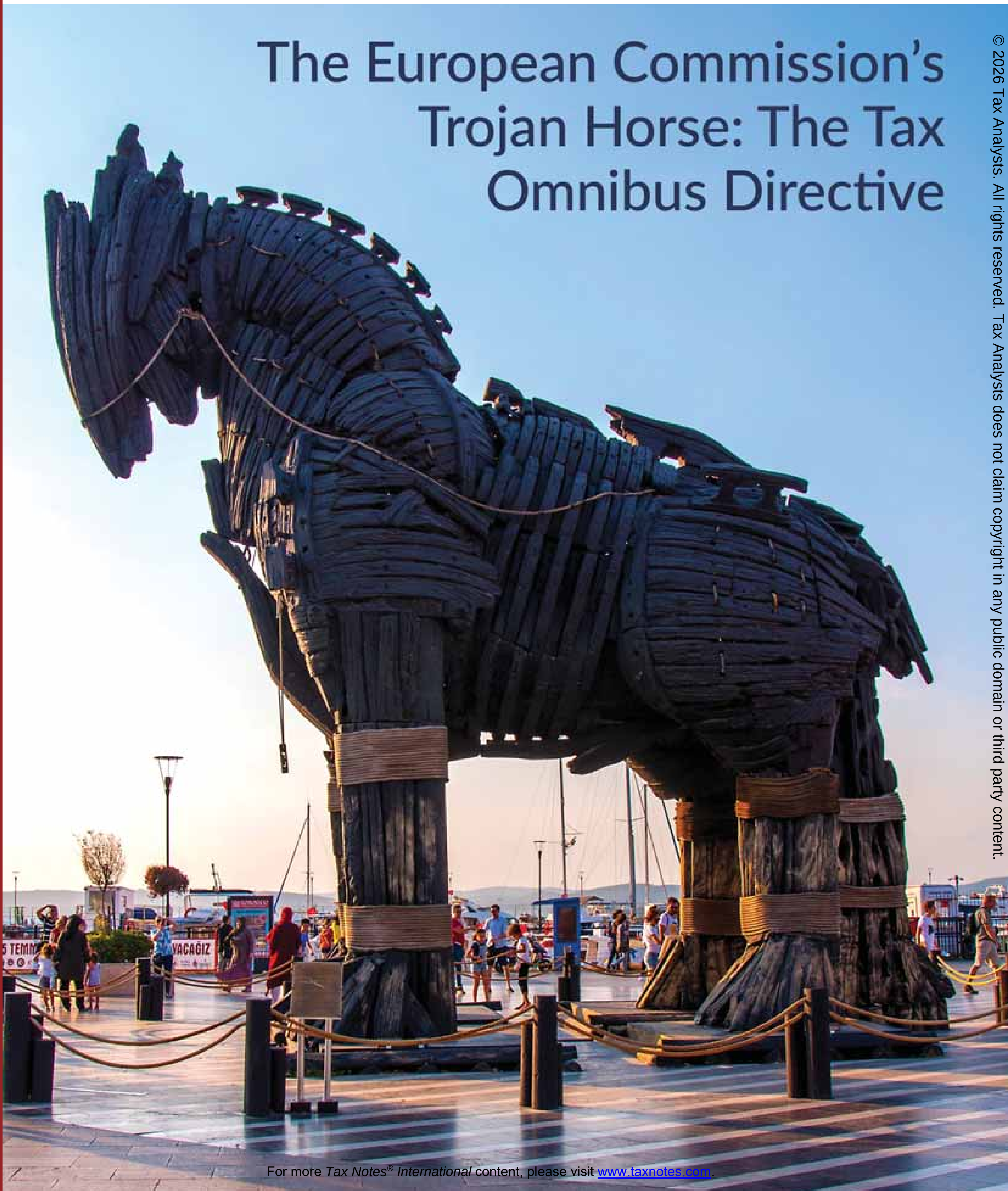
taxnotes® international

Volume 123, Number 4 ■ July 27, 2026

The European Commission's Trojan Horse: The Tax Omnibus Directive



© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

taxnotes® international

Volume 123, Number 4 ■ July 27, 2026

The Commission's Trojan Horse: How the Tax Omnibus Directive Would Eliminate EU Tax Sovereignty

by Oliver R. Hoor

Reprinted from *Tax Notes International*, July 27, 2026, p. 547

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

The Commission's Trojan Horse: How the Tax Omnibus Directive Would Eliminate EU Tax Sovereignty

by Oliver R. Hoor


Oliver R. Hoor

Oliver R. Hoor is a tax partner with ATOZ Tax Advisers. The author thanks Marie Bentley for her help in reviewing this article.

