European Commission's Call for Evidence on the Omnibus on Taxation

Position Paper

30 March 2026

Table of Contents

1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 33,000 members. It includes the Chartered Institute of Taxation UK, The Tax Institute (Australia), the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Executive Summary

We welcome the opportunity to contribute to the European Commission's Call for Evidence on the Omnibus on Taxation.

The Call for Evidence notes that the Commission intends to propose an Omnibus on Taxation by the second quarter of 2026 with the aim to streamline, enhance and clarify a number of Directives including:

- the Interest and Royalties Directive (Council Directive 2003/49/EC),
- the Parent-Subsidiary Directive (Council Directive 2011/96/EU),
- the Tax Merger Directive (Council Directive 2009/133/EC),
- the Anti-Tax Avoidance Directive (Council Directive (EU) 2016/1164) and the Tax Dispute Resolution Mechanisms Directive (Council Directive 2017/1852).

The EU tax framework plays a crucial role in shaping the business environment, influencing investment decisions, and driving economic growth in the European Union. While earlier Directives in the area of taxation were designed to facilitate cross-border activity within the internal market, more recent initiatives have expanded reporting requirements and introduced anti-avoidance measures. This has resulted in increased complexity and administrative burdens for businesses operating in the EU which can act as barriers to cross-border trade.

The gradual shift away from a focus on market integration risks undermining the fundamental principles underlying the early tax Directives, such as the elimination of double taxation. In addition, the fragmented implementation of EU tax measures and divergent approaches to the administration of such measures by Member States' tax authorities has introduced further complication for businesses operating in the internal market.

In our view, a recalibration of the Directives outlined in the Call for Evidence is required with a renewed focus on the core objectives of eliminating double

taxation and ensuring tax neutrality for cross-border corporate reorganisation. Simplifying the Directives and reducing the administrative burden is essential to enhancing the competitiveness of the EU, which has become even more important in the evolving global tax environment.

A more proportionate, coordinated and principle-based approach to the Directives should prioritise reducing unnecessary EU-level rules and ensure that anti-avoidance measures are appropriately targeted. At the same time, it is an imperative that the procedural and administrative requirements imposed by Member States are proportionate and are aligned with objectives of each Directive.

A coordinated approach to Interest and Royalties Directive (IRD), the Parent-Subsidiary Directive (PSD), and the Tax Merger Directive that harmonises eligibility criteria, enhances coherence and clarifies definitions will help strengthen the functioning of the Single Market.

We believe replacing the IRD and the PSD with a single Directive dealing with cross-border payments between qualifying companies would enhance the operation of these Directives. There are also several areas that are common to both the IRD and the PSD where we consider amendments are necessary to streamline the Directives and reduce technical complexity. These include expanding the definition of a company; amending the subject to tax requirement; harmonising the ownership thresholds and removing the exclusion of indirect holdings when considering if the ownership threshold has been satisfied.

Changes are also needed to improve the effectiveness of the Tax Merger Directive and to minimise uncertainty. These include amending the definitions of merger, division, and partial division; expanding the definition of a company; and ensuring that the benefits of the Tax Merger Directive are not unfairly denied where the merger or division includes a tax transparent entity.

It is critical that the Anti-Tax Avoidance Directive (ATAD) measures, when considered in the wider tax regulatory and economic environment, do not place a

disproportionate burden on businesses operating in the Single Market. There have been significant changes to the economic environment and the tax policy landscape since ATAD was first proposed, particularly following the implementation of the Pillar Two Global Anti-Base Erosion (GloBE) Rules across the EU. Considering these changes, amendments to the ATAD measures, in particular the Interest Limitation Rule (ILR) and the Controlled Foreign Company (CFC) rules are necessary to ensure that ATAD does not hamper EU competitiveness.

Finally, consideration should be given to permitting more meaningful participation by the taxpayer in the dispute resolution processes provided for under the Tax Dispute Resolution Mechanisms Directive to further increase tax certainty and the trust of taxpayers in the dispute resolution procedures.

In recalibrating the Directives, it is vital that there is sustained and structured engagement with stakeholders to ensure that any measures which are ultimately adopted result in an enhanced business environment.

