out within the EU or in a third country, provided that appropriate safeguards and information exchange mechanisms are in place.

3. Simplify treasury, financing, and investment activities

The Commission's objective of reducing unnecessary compliance burdens should also be reflected in the treatment of common treasury and financing arrangements:

- In particular, clarification is needed to ensure that genuine commercial cash-pooling arrangements are not inadvertently excluded from proposed exemptions under the interest limitation rules simply because externally raised funds are on-lent within a group as part of an ordinary treasury function.

- Similarly, the application of certain CFC provisions should better reflect the reality of investment and insurance structures and should not produce unintended outcomes for ordinary financing, fund management and asset management activities that do not present base erosion risks.

- Legitimate investment structures, including insurance investment vehicles, real estate investment structures and intra-group financing arrangements, should not be brought within the scope of the CFC rules solely as a result of technical features that do not give rise to base erosion concerns.

4. Strengthen competitiveness through targeted tax incentives

Insurance Europe welcomes the introduction of a harmonised EU research and development incentive.

- To better support the digital and green transition of the financial sector and the wider economy, consideration should be given to extending the scope of the incentive beyond tangible investments to include relevant intangible investments and operating expenditure, while ensuring compatibility with the Pillar Two framework and avoiding unnecessary complexity.
- Insurance Europe also supports further efforts to remove practical barriers to tax-neutral business reorganisations and restructurings, including through greater legal certainty regarding the application of the Merger Directive.

DAC Recast

1. Make DAC simplification meaningful in practice

Insurance Europe supports the Commission's efforts to consolidate and simplify the Directive on Administrative Cooperation. However, the proposed simplifications should go further to ensure a genuine reduction in reporting and compliance obligations.

- In particular, Insurance Europe supports:
    - practical guidance on the Main Benefit Test to reduce defensive reporting;
    - the centralisation of DAC4 and DAC9 notifications and reporting obligations within a single Member State;
    - the elimination of local GIR filings where no local tax liability arises;
    - notification requirements that avoid repeated annual filings where relevant information has not changed and provide practical filing deadlines; and
    - the removal or substantial simplification of low-value DAC6 reporting obligations.

- While the proposed DAC6 exemption for groups within the scope of Pillar Two is welcome, its practical application remains complex and may significantly limit its effectiveness. Further simplification and legal certainty would therefore be desirable.

2. Improve the proportionality and legal certainty of DAC6

Insurance Europe welcomes the proposed streamlining of DAC6, including the removal of certain hallmarks and the extension of reporting deadlines. However, further improvements are needed to ensure that reporting obligations remain proportionate and focused on arrangements presenting genuine tax-planning risks.

- In particular:
  - the proposed Pillar Two exclusion should be simplified so that it can be applied in practice by taxpayers and intermediaries;
  - intermediaries should be able to rely on information reasonably available to them and should not be expected to verify the Pillar Two status or tax position of unrelated counterparties;
  - the definition of intermediary should better reflect the role and information actually available to regulated financial institutions providing ordinary financing, payment, custody, safekeeping, execution or settlement services;
  - the definition of a cross-border arrangement should be designed so that the taxpayer can easily determine whether an arrangement is within scope and to only capture situations involving a genuine cross-border tax dimension;
  - Hallmark B2 should be refined to avoid capturing ordinary commercial transactions that benefit from tax treatment expressly provided for by legislation; and
  - reporting obligations that duplicate substantive anti-avoidance provisions already contained in ATAD should be removed.

- Insurance Europe also has concerns regarding proposals to expand reporting obligations relating to third-country jurisdictions, which could significantly increase administrative burdens without a commensurate benefit for tax authorities.

3. Ensure that future substance requirements are introduced through primary legislation

Insurance Europe welcomes the withdrawal of the Unshell proposal. Any future EU substance requirements should be introduced through a directive. Requirements should be harmonised across the EU, clearly defined and designed to avoid creating new layers of administrative complexity.

Annex – Drafting and implementation suggestions

Taxation omnibus

1. Parent-Subsidiary Directive (Directive 2011/96/EU)

- **1.1 Extension of Article 5 to additional pension providers and collective investment undertakings**
  - The exemption from withholding tax should be extended to reflect the diversity of pension provision across Member States and to cover distributions paid to collective investment undertakings. Article 5(2) could be reworded:
    "By derogation from Article 2(a), points (i) and (iii), paragraph 1 shall also apply where the receiving company is a pension institution, **or a Collective Investment Undertaking.**

    …

    (c) a life insurance undertaking subject to Directive 2009/138/EC, to the extent that it manages occupational or retirement pension assets.

    For the purposes of the second subparagraph, 'Collective Investment Undertaking' means a UCITS, an EU AIF or an alternative investment fund managed by an EU AIFM that, regardless of its legal form, is in scope of the definitions included in Article 3(1), points (7), (36), (37) or (38) of Council Directive (EU) 2025/50 of 10 December 2024."

- **1.2 Beneficial ownership**
  - Introduce a common EU concept of beneficial ownership across the PSD, IRD and FASTER Directive.

- **1.3 Anti-abuse and substance**
  - Amend Article 1(2) PSD to introduce harmonised EU-level substance criteria and standardised documentation requirements.

- **1.4 Indirect holdings through tax-transparent partnerships**
  - Confirm that indirect holdings held through tax-transparent partnerships fall within the scope of the Directive, including where the partnership lacks a permanent establishment in the Member State of the distributing company.

- **1.5 Profit-related municipal taxes**
  - Clarify Articles 2 and 5 to confirm that profit-related municipal taxes fall within the scope of the Directive.

- **1.6 Prior clearance**
  - Retain an optional advance clearance procedure for taxpayers seeking legal certainty, notwithstanding the Commission's proposal to abolish mandatory prior authorisation.