In this report, Hoor explores the European Commission's proposed tax omnibus directive, arguing that it will undermine tax sovereignty within the EU and that member states should reject it.

The views expressed in this article are solely the author's and do not necessarily reflect the official position of ATOZ Tax Advisers.

On June 25 the European Commission adopted a draft directive proposing amendments to six existing EU directives (the tax omnibus directive). According to the commission, the purpose of the amendments is to simplify the EU's framework for direct taxation and support EU growth and competitiveness. However, in its current form, the directive more closely resembles a Trojan horse that would erode the tax sovereignty of EU member states. This article explores the directive's proposed changes and offers a critical analysis.

Introduction

Over the past decade, the EU has undergone a complete overhaul of its direct tax rules, prompted by the OECD's base erosion and profit-shifting project. The anti-tax-avoidance directive (ATAD) and ATAD 2 introduced a range of antiabuse rules that EU member states were required to implement — with some optionality — including interest limitation rules, exit taxation, controlled foreign corporation rules, a general antiabuse rule, and hybrid mismatch rules.

The EU has also significantly expanded its directive on administrative cooperation (DAC). DAC6 introduced a mandatory disclosure regime for potentially aggressive cross-border tax arrangements. DAC7 imposed reporting obligations on digital platform operators. DAC8 introduced tax transparency rules for cryptoassets. DAC9, meanwhile, provided for the exchange of information regarding the pillar 2 global minimum tax rules. Each of these required significant implementation efforts by member states.

Another significant development was the adoption of the pillar 2 directive, which requires EU member states to implement a global minimum taxation framework that the United States has since abandoned. In response, the commission has stretched a provision of the directive to maintain the U.S. regime as a "side-by-side" jurisdiction, thus keeping the global minimum tax framework alive despite the United States' withdrawal of support.

At the time, EU member states offered relatively little resistance to these initiatives, given the politically charged environment that existed following the BEPS project and the wider push for tax transparency. However, the commission has recently failed on several occasions to secure the unanimous agreement required for its draft directives.

Draft directives that have been abandoned or stalled are:

- the Unshell directive (also known as ATAD 3), which aimed to lay down rules to prevent the misuse of shell entities for tax purposes;

For more *Tax Notes® International* content, please visit www.taxnotes.com.

- the debt-equity bias reduction allowance (DEBRA), which proposed a new allowance for additional equity contributions and further restrictions on interest deductions;
- the transfer pricing directive, which would have given the commission greater influence over how the arm's-length principle is applied by EU member states; and
- the Business in Europe: Framework for Income Taxation (BEFIT) directive, which aimed to provide simplified profit determination for subsidiaries of multinational enterprise groups operating in the EU, as well as formulary apportionment.

Another project that appears to have been abandoned is the Securing the Activity Framework of Enablers (SAFE) initiative, which targeted enablers, such as tax advisers, lawyers, and financial advisers, who design, market, or assist in creating complex tax schemes, particularly those involving non-EU countries.

This pattern shows that EU member states have become considerably more skeptical of new tax initiatives proposed by the commission in recent years, despite investing substantial resources in implementing various EU directives adopted since 2016.

Will the draft tax omnibus directive be able to garner the necessary unanimous support among EU member states or will it fail like other recent EU directives?

Overview of the Tax Omnibus Draft

The tax omnibus directive proposes amendments to the following six EU directives:

1. interest and royalty directive (Council Directive 2003/46/EC);
2. parent-subsidiary directive (Council Directive 2011/96/EU);
3. tax merger directive (Council Directive 2009/133/EC);
4. anti-tax-avoidance directive (Council Directive (EU) 2016/1164);
5. dispute resolution mechanism (Council Directive (EU) 2017/1852); and
6. directive on faster and safer relief of excess withholding taxes (FASTER) (Council Directive EU 2025/50).

Interest and Royalty Directive

Scope

Under the interest and royalty directive, interest and royalty payments arising in an EU member state are exempt from withholding tax in that state, provided the beneficial owner is either an associated company resident in another member state or a permanent establishment situated in another member state.

The directive sets out a minimum holding requirement for the exemption to apply. Further, EU member states may apply a prior authorization or certification procedure to verify in advance whether the conditions for the exemption are fulfilled.

Proposed Changes

First, the tax omnibus directive proposes removing the minimum holding requirement. As a result, interest and royalty payments between companies within the EU would be exempt from tax, regardless of the shareholding relationship.