We have outlined in more detail in the body of this submission the feedback we received from members in respect of each of the Directives referred to in the Call for Evidence and the changes which we believe are necessary to simplify the operation of these Directives and support the enhancement of competitiveness in the internal market.

3. Interest and Royalties Directive and Parent-Subsidiary Directive: Common Issues

We believe there is a compelling case to replace the IRD and the PSD with a single Directive, which would deal with cross-border payments between qualifying companies.

There are a number of areas which are common to both the IRD and the PSD where we believe amendments are necessary to streamline and enhance the operation of the Directives. We have set out these areas in detail below.

Definition of a company

Both the IRD and the PSD are limited in their application to certain specified forms. This means certain entities which are tax resident in an EU Member State and subject to corporate income tax cannot avail of the benefit of the Directives. For example, a company which is incorporated in a third country but resident for tax purposes and subject to corporate income tax in an EU Member State cannot avail of the benefit of the Directives.

The rationale for restricting the application of the Directives to certain legal forms of a company is unclear and, in our view, is not in line with the objective of providing a consistent and comprehensive EU wide approach to preventing double taxation. Adopting a definition of a company based on tax residence and liability to corporate income tax would reflect economic reality and support cross-border business activity.

Subject to tax

The IRD and the PSD require that the payer or recipient company concerned must be subject to corporate income tax in an EU Member State. This precludes tax exempt entities such as pension funds, investment funds, charitable organisations, and government bodies from availing of the benefits of the Directive. The decision to exempt certain companies from corporate income tax is

a policy matter for the Member State concerned and we do not consider it should be a basis for denying the application of the Directives.

For example, many Member States have a participation exemption for dividends. It seems inequitable to allow the benefits of the PSD to apply to a dividend received by a company which is within the charge to tax but exempt from tax on that dividend under a participation exemption but to deny the benefits of the PSD where the recipient is exempt from tax on the dividend for other reasons.

At a minimum, we would urge the Commission to consider modifying the requirement in the Directives to acknowledge that tax may be applied through other means such as a qualifying top-up tax under the EU Minimum Tax Directive.

Permanent Establishments (PEs)

The application of the IRD and the PSD can be restricted in certain scenarios where there is PE. The policy rationale for such restrictions is unclear and, in our view, is contrary to the objective of eliminating double taxation on cross border dividend, interest and royalty payments.

For example, the IRD provides that where the PE of a company is treated as a payer or as the beneficial owner of interest or royalties then no other part of that company shall be treated as the payer or the beneficial owner. This rule is logical in cases where the profit of the PE is not subject to tax in the jurisdiction of residence of the company concerned (for example, where the jurisdiction in which the company is tax resident has a branch profit exemption which applies to that PE).

However, the logic for this restriction is not clear in cases where the profits of the PE concerned are included in the taxable profits of the company in the jurisdiction in which it is tax resident. We believe that consideration should be given to limiting this restriction to cases where there is a foreign branch exemption.

The application of the IRD is also restricted in the case of a PE if that PE is situated in a non-EU Member State. Similarly, the PSD effectively limits the application of the benefits of the Directive in respect of payments made to a PE to cases where the PE is situated in an EU Member State. These restrictions might make sense if the profits of that PE are not subject to corporate tax in the EU (for example, where the country of residence of the company with the PE operates an exemption in respect of foreign branches such that the profits of the PE are not subject to tax in that jurisdiction).

However, we believe it is inequitable to apply such a restriction where the profits of the PE are taxed in the jurisdiction where the company concerned is resident in like manner as other profits of that company. In our view, consideration should be given to limiting this restriction to situations where there is a foreign branch exemption.

Exclusion of certain payments

The IRD permits Member States to disapply the provisions of the Directive in certain circumstances where the payment of interest or royalties is treated as a distribution of profits, or debt claims with a profit participating coupon, or debt claims which are convertible. Essentially, these provisions give Member States the authority to disapply the Directive if the debt claims concerned have certain equity features and, consequently, are more akin to shares economically.

Where relief is denied in respect of such payments under the IRD, it is not clear that the benefits of the PSD apply to those recharacterised interest payments. This can give rise to inequitable situations where a payment is not entitled to relief under either Directive even though the necessary relationship between the payer and recipient is established. This is because there is no comprehensive definition of ‘distribution’ included in the PSD.

