

Response to European Commission call for evidence for evaluating ATAD

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General consideration and fundamental concerns

Insurance Europe welcomes the European Commission (EC)'s call for evidence as an opportunity to provide feedback on the upcoming evaluation of the Anti-Tax Avoidance Directive (ATAD).

The European (re)insurance industry is concerned about the inefficiencies and high compliance costs (eg, personnel, IT, and data systems) arising from the overlap of ATAD, with the Global Minimum Corporate Taxation Directive (GloBE rules), and the Sixth Directive on Administrative Cooperation (DAC 6). These multiple regimes create a complex and burdensome environment for businesses, especially Multinational Enterprises (MNEs). For these reasons, European (re)insurers recommend the following approaches:

Repealing ATAD

The introduction of the GloBE rules has diminished the original justification behind ATAD. On top of that, the compliance costs associated with keeping both measures far exceed any potential benefits. Given this, Insurance Europe recommends repealing ATAD.

Repealing some ATAD provisions and aligning others to the GloBE rules

If a complete repeal of the ATAD is not feasible, Insurance Europe proposes a partial repeal and adjustment:

- MNE groups subject to the Global Minimum Corporate Tax should be exempt from the Controlled Foreign Company (CFC) rules. Consequently, CFC rules would only apply to MNE groups outside of the scope of the Minimum Corporate Taxation. To simplify and align CFC rules with GloBE for those companies, the industry suggests:
 - Using financial accounting as a starting point for the CFC income computation, as established by GloBE rules.
 - Differently from GloBE rules, income inclusion would be limited to foreign passive income.
 - Such income would be subject to a minimum tax rate of 15% using a simplified version of the GloBE income-inclusion rule.
 - Simplification should entail, for instance, eliminating complex rules like those for Partially Owned Parent Entities (POPE).
- Additionally, CFC rules (Articles 7 and 8 of ATAD) should be amended as follows:

- 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.
- 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.
- The interest limitation rule (Article 4) should be transformed into a thin capitalization rule that primarily targets debt owed to shareholders, rather than overall interest expense.
- The rules related to hybrid mismatches (Articles 9, 9a, and 9b) should be amended as follows:
 - 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.
 - Limit anti-hybrid rules to entities within the same group, connected by a controlling interest.
 - Repeal Article 9(3), addressing imported mismatches. 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.

Repealing DAC 6

Similar considerations apply to DAC 6. Given the global minimum corporate tax, abusive cross-border arrangements are less likely. Additionally, the ambiguous language of DAC 6 creates legal uncertainty and administrative burdens. Its hallmarks are poorly suited to combat tax avoidance structures.

Conclusions

In summary, Insurance Europe urges the European Commission to simplify the tax landscape by reducing overlaps and eliminating unnecessary compliance burdens. Aligning ATAD and DAC 6 with GloBE rules would create a more efficient and competitive business environment for European companies. The EU should avoid duplications to prevent a competitive disadvantage compared to other major economic regions.

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