Second, the proposal says EU member states would have to either levy withholding tax or deny the deductibility of interest and royalty payments at source if the recipient is resident in a jurisdiction that either doesn't levy corporate income tax or applies a zero tax rate to income from interest and royalties.

However, this requirement would not apply if the recipient were subject to a qualified domestic top-up tax for the tax period in question and did not receive any refunds or direct or indirect financial benefits relating to the tax. It also does not apply if the recipient is part of an MNE group that is subject to the pillar 2 directive (or, for third-country jurisdictions, the OECD model rules).

Third, EU member states would no longer be able to require prior authorization to verify that the exemption conditions are met at the time of payment. Instead, taxpayers would self-assess their eligibility, subject to ex post controls and the application of antiabuse rules, including beneficial ownership rules.

Fourth, the proposal clarifies that the interest and royalty directive applies to payments

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

attributable to the activities of a PE, regardless of whether those payments are tax deductible in the EU member state in which the PE is situated.

Fifth, there is a proposal to update the annex to the interest and royalty directive to ensure that all entities falling within the scope of the directive are explicitly covered.

Parent-Subsidiary Directive

Scope

Under the parent-subsidiary directive, dividends and other profit distributions paid by EU subsidiaries to parent companies in different EU member states are exempt from withholding taxes at source. Double taxation of this income is eliminated at the level of the parent company, either through a participation exemption or a tax credit.

The directive sets out a minimum holding requirement for the exemption to apply. Further, EU member states may apply a prior authorization or certification procedure to verify in advance whether the exemption conditions are met.

Proposed Changes

First, the tax omnibus directive would extend the material scope of the parent-subsidiary directive by removing the minimum holding requirement. Consequently, dividends and other profit distributions between companies within the EU would be tax exempt irrespective of the shareholding percentage.

Second, the directive's scope would be extended to include pension funds, regardless of their legal form, by way of derogation from the subject-to-tax condition that would otherwise apply.

Third, member states would no longer be able to require prior authorization to verify whether the conditions for the exemption are fulfilled at the time of payment. However, EU member states would retain the ability to perform ex post checks and to verify the applicability of antiabuse rules.

Fourth, there is a proposal to update the annex to the parent-subsidiary directive to ensure that all entities that should fall within its scope are explicitly covered.

Tax Merger Directive

Scope

The tax merger directive establishes common rules for the deferral of capital gains tax on certain cross-border business reorganizations, including mergers, divisions, transfers of assets, and share exchanges involving companies in different member states, until the assets are actually disposed of.

The directive aims to ensure that these restructuring operations can take place without incurring immediate tax liabilities, which would otherwise create barriers to the functioning of the internal market.

Proposed Changes

First, the tax omnibus directive proposes to introduce new forms of cross-border reorganizations that are not covered by the scope of the tax merger directive, specifically the simplified merger and the division by separation.

Second, the tax omnibus directive would introduce a new chapter on cross-border conversions, which would extend the principle of tax neutrality to the transfer of a company's registered office from one member state to another.

Third, there is a proposal to update the annex to the tax merger directive to ensure that all entities that should fall within its scope are explicitly covered.

ATAD

ATAD required EU member states to implement a common framework of antiavoidance rules, including interest limitation rules, exit taxation, CFC rules, hybrid mismatch rules, and a GAAR. However, ATAD provided for some optionality, giving EU member states a degree of freedom when transposing these rules into national law.

The tax omnibus directive also notes that the different legal frameworks adopted by EU member states for research and development activities result in a fragmented landscape across the EU, with no common minimum level of support for R&D. To address this, the scope of ATAD is proposed to be extended to include the full expensing of certain R&D expenditure.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

Interest Limitation Rules

First, the tax omnibus directive would require EU member states to allow the deduction of exceeding borrowing costs up to 30 percent of a company's EBITDA. Member states would no longer be permitted to set a lower threshold. When ATAD was adopted, member states were free to choose a lower threshold.

Second, the proposal would exempt loans granted by third parties from the scope of the interest limitation rule, provided the funds are used to finance the borrowing taxpayer's own activities and are not lent on within the group. The existing interest limitation rules apply equally to loans from both related parties and third parties, with no option to exclude the latter. However, interest payments between third parties cannot, by definition, result in profit shifting between group companies.

Third, the tax omnibus directive would make the implementation of a €3 million safe harbor mandatory, which would then be automatically indexed based on annual inflation.

Fourth, it is proposed to remove the standalone entity exception, which (when adopted) excludes entities that do not have an associated enterprise or a foreign PE from the scope of the interest limitation rules.

Fifth, a safeguard is proposed that would discharge the application of the interest limitation rules when a company's earnings before interest, taxes, depreciation, and amortization are reduced by 50 percent in a given tax year.