To ensure the Directives operate in a coherent manner, where relief is precluded by a Member State under the IRD because the debt instrument has certain equity

characteristics, it should be clear that such payments are within scope of the PSD.

Ownership requirement

Simplifying and harmonising the ownership requirements for the PSD and the IRD would improve the efficiency of these Directives.

The ownership thresholds under the IRD and PSD differ with the IRD requiring a direct 25% ownership relationship and the PSD requiring 10% direct ownership relationship. This results in complexity and inconsistent outcomes. Harmonising the ownership thresholds so that a 10% relationship applies for both Directives would enhance coherence and predictability.

Neither the IRD nor the PSD allow indirect relationships to be taken into account when considering whether the ownership threshold has been met. For example, a company might own 5% of the shares in a subsidiary directly and another 5% through another company in the group. Even though the overall 10% requirement is met, the PSD does not apply in those circumstances. This approach adds unnecessary complexity, and we consider there is no clear policy rationale for denying the benefits of the Directives where the ownership relationship is indirect though intermediary entities.

The IRD and the PSD both require that the ownership relationship between the payer and recipient company must not be through companies which are established outside of the EU. In our view, this restriction should be removed so that the Directives apply to cases where the ownership chain between the payer and recipient includes companies which are established outside of the EU. An anti-avoidance measure could be introduced to restrict the application of the Directives where the ownership is through companies that are located in an EU listed non-cooperative jurisdiction or a zero-tax territory. While the PSD would not apply to distributions made to shareholders in a non-EU Member State, we believe relief should apply where another company in the group has shares and

is resident in a Member State, and in combination with the non-EU shareholder, the 10% threshold is reached.

Article 3, paragraph (b) of the IRD requires a direct minimum 25% common ownership of capital between the payer and receiver. However, Member States have the option to substitute voting rights instead of capital ownership depending on their preference. We believe it would make sense if Member States were obliged to apply the IRD in cases where either capital ownership or voting control is established.

4. Interest and Royalties Directive: Other Issues

Evidentiary standards relating to beneficial ownership

The IRD provides for the elimination of withholding taxes where the beneficial owner of the interest or royalties is a company of another Member State, or a PE situated in another Member State of a company of a Member State. A Member State may require proof or evidence to substantiate that the benefits of the Directive should apply including information about the beneficial ownership of the receiving company.

Feedback from our members suggests that the evidentiary standards relating to beneficial ownership applied by the tax authorities in some Member States can be extremely difficult or impossible to satisfy. Such a high administrative burden undermines the efficiency of the of IRD.

To ensure the IRD applies as intended, consideration could be given to amending the IRD to confirm that a receiving company must be treated as the beneficial owner of the income where certain specific conditions are met, such as the income is included in the company's financial statements and the company’s corporate income tax computation (assuming it is not tax exempt).

5. Parent-Subsidiary Directive: Other Issues

Transparent Entities

The PSD does not allow for situations where the ownership chain includes a tax transparent entity, such as a partnership, between the parent and subsidiary. The policy rationale for this approach is unclear as there may be valid commercial reasons why an ownership chain includes a tax transparent entity.

To improve the efficiency of the PSD, consideration should be given to amending the Directive to provide the ability to 'look through' a tax transparent entity for the purpose of applying the benefits of the Directive. The Directive could confirm that nothing in it shall disapply the provisions of the ATAD with specific reference to the rules applying to hybrid entities and reverse hybrid entities.

Capital Gains

Regarding the taxation of dividends, the Preamble to the PSD states: *"the tax provisions governing the relations between parent companies and subsidiaries of different Member States varied appreciably from one Member State to another and were generally less advantageous than those applicable to parent companies and subsidiaries of the same Member State."* We believe this policy rationale should similarly apply to gains realised by a non-resident parent company on shares in its subsidiary.

At present, a Member State might seek to impose taxation on a capital gain realised on shares of a company resident in that State (even where those shares are not held by the foreign parent company through a local PE). However, the same Member State may have an exemption from capital gains tax available to resident companies in respect of their subsidiaries (both foreign and domestic).

Consideration should be given to extending the PSD to apply to the taxation of capital gains. If a full exemption cannot be agreed, we consider, at a minimum, that the Directive should be amended to require Member States that have an

exemption from capital gains available to residents of that State to extend it to qualifying parent companies.