- **1.7 Transition period**
  - Shorten the proposed eight-year transition period applicable to withholding tax simplification measures.

2. ATAD (Directive (EU) 2016/1164) – CFC rules

- **2.1 Pillar Two carve-out**

- Retain the Commission's proposed exemption from CFC taxation for taxpayers within the scope of Pillar Two.

- **2.2 Mandatory 50% ownership threshold**
  - Make the 50% ownership threshold under the CFC rules mandatory across all Member States.

- **2.3 Indirect holdings**
  - Amend Article 7(1) so that control is determined on the basis of the taxpayer's look-through participation in the CFC rather than through aggregation of holdings held by associated enterprises linked only through the 25% associated-enterprise threshold.

- **2.4 One-third threshold for financial undertakings**
  - Exclude transactions by a financial undertaking with entities controlled by it from the one-third threshold calculation in Article 7(3).
  - Exclude foreign-to-foreign transactions that have no connection to the Member State of the taxpayer from that calculation.

- **2.5 Computation of CFC income**
  - Amend Article 8(1) so that the computation of CFC income starts from the CFC's financial statements or reporting package, with only essential adjustments.

- **2.6 Dividends and share disposals**
  - dividends should be treated as active income and should not reduce the CFC income of the distributing entity.
  - Alternatively, dividends should be treated as passive only where the underlying income of the distributing entity is passive and gains from the disposal of shares should be treated as passive only where the underlying company is passive.
  - dividends within the scope of the PSD should be excluded from CFC income.
  - dividends relating to investments held by insurers for the benefit of policyholders should not be treated as passive. Since dividends are included on a gross basis, commensurate increases of insurance reserves expensed in the p/l of the CFC may not be deducted, hence leading to inflated CFC income.

- **2.7 Asset management**
  - Clarify that providing asset-management does not qualify as active service delivery.

- **2.8 Effective tax rate test**
  - Ensure Article 7 clarifies:
    - that taxes paid on the CFC income by another entity under tax consolidation regimes are allocable to the CFC; and
    - the methodology for calculating the effective tax rate where a CFC derives both active and passive income.

- **2.9 Tax-neutral restructurings**
  - Clarify that income arising from tax-neutral mergers, demergers and contributions in kind should be treated as active income where taxing rights remain preserved.

- **2.10 Third-country substance exemption**
  - Make the substance carve-out mandatory for third-country CFCs where genuine economic activity can be evidenced.

- **2.11 Pillar Two dispute resolution**

- Expand the Taxation Omnibus to include a dedicated Pillar Two dispute-resolution mechanism.

3. ATAD (Directive (EU) 2016/1164) - Interest limitation rule

- **Cash-pooling**
  - Clarify that ordinary commercial cash-pooling and treasury arrangements do not fall outside the proposed exemption for third-party loans solely because externally raised funds are on-lent within a group as part of a genuine treasury function.

4. ATAD (Directive (EU) 2016/1164) - R&D allowance

- Extend the R&D incentive to relevant intangible investments and operating expenditure, subject to safeguards avoiding unnecessary complexity and adverse Pillar Two consequences.

5. Merger Directive (Directive 2009/133/EC)

- Clarify Article 2(j) so that functionally important assets used by both the transferred and retained business may be allocated to the transferred branch where an appropriate contractual right of use is granted.

DAC Recast

- **6.1 Main Benefit Test**
  - Develop practical guidance on the Main Benefit Test to reduce defensive reporting of ordinary commercial transactions.

- **6.2 DAC4 and DAC9**
  - ensure genuine centralisation of notifications in one Member State;
  - do not repeat annual notifications where there has been no relevant change;
  - introduce a notification deadline of six or twelve months after financial year-end; and
  - eliminate local GIR filing requirements where no local tax liability arises.

- **6.3 DAC6 Pillar Two exclusion**
  - Simplify the proposed DAC6 exclusion for groups within the scope of Pillar Two to ensure that intermediaries are not required to verify information about other participants in a transaction that is not reasonably available to them.

- **6.4 Intermediary definition**
  - Narrow the intermediary definition so that it better distinguishes:
    - tax advisers and arrangement promoters; and
    - regulated financial institutions providing ordinary financing, payment, custody, safekeeping, execution or settlement services.

- **6.5 Definition of cross-border arrangement**
  - Amend Article 3(19) to ensure that in-scope scenarios can be easily determined and only arrangements involving genuine cross-border tax-planning risks are reportable. This is notably important for:
    - Article 3(19)(b) (multiple tax residence); and
    - Article 3(19)(d) (activities carried out in another jurisdiction).

- It can be difficult for a participant to determine whether another participant is tax resident in multiple jurisdictions (Article 3(19)(b)) or carries out an activity in another jurisdiction without being tax resident or creating a permanent establishment (Article 3(19)(d)).

- **6.6 Hallmark B2**
  - Significantly narrow Hallmark B2 so that it does not capture legitimate outcomes resulting from:
    - participation exemptions;
    - double taxation agreements; or
    - the Parent-Subsidiary Directive.

- **6.7 Hallmarks C1(c) and C2**
  - Remove or review Hallmarks C1(c) and C2 because the underlying risks are already addressed by Articles 9(1), 9(2) and 9b ATAD.

- **6.8 Third-country jurisdictions**
  - Remove the DAC6 amendments that would require the identification of third-country jurisdictions concerned by, or affected by, a reportable arrangement.

- **6.9 Substance requirements**
  - Ensure that any future EU substance requirements be introduced through a directive rather than through an implementing act.

Insurance Europe is the European insurance and reinsurance federation. Through its 39 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings active in Europe and advocates for policies and conditions that support the sector in delivering value to individuals, businesses, and the broader economy.