Sixth, in view of the geopolitical context, it is proposed to introduce a new mandatory exclusion for loans financing investments in the military sector, for investments initiated within the first five tax periods following the initiative's entry into force.

Finally, it is proposed to make several previously optional provisions mandatory, including the group escape rule (which is most difficult to apply in practice) and the carry-forward mechanism. Under ATAD, EU member states were free, but not required, to implement these options.

CFC Rules

First, the tax omnibus directive introduces an exemption from the CFC rules for taxpayers that are subject to the pillar 2 framework.

Second, it proposes an exemption from CFC rules for small and medium-size enterprise groups.

Third, the tax omnibus directive would remove the choice between models A and B that has been provided by ATAD. Model A involves directly attributing predefined categories of passive income, while model B attributes only undistributed profits arising from nongenuine arrangements put in place primarily for tax avoidance or evasion purposes. The tax omnibus directive proposes to make model A the only possible approach by deleting model B.

GAAR

Regarding the GAAR, the tax omnibus directive proposes amending its wording to ensure its scope encompasses all direct taxes to which companies are subject, including withholding taxes and those related to the pillar 2 framework.

Hybrid Mismatch Rules

The hybrid mismatch rules include an imported hybrid mismatch rule. This rule applies when a deductible payment made by a taxpayer in an EU jurisdiction (the importing jurisdiction) directly or indirectly funds expenses that give rise to a hybrid mismatch outcome (i.e., a deduction without inclusion or a double deduction) between two other jurisdictions (typically non-EU third countries), if the mismatch has not been neutralized by local rules. The tax omnibus directive aims to eliminate this rule, which has proven particularly challenging for taxpayers and tax administrations.

New R&D Allowance

The tax omnibus directive proposes introducing a new chapter to ATAD, setting out an EU-wide R&D allowance as a minimum standard to ensure the full deductibility of qualifying R&D expenditure. Taxpayers would be permitted to deduct qualifying expenditure either immediately or over any of the four subsequent tax periods.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

To this end, the calculation of EBITDA for the purposes of the interest limitation rules would be amended to ensure that the new R&D allowance does not reduce the taxpayer's EBITDA and, consequently, its entitlement to interest deductibility.

Dispute Resolution Mechanism Directive

Scope

The dispute resolution mechanism directive provides rules for resolving disputes related to the interpretation of tax treaties, covering issues of double taxation for both businesses and individuals.

Proposed Changes

The tax omnibus directive proposes targeted amendments designed to preserve its overall architecture while introducing clarifications and procedural simplifications.

First, it is proposed that if the taxation of more than one person is directly affected by the same disputed issue, each of these persons should qualify as an affected person for the purposes of the directive.

Second, the directive would undergo several amendments to streamline and clarify the complaints stage of the procedure.

Third, an amendment would clarify that competent authorities should inform the taxpayer without delay if they conclude that no agreement can be reached — rather than waiting for the two-year mutual agreement procedure period to expire — allowing the taxpayer to access the arbitration phase earlier and avoid unnecessary delays.

Fourth, it is proposed that failure to comply with procedural requirements may result in the complaint being rejected.

Fifth, the tax omnibus directive would clarify that objections against independent persons of standing participating in the advisory commission may be raised only until the final decision has been accepted by all competent authorities.

Sixth, the directive would specify that an alternative dispute resolution commission may be set up not only for the substantive resolution of double taxation disputes but also for disputes relating to the admissibility of complaints.

Finally, the tax omnibus directive proposes several clarifications regarding the functioning of the dispute resolution mechanism.

FASTER Directive

Scope

The FASTER directive provides for standardized fast-track procedures for relief at source or quick refund of withholding tax levied on dividends and interest from publicly traded securities.

Proposed Changes

The tax omnibus directive would extend the scope of the withholding tax exemption that could be claimed under FASTER, in accordance with the amended interest and royalty directive and the parent-subsidiary directive. Consequently, exemptions from withholding tax would be granted without the need for any upfront procedures.

Critical Analysis

The tax omnibus directive proposes amendments to six existing EU directives, which would significantly restrict the tax sovereignty of EU member states. While some measures would restrict the freedoms of member states that prefer stricter tax rules, others would limit the ability of those that wish to offer businesses and investors a more competitive tax environment. Remarkably, the directive manages to please no one.

In the explanatory memorandum, the European Commission uses euphemistic language to describe the intention of the draft directive, which is said to form part of the broader agenda to simplify EU legislation, reduce unnecessary administrative burdens, and strengthen the competitiveness of the internal market — if one can believe that.