Minimum period of ownership

The PSD allows Member States to impose a minimum ownership period of at least two years before applying the benefits of the Directive to any particular group.

To provide certainty to taxpayers, we believe it should be made clear in the PSD that any distribution made during that two-year period can qualify for the benefit of the Directive, provided the two-year period is ultimately satisfied (i.e., it should not be necessary to wait for two years before applying the benefit of the Directive). Provided the two-year ownership period is ultimately satisfied, the benefit of the Directive should apply from the first day when the ownership percentage condition is satisfied.

6. Tax Merger Directive

The policy rationale for a number of eligibility conditions for the Tax Merger Directive is unclear, and we believe this undermines the effectiveness of the Directive. We consider that amendments to the conditions are necessary to improve the Directive's efficiency and to support the enhancement of competitiveness in the internal market.

Definitions of merger, division, and partial division

The definitions of merger, division, and partial division are limited to situations where in exchange for the transfer of assets and liabilities, there is only an issue to the shareholders of the transferring company securities and, if applicable, a cash payment. The restriction of non-share-based remuneration to a cash payment precludes the possibility for other assets to be transferred instead, hindering the effectiveness of the Directive. In our view, the terms of the Directive

should be modified so that the definitions can capture other forms of consideration apart from cash.

In addition, the Directive provides that the maximum amount of cash payment may not exceed 10% of the nominal value of the securities issued or, in the absence of a nominal value, the accounting par value of those securities. However, the securities issued may well have a nominal value below market value because, for example, there may be amount of share premium recorded in the accounts. Consequently, we believe the restriction to which the 10% threshold applies should be framed with reference to the market value of the securities rather than their nominal value.

Definition of company from a Member State

The Tax Merger Directive requires that the companies concerned must be one of the forms listed in the Annex. Similar to the position outlined above with regard to IRD and PSD, the rationale for restricting the application of the Directive to certain legal forms of a company is unclear given there are additional requirements which stipulate that the company concerned must be tax resident in an EU Member State and be subject to a form of corporate income tax. For example, there are cases where companies might be incorporated in a third territory but are resident for tax purposes and subject to corporate income tax in an EU Member State. In our view, there is no clear policy rationale to exclude such companies from relief.

The Tax Merger Directive also requires that the companies concerned must be subject to corporate income tax in a Member State. As stated previously, this precludes tax exempt entities like pension funds, investment funds, charitable organisations, and government bodies from availing of the benefits of the Directive. We believe the decision to exempt certain companies from corporate income tax is a policy matter for the Member State concerned and should not be a basis for denying the application of the Directive. We recommend, at a minimum, that the requirement should be modified to recognise that tax may be

applied through other means such as a qualifying top-up tax under the EU Minimum Tax Directive.

Condition regarding the rules that would have applied to the transferring company

The benefits of the Tax Merger Directive only apply where the receiving company computes any new depreciation and gains or losses in respect of the assets and liabilities transferred, according to the rules that would have applied to the transferring company if the merger had not occurred.

While we understand that this provision is intended to avoid any misuse of an arbitrage between different sets of rules, it overlooks the possibility that there could be a change of law in a Member State, which applies to new transactions but not pre-existing arrangements. Consequently, we believe consideration should be given to inserting an exclusion from this provision so that the benefits of the Directive can be availed in circumstances where there is a change of law in the relevant Member State.

The benefits of the Tax Merger Directive will not apply where the receiving company exercises an option to have any new depreciation and gains or losses in respect of the assets and liabilities transferred in a manner different to the rules that would have applied to the transferring company if the merger had not occurred. This provision does not take into account the possibility that the alternative treatment may not result in any overall difference in taxes paid. For example, the taxpayer might have the option to claim tax depreciation over a longer period than the transferring company, but the overall amount of depreciation claimed would not be different.

Consequently, we believe consideration should be given to inserting an exclusion from this provision so that the benefits of the Directive can be availed of provided the aggregate tax benefits arising from the exercise of that option do not materially exceed the tax benefits which would have been available had they not.

Value for tax purposes

The benefits of the Tax Merger Directive will only apply if the shareholder does not attribute to the securities received a value for tax purposes which is higher than the value of the securities exchanged immediately before the merger, division, etc. Whether or not a higher value applies to those shares is a matter of national law and generally will not be the choice of the taxpayer. Therefore, it could be considered inequitable where the tax law of a particular jurisdiction provides for a higher value and the taxpayer has no option but to apply that rule.