The restriction of EU member states' tax sovereignty is justified with the following statement:

> The proposal simplifies and modernizes the Union direct tax acquis, while preserving the original objectives of the directives. It contributes to the Commission's broader objective of strengthening the competitiveness of the

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes*® *International* content, please visit www.taxnotes.com.

Union by reducing unnecessary compliance burdens, improving legal certainty and facilitating cross-border investment and business activity within the internal market.

This feels like an abusive relationship. After spending years imposing complex, burdensome, and overlapping directives (e.g., ATAD, ATAD 2, DAC6, DAC7, DAC8, and DAC9, as well as pillar 2 and FASTER), the commission now offers "simplification" as a solution to the complexity it created.

Regarding the scope of the tax omnibus directive, the commission considered three combinations of implementation options:

- the "comprehensive omnibus," which includes all policy options and the most ambitious alternatives for the main measures of this initiative;
- the "medium ambition omnibus," which encompasses all policy options except the new R&D allowances, as well as less ambitious alternatives for some measures; and
- the "limited ambition omnibus," which would target existing measures in a simpler and more straightforward way while maintaining the status quo for the remaining policy options.

The commission concluded that the comprehensive omnibus option would be the preferred policy package. This option aims to maximize harmonization, thereby eliminating the leeway of EU member states to design their tax systems as they see fit.

Changing Legacy EU Directives

The interest and royalty directive and the parent-subsidiary directive were introduced to eliminate barriers for MNE groups operating across several EU member states. A key achievement for the internal market was the adoption of minimum standards by EU member states, which removed obstacles to cross-border investment within the EU.

The interest and royalty directive provides an exemption from withholding tax on interest and royalty payments if certain conditions are met, including a minimum shareholding requirement. Similarly, the parent-subsidiary directive requires an exemption from withholding tax on dividend income at the level of the EU parent company. It also requires an exemption from withholding tax in the EU member state in which the subsidiary is resident for tax purposes, provided that certain conditions are met, including a minimum shareholding requirement.

Forcing Withholding Tax Exemptions

The tax omnibus directive proposes extending the scope of the interest and royalty directive and the parent-subsidiary directive by removing the minimum holding requirements. The new rules would extend to payments between third parties, thereby applying it to all levels of participation.

This goes far beyond the original intention of the directives. The interest and royalty directive and the parent-subsidiary directive were designed to eliminate double taxation within groups of companies. The minimum holding requirement was not an arbitrary threshold; it formed part of the definition of what constitutes a group. These directives were never intended to cover payments between unrelated parties.

By extending the exemption to all payments, regardless of the level of participation, the commission is not addressing double taxation; rather, it is redefining the purpose of the directives. This strips EU member states of a legitimate source of tax revenue.

The commission claims this is simplification. In reality, it is harmonization by stealth, extending EU-mandated tax exemptions to situations that were never intended to be covered. EU member states are left with less flexibility to design their tax systems, and taxpayers are left with legal uncertainty regarding the application of these expanded rules.

Conversely, EU member states are free to refrain from levying withholding taxes on dividend, interest, and royalty payments and can define the conditions for these exemptions (or reduced withholding tax rates).

Further, the shift to self-assessment — while purportedly a simplification — could create significant legal uncertainty for taxpayers. Without prior authorization, taxpayers will bear the risk of incorrect self-assessment, potentially leading to penalties, interest, and prolonged

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

disputes. This may also result in defensive filings if directors of the paying company are concerned that the conditions may not be met (particularly in jurisdictions with significant director personal liabilities).

Forcing Withholding Tax or Nondeductibility

The tax omnibus directive also provides that EU member states must either levy withholding tax or deny the deductibility of interest and royalty payments at source if the recipient is based in a jurisdiction that does not levy corporate income tax or applies a zero tax rate to income from interest and royalties.[1]

This is a similar measure to one recently implemented regarding the tax treatment of deductible cross-border payments to entities resident in blacklisted jurisdictions. The commission updates its list of noncooperative jurisdictions every six months. This measure is intended to punish foreign jurisdictions that do not comply with the commission's requirements.

However, punishing entities based in countries that do not levy corporate income tax or apply a zero tax rate to interest and royalties seems to contradict the commission's previous policy objectives.

First, this is the first time these measures have been discussed in the context of the interest and royalty directive, a directive originally designed to eliminate, not impose, withholding taxes.

Second, ATAD 2 (hybrid mismatch rules) explicitly excludes situations in which an entity is resident in a jurisdiction that either does not levy corporate income tax or applies a zero tax rate, in which the jurisdiction has adopted a territorial tax regime under which income is treated as tax-exempt foreign-source income, or in which the recipient is a tax-exempt investor (for example, a pension fund). In all these circumstances, the hybrid mismatch rules should not apply, because the deduction without inclusion outcome is because of the tax status of the investor rather than the hybrid nature of an entity or financial instrument. The hybrid mismatch rules were designed to target situations in which the hybridity of an entity or financial arrangement causes a mismatch outcome.

The commission has thus completely changed its policy direction in less than 10 years. How can EU member states relinquish tax sovereignty when the commission can simply change its policy contrary to the will of EU member states?

The proposed amendments to these directives should be unacceptable to EU member states interested in policy choices that result in a high-tax environment, as well as to those interested in offering a more competitive tax environment. Once again, the tax omnibus directive pleases no one.

The ATAD/ATAD 2 Overhaul

The tax omnibus directive proposes several changes to ATAD and ATAD 2. Some of these changes would restrict the freedom of EU member states to adopt stricter tax rules, while others would limit their ability to choose taxpayer-friendly alternatives.

Proposals Restricting EU Member States' Taxing Rights

The following proposals would restrict the ability of EU member states to design their tax systems in a way that reflects their national policy choices.

Interest Limitation Rules

The following amendments to the interest limitation rules would require EU member states to introduce more favorable rules for taxpayers:

- While ATAD permitted EU member states to allow the deduction of exceeding borrowing costs up to 30 percent of a company's EBITDA (with some EU member states opting for a lower percentage), the proposal would make the 30 percent threshold mandatory.
- While the interest limitation rules apply to loans granted by group companies and third parties alike, the proposal would exclude interest incurred in relation to third-party loans from the scope of the rules.
- While the interest limitation rules allow EU member states to implement a safe harbor of up to €3 million (with EU member states free to adopt a lower threshold), the proposal

[1] The tax omnibus directive does not, however, provide for a withholding tax rate that would need to be applied.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

would dictate a mandatory threshold of €3 million, indexed for inflation.
- The tax omnibus directive proposes exempting companies from the interest limitation rules if their EBITDA is reduced by 50 percent in a given year.
- While the group escape clause and carryforward mechanism were optional, the proposal would make these rules mandatory.

In general, EU member states should have maximum freedom to design their own tax systems. Mandating these tax incentives, however, is inappropriate and undermines national sovereignty, regardless of how well intentioned it may be.

Mandatory R&D Allowance

The tax omnibus directive proposes the introduction of a new EU-wide R&D allowance as a minimum standard to ensure the deductibility of qualifying R&D expenditure. This allowance would equal the amount of qualifying expenditure and could be deducted from the taxable base.

EU member states may implement certain incentives to encourage R&D activities within their territories, within certain limits. Notably, as part of the work on BEPS action 5, the OECD restricted the scope of intangible property tax regimes and IP boxes offering favorable tax rates on royalty income by introducing the modified-nexus approach. This approach restricts IP tax regimes to productive intangibles, such as patents, and required a certain link between R&D work and the subsequent exploitation of IP rights.

While it would be positive to give EU member states the freedom to provide incentives for R&D activities, it seems inappropriate to require them to implement such an allowance. For high-tax member states, the mandatory R&D allowance would effectively force them to forgo revenue that they might prefer to retain or deploy elsewhere. For member states that wish to create R&D incentives, it restricts their ability to design targeted R&D incentives that reflect their industrial policy objectives. Once again, the tax omnibus directive pleases no one.

Proposals Restricting EU Member States' Optionality

The following proposals would limit the flexibility that member states enjoy under ATAD.

CFC Rules

Under the current version of ATAD, member states can choose between two models for implementing CFC rules:
- Model A targets specific categories of passive income, such as interest, royalties, dividends, leasing, insurance, and invoicing income.
- Model B, by contrast, considers whether the CFC engages in genuine economic activity supported by staff, equipment, assets, and premises. Model B is not a loophole. It is a deliberate choice rooted in the landmark *Cadbury Schweppes* judgment of the EU's Court of Justice (C-196/04), which held that CFC rules cannot apply to a subsidiary with genuine economic substance.

The tax omnibus directive proposes eliminating this choice by abolishing model B, meaning model A would become mandatory across all member states. However, in light of the *Cadbury Schweppes* ruling and subsequent Court decisions, model A should not apply if a subsidiary realizing passive income has genuine economic substance and is not a wholly artificial arrangement. Nevertheless, this proposal would create significant and unnecessary legal uncertainty. It constitutes a direct assault on the Court's fundamental freedoms jurisprudence.