This would be particularly unfair in a situation where the jurisdiction concerned has a capital gains tax exemption such that the value attributed to the shares is irrelevant because the gain will not be taxed in any event. While the purpose of the restriction is to ensure that there is no misuse of an arbitrage between tax rules, nevertheless it would seem inequitable to deny the benefits of the Directive in all such circumstances.

In our view, the Directive could be amended to require that Member States, which would otherwise apply a higher value to the securities exchanged, permit taxpayers to opt to adopt a lower value that would allow them avail of the Directive. This approach should protect the Exchequer of that Member State while still permitting legitimate taxpayers access to the benefits of the Directive. A similar point arises in relation to partial divisions.

Transparent entities

Member States may deny the benefits of the Directive in certain circumstances where the merger or division includes a tax transparent entity. While the purpose of the restriction is to ensure that there is no misuse of an arbitrage between tax rules, nevertheless it would seem unfair to deny the benefits of the Directive where the shareholders or members of that tax transparent entity would otherwise be able to avail of the Directive had that tax transparent entity not been in place.

There may be valid commercial reasons why an ownership chain includes a tax transparent entity. The Directive recognises this by permitting a Member State that considers a non-resident receiving company to be fiscally transparent, to apply the benefits of the Directive to any direct or indirect shareholders as it would, had the receiving entity not been tax transparent. To improve the efficiency of the Tax Merger Directive, consideration should be given to making this provision mandatory.

7. Anti-Tax Avoidance Directive (ATAD)

It is important that the ATAD measures, when considered in the wider tax regulatory and economic environment, do not place a disproportionate burden on businesses operating in the Single Market. Given the significant changes to the economic environment and the tax policy landscape since ATAD was first proposed, particularly following the implementation of the Pillar Two GloBE Rules across the EU, amendments to the ATAD measures are necessary to ensure that the Directive does not hamper the competitiveness of the EU.

The Institute **responded** to the European Commission's public consultation on its evaluation of ATAD on 11 September 2024. The Institute also participated in an interview with the European Commission as part of its study to support the evaluation of ATAD in March 2025. In preparation for this interview, we conducted a survey of our members to obtain feedback on the practical operation and impact of ATAD on Irish businesses.

Based on the feedback we received from our members, we have outlined below amendments to the ATAD measures which we consider are necessary to ensure that the Directive supports the growth and the competitiveness of the internal market.

Controlled Foreign Company (CFC) Rules

We believe ATAD should be amended to exempt Pillar Two in-scope groups from the scope of national CFC regimes. This would reduce the administrative burden for companies and reduce duplication.

CFC rules should also be updated with a requirement for Member States to credit tax imposed under a Qualified Domestic Minimum Top-up Tax (QDMTT) in a relevant jurisdiction, whether that jurisdiction is in or outside the EU. This should help to safeguard against double taxation.

Interest Limitation Rule (ILR)

30% EBITDA threshold

Since ATAD was introduced in 2016, the cost for companies accessing capital has increased. Indeed, the ECB marginal lending rate in March 2026 is 2.4% compared to 0.25% in March 2016. We believe that the negative impact of high borrowing costs on growth and investment could be alleviated through measures that reduce the after-tax cost of debt. In this context, we believe that the deductibility threshold of up to 30% of the taxpayer's EBITDA should be reconsidered to reflect changes in interest rates.

De Minimis threshold

Consideration should be given to increasing the current *de minimis* threshold of €3 million or provide Member States with the flexibility to increase the threshold within a set range (which could be a multiple of the current €3 million threshold). The current threshold is set at a fixed amount which has no regard to the fact that prevailing interest rates have increased since it was introduced.

We recommend a higher *de minimis* threshold should apply to interest groups (e.g., a *de minimis* threshold of €10 million could apply to groups with more than three entities in the relevant Member State). In a group context, the €3 million *de*

minimis threshold currently applies to the interest group, as a whole, and not to each individual company.

There are inconsistencies across Member States in the implementation of the ILR with respect to the application of the €3 million *de minimis*. We believe that the rules governing the €3 million *de minimis* threshold should be amended to clarify that the first €3 million of exceeding borrowing costs is excluded from the ILR.