Hybrid Mismatch Rules

The proposed elimination of the imported hybrid mismatch rules would be welcome, because this provision creates significant unnecessary complexity and compliance costs. However, the elimination should be optional for EU member states. Once again, the commission is using simplification to eliminate national choice. Member states should be free to retain the rule if they wish.

The Demise of Optionality

The most notable aspect of the tax omnibus directive is its systematic elimination of optionality. By their very nature, directives are instruments that allow for national

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes®* *International* content, please visit www.taxnotes.com.

implementation. They establish minimum standards, not maximum constraints. However, the tax omnibus directive reads more like a regulation — binding in its entirety and directly applicable — than an EU directive.

The removal of optionality is particularly frustrating given that it was a key feature of the ATAD when it was adopted. Member states were assured that they would have the flexibility to implement the rules in a manner that reflected their national policy choices. They were told that the directive set minimum standards, not maximum constraints. They were also assured that their sovereignty in tax matters would be respected. Yet now, just a few years later, the commission is proposing to take that flexibility away.

The commission's approach is now clear. First, it proposes a directive with extensive optionality to reassure EU member states that their sovereignty will be respected. However, once the directive has been adopted, the commission returns with a new proposal that eliminates this optionality, claiming that simplification requires uniformity. This could significantly erode trust, making future tax cooperation even more challenging. It teaches EU member states that any flexibility granted to them may be temporary.

Further, the commission unsuccessfully attempted to pass the BEFIT directive, which would have explicitly harmonized corporate tax bases and introduced formulary apportionment. Now it is proposing amendments to six existing directives that would remove all optionality and implement BEFIT's centralizing logic without ever referring to it as such. This is BEFIT without BEFIT: harmonization by stealth.

Reopening ATAD so soon after its adoption also undermines the predictability that businesses require for long-term investment decisions. ATAD was presented to businesses and member states as a stable framework, not as a work in progress subject to perpetual revision. By constantly reopening and revising the rules, the commission is creating an uncertain environment that discourages investment and undermines the very competitiveness it claims to promote.

Some adjustments to ATAD's flaws could be beneficial, but they could be implemented through targeted amendments, not a sweeping tax omnibus directive that eliminates national discretion.

Useful Clarifications

The tax omnibus directive would provide some useful clarifications. For example, the scope of the interest and royalty directive, the parent-subsidiary directive, and the tax merger directive would be updated to explicitly cover all EU entities that should fall within their scope.

The tax omnibus directive would also introduce welcome changes to the dispute resolution mechanism directive. In the current tax environment, characterized by high complexity and tax revenue pressures resulting in a more aggressive stance by some local tax authorities, efficiently and promptly eliminating double taxation is important.

The proposed clarifications of the complaints procedure, the arbitration phase, and the functioning of the advisory commission are sensible and would improve the effectiveness of the dispute resolution framework.

Regarding the application of withholding tax exemptions, FASTER would be aligned with the amended interest and royalty directive and parent-subsidiary directive, ensuring that exemptions from withholding tax can be claimed without the need for upfront procedures.

While these clarifications are welcome, they do not require an omnibus directive. The commission could propose them as stand-alone, targeted amendments to the relevant directives. Their inclusion in the tax omnibus package suggests a deliberate strategy, using clarifications as cover for the more controversial measures. EU member states would be wise to remain vigilant.

A Decade of Overregulation

Over the last decade, the European Commission has introduced a number of new directives and amendments to existing ones, following the publication of the final reports on the OECD's BEPS project in October 2015.

The directives that EU member states were required to incorporate into their domestic tax legislation are:

- ATAD (2016);
- ATAD 2 (2017);

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

- DAC6 — mandatory disclosure regime (2018);
- DAC7 — reporting regarding the digital platform economy (2020);
- pillar 2 directive — global minimum tax rules (2022);
- FASTER directive (2024);
- DAC8 — tax transparency rules for cryptoassets (2025); and
- DAC9 — exchange of information regarding the pillar 2 global minimum tax rules (2026).

Each of these required national legislation, training for tax authorities, systems overhauls, guidance for businesses, and defense in court. The cumulative effect has been exhaustion. Finance ministries across the EU and local tax authorities have been overwhelmed by the constant transformation of the European tax landscape. The political will for yet another tax directive is therefore likely to be very low.

EU member states have shown little appetite for new tax initiatives that do not reflect their policy priorities, as evidenced by the commission's numerous failed attempts to push directives through in recent years, including:

- ATAD 3 (Unshell directive) (draft released in 2021, abandoned in 2025);
- transfer pricing directive (draft released in 2023, withdrawn in 2025);
- debt-equity bias reduction allowance (draft released in 2022, withdrawn in 2025);
- BEFIT (draft released in 2023, stalled); and
- financial transaction tax (released in 2013, abandoned in 2025).