Meaning of interest equivalent – treatment of financial instruments

We believe that clarity is required on the treatment of certain financial instruments and the associated characterisation of interest or interest equivalent in respect of them (e.g., the treatment of returns on non-performing loan portfolios acquired by a financial institution or the fair value movement of financial assets and liabilities).

Treatment of capitalised costs

Property developers typically capitalise interest incurred on building projects on their balance sheet throughout the course of the project, with the capitalised interest subsequently unwound to the income statement when the project is completed. Under the ILR, where the unwind of the interest expense exceeds €3 million in that accounting period, a restriction may apply to the amount of deductible interest expense notwithstanding that not all of the interest was incurred in that accounting period.

We believe that consideration should be given to amending the rules to provide that the deduction of such interest will not be restricted by the ILR in the year of unwind to the extent that the restriction would not have applied in the accounting period during which the interest was capitalised.

Company expansion in Europe – Issue with unused capacity restrictions

In practice, the one-size fits all time-limit placed on unused capacity fails to recognise the commercial reality that some business and sectors, by their nature,

require extended periods of development/expansion during which no profits are earned. Companies in such circumstances can be disadvantaged because of a permanent loss of unused capacity due to the operation of the five-year carry forward rule. This can be detrimental to growth and the competitiveness of the EU. We recommend permitting Member States to apply a longer time horizon for spare capacity for all sectors or, at a minimum, for sectors where distortions are identified as commonly occurring.

Long-term public infrastructure projects

The Preamble to ATAD notes that, without prejudice to EU State aid rules, Member States can allow for the exclusion of exceeding borrowing costs (for the purposes of the ILR) incurred on loans used to fund long-term public infrastructure projects. It is further noted that such financing arrangements are considered to present little or no base erosion and profit shifting risks.

The scope of the long-term public infrastructure project exclusion could be expanded to cover a wider range of infrastructure projects. For example, consideration could be given to including financing for residential development in line with the European Affordable Housing Plan and financing related to the development of semiconductor manufacturing plants in line with the Chips for EU Initiative. This could boost European competitiveness in the face of pressure from other jurisdictions (e.g., the Inflation Reduction Act in the US). In addition, Member States could be provided with increased flexibility to determine which projects are in the general public interest. This may vary across Member States depending on their specific infrastructure needs.

Anti-hybrids

Group Taxation

There is insufficient flexibility under ATAD to deal with certain group taxation regimes, the operation of which does not fit into the current definitions of income inclusion under the Directive. For example, the US operates a worldwide group

taxation regime under which foreign entities may be treated as equivalent to foreign branches, with the intragroup transactions between such entities being ignored (i.e., disregarded payments). As such entities are disregarded for US tax purposes, the income is only recognised further up the chain, at the level of the first US entity that is regarded for tax purposes.

Individual Member States, including Ireland, have attempted, in some instances, to legislate for this. However, the approach has been inconsistent across the EU resulting in significant variations, with additional pressure in terms of burden of proof placed on taxpayers. We believe a consistent approach for dealing with disregarded payments across Member States would be preferable to help avoid disparities in the application of the anti-hybrid rules and to prevent situations in which the inclusion rule results in double or even multiple taxation outcomes.

Imported mismatches

Consideration should be given to providing a carve out for payments made to EU counterparties from the imported mismatch rule. Taxpayers should be able to rely on the fact that EU Member States have adequately implemented ATAD and as a result, any payment made by a taxpayer to a counterparty in another EU Member State should not give rise to an imported mismatch.

8. Tax Dispute Resolution Mechanisms Directive

The Tax Dispute Resolution Mechanisms Directive is intended to improve tax dispute resolution procedures, by providing for a binding dispute resolution process with improved tax certainty for taxpayers. Clearly defined time limits apply to each stage of the dispute resolution process under the Directive, meaning that the competent authorities are required to issue acknowledgements and reach decisions within certain timeframes.

While these rights for taxpayers are welcome, the involvement of the taxpayer in the underlying dispute resolution process is limited. In our view, permitting more

meaningful participation by the taxpayer in the dispute resolution process would increase further tax certainty and the trust of taxpayers in the dispute resolution procedures.