All these initiatives consumed a great deal of energy from governments, taxpayers, tax advisers, and business associations until the commission finally abandoned them.

However, it seems that it has not learned from these failures. The tax omnibus directive demands simultaneous amendments to six directives, claiming that this would lead to simplification and competitiveness and offering solutions to issues created by the commission itself.

Instead of imposing another sweeping omnibus package, the commission could offer member states the option to implement changes to existing EU directives separately, allowing them to focus on the clarifications that are genuinely useful while rejecting the measures that would erode their sovereignty. The fact that it has chosen not to do so speaks volumes about its true agenda.

The Procedural Deficit

The tax omnibus directive is procedurally flawed because of the rushed consultation process and inadequate impact assessment.

The call for evidence was open for just 44 days, from February 16 to March 30. For a proposal that amends six EU directives and fundamentally reshapes the EU's tax architecture, this is clearly insufficient. The commission is not providing stakeholders with a meaningful opportunity to be heard. It is merely ticking a box.

The impact assessment is vague, and the assumptions and method are questionable. The commission claims that the tax omnibus directive will save businesses €7 billion in compliance and financial costs annually and boost EU GDP by around 0.2 percent, but these figures appear to lack a robust analytical foundation. The Regulatory Scrutiny Board has raised serious concerns about the intervention logic, the range of options and the reliability of the cost-benefit analysis. The commission has not adequately addressed these concerns.

This raises two pertinent questions: What has been the cumulative cost of directives implemented over the last decade, and what impact have they had on GDP? The commission's claims of savings ring hollow when set against the cumulative burden of the very directives it now seeks to simplify.

Overall, this is not an appropriate way to implement fundamental tax reforms. The rushed consultation, the flawed impact assessment and the lack of meaningful stakeholder engagement should all be a cause for concern for EU member states. They should demand proper scrutiny, consultation, and impact assessment — or reject the proposal outright.

Conclusion

The tax omnibus directive is much more than just a modest update. In fact, it represents a fundamental reordering of the EU's tax architecture. The scope of the interest and royalty directive and the parent-subsidiary directive

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.

would be extended. The carefully crafted optionality of the ATAD would be systematically eliminated. The European Commission is trying to transform directives into regulations by stealth.

Remarkably, the draft tax omnibus directive manages to please no one. For member states that wish to maintain higher taxation, it restricts their flexibility by imposing mandatory rules that constrain their policy choices. For those that want to create a business-friendly environment, it eliminates the flexibility that made their approach viable. Everyone would lose out, except the commission.

However, when it comes to tax policy, EU member states should be free to set their own tax rates, incentives, and approaches to economic development. Tax systems must be tailored to a country's unique economic circumstances, political decisions, and financial requirements. The tax omnibus directive undermines this freedom by replacing national discretion with one-size-fits-all mandates.

The commission previously attempted to implement BEFIT, which would have explicitly harmonized corporate tax bases and allocated taxable income through formulary apportionment. Now, it is attempting to amend existing directives by removing all optionality and implementing BEFIT's centralizing logic without ever referring to it by name.

The commission's bait and switch strategy is now clear. First, it proposes a directive that allows for a great deal of optionality, reassuring member states that their sovereignty will be respected. However, once the directive has been adopted, it returns with a new proposal that eliminates this optionality, claiming that simplification requires uniformity. This is not good-faith negotiation.

EU member states are exhausted. They have transposed, implemented, and defended EU tax directives for a decade. They have watched ATAD 3, the debt-equity bias reduction allowance, the transfer pricing directive and BEFIT all fail. Now, the tax omnibus directive would further undermine their tax sovereignty.

Further, the procedural deficit is striking. The call for evidence was open for only 44 days. The impact assessment is vague, and the assumptions are questionable. This is not an appropriate way to legislate fundamental tax reform.

With its supposed focus on simplification and competitiveness, the tax omnibus directive resembles an abusive relationship. The commission imposes years of complex, burdensome, and overlapping directives and then offers simplification as a solution to the complexity that it created. Reasonable changes should be implemented through separate, targeted amendments. These do not require an omnibus directive.

Ultimately, it is highly questionable whether the tax omnibus directive will receive unanimous support from EU member states, which is necessary for its passage. Sticking with the Trojan horse metaphor, the member states have been here before. They are unlikely to be curious enough to bring it inside again. The tax omnibus directive should be rejected. ■

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes® International* content, please visit www.taxnotes.com.