



**European Commission Public Consultation on the
Tax Omnibus Directive**

Position Paper

27 September 2026

Table of Contents

1.	About the Irish Tax Institute.....	3
2.	Introduction	4
3.	Anti-Tax Avoidance Directive (ATAD).....	6
3.1	Interest Limitation Rule (ILR)	6
3.2	EU R&D Allowance	8
3.3	Controlled Foreign Company (CFC).....	10
4.	Parent–Subsidiary Directive (PSD) & Interest and Royalties Directive (IRD)	13
5.	Tax Merger Directive	16
6.	Conclusion	16

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. Introduction

We welcome the opportunity to provide feedback on the European Commission's proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU (i.e. Tax Omnibus Directive).

The Irish Tax Institute supports the objective of the Tax Omnibus Directive, together with the proposal for a Recast of the Directive on Administrative Cooperation (DAC), to simplify EU tax rules and reduce compliance burdens for businesses. The EU tax framework plays a crucial role in shaping the business environment, influencing investment decisions, and driving economic growth in the EU. 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 ever-changing global tax environment.

We welcome the Commission's efforts to enhance consistency in the application of the Anti-Tax Avoidance Directive (ATAD) Interest Limitation Rule across Member States by proposing to make mandatory the 30% EBITDA threshold, the group escape clause and the carry-forward of non-deductible interest expenses. We strongly support the proposal to exclude low-risk third-party loans from the ILR which we believe is a necessary measure to protect the competitiveness of companies operating in the Single Market. However, there are some aspects of the proposed changes to the ILR, such as the amendments to the €3 million *de minimis* threshold which we consider require further clarity.

The proposed introduction of a research and development (R&D) allowance in the EU, as a minimum standard, is a welcome development. However, it is important that clarity is provided on how the proposed allowance will interact with the existing capital allowances regimes in Member States. In addition, any clawback provisions must be appropriately calibrated and clearly understood by taxpayers.

We believe the proposal to exclude groups within the scope of Pillar Two from the controlled foreign company (CFC) rules is an important step in removing duplicative compliance obligations and overlapping anti-avoidance measures. However, our members have expressed concern over the proposal to remove the optionality afforded to Member States to apply either the Model A or Model B approach to the design of CFC rules. Removing Model B as an option, despite its alignment with principles laid down by the Court of Justice of the European Union (CJEU), risks creating legal uncertainty and significantly increasing the administrative burden on multinational groups that have structured their international operations to comply with the current CFC rules.

Our members welcome the proposed amendments to the Parent-Subsidiary Directive (PSD) and the Interest and Royalties Directive (IRD) to extend the scope of these Directives, remove the association and holding requirements and the prior authorisation procedures. But we believe the proposed transposition date of 1 January 2037 is too long a lead time for implementation and risks creating uncertainty for businesses and investors.

We are also concerned with the proposal to introduce a safeguard into the IRD which would require Member States to either levy withholding tax or deny the deductibility of interest and royalty payments at source, where the recipient of the payment is established in a jurisdiction that does not levy corporate income tax or applies a zero tax rate, and the Member State of source does not levy withholding tax. We believe the proposed safeguard could result in investment managers favouring non-EU investment platforms over existing EU investment hubs. Such an outcome would be contrary to the objective of the Tax Omnibus Directive of supporting the growth and competitiveness of the EU and the Savings and Investment Union (SIU).

In Sections 3 to 5 below, we outline in more detail the specific feedback we received from our members on the proposed changes to ATAD, the PSD, the IRD and the Tax Mergers Directive.

3. Anti-Tax Avoidance Directive (ATAD)

3.1 Interest Limitation Rule (ILR)

We welcome the Commission's efforts to enhance consistency in the application of the ILR across Member States by proposing to make mandatory the 30% EBITDA threshold, the group escape clause and the carry-forward of non-deductible interest expenses. However, there are some aspects of the proposed changes to the ILR in the Directive, which we consider require more clarity and, in some instances, we believe could make the ILR unworkable in practice.

Low-risk third-party loan exclusion

The proposal to exclude low-risk third-party loans from the ILR is a welcome development. The ILR is intended to counteract groups of companies engaging in the risk of base erosion profit shifting (BEPS) through excessive interest payments. It should not restrict genuine external borrowing negotiated between independent parties on an arm's-length basis. Third-party borrowing costs is a fundamental and unavoidable feature of ordinary commercial activity. Restricting the deduction of interest on third-party loans is an additional cost for companies operating in the EU which weakens their capacity to fund productive investment and expansion, and places them at a competitive disadvantage. We strongly support the exclusion of low-risk third-party loans from the ILR as a necessary measure to protect the competitiveness of companies operating in the Single Market.

In addition, we also believe that clarity should be provided on how the exception for low-risk third-party loans would apply in the context of intra-group lending between the members of an interest group. For example, if the entities within a jurisdiction

have elected to form an interest group (and are therefore treated as an entity for ILR purposes), can borrowings between the interest group members be ignored for the purpose of the exception? For instance, if a treasury company obtains a third-party loan and lends to a member of the interest group, can the carve-out still apply as the interest group is considered to be one entity and therefore, the intra-group lending between members of the interest group may be disregarded?

Many groups raise external debt through entities that perform centralised treasury functions and subsequently lend to other group companies. Often, such centralised treasury functions are established for commercial reasons, such as operational ease, access to favourable lending rates and cash-flow management within the group. In our view, excluding such groups from the exception for low-risk third-party loans would penalise groups that structure their external financing through one group company, and departs from commercial funding realities.

€3 million *de minimis*

The proposed methodology for calculating the *de minimis* amount could result in the threshold reducing year-on-year. We do not believe that this is the policy intention.

Groups require certainty that the indexed *de minimis* threshold will not fall below €3 million. As a result, we consider that the *de minimis* should be the higher of either €3 million, or the indexed amount calculated using the formula. Adopting this approach would provide certainty for taxpayers incurring fluctuating financing costs where inflation in individual Member States differs from the EU average.

Treatment of capitalised interest

Recital 25 of the proposed Directive acknowledges that the ILR may disproportionately affect capital-intensive sectors such as the real estate, infrastructure, and innovative start-ups that rely on long-term debt financing.

This disproportionate impact is evidenced in the practical application of the €3 million *de minimis* threshold to capitalised interest. For example, 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 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.

Rules that diverge from the ILR

Article 4(5)(j) of the proposed Directive provides that for the purposes of the ILR *“Member States shall not maintain or introduce, in their national law, any provisions with a subject-matter that falls within the scope of this Article if they lay down rules that diverge from those laid down in this Article.”* In our view, clarity is needed on the intended scope of this article. It is unclear how this provision would interact with Article 3 of ATAD which provides that the Directive shall not preclude the application of domestic provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases?

3.2 EU R&D Allowance

The Tax Omnibus Directive proposes to amend ATAD by introducing a new research and development (R&D) allowance in the EU, as a minimum standard. The allowance provides for full deductibility of R&D qualifying expenditure (i.e., capital

expenditure on plant, machinery and tangible assets used directly for R&D or to support R&D facilities). The Pillar Two Side-by-Side Package's Substance-Based Tax Incentive (SBTI) highlights the importance of tax incentives in attracting investment and there is a growing focus among jurisdictions to strengthen their offerings. Therefore, it is critical that EU Member States maintain and continue to enhance their incentive offerings to companies.

Balancing charges

The proposal includes recapture rules for scenarios where assets are disposed of, demolished or cease to be owned, leading to a balancing charge where the disposal value or deemed disposal value exceeds any unclaimed allowance.

Consideration must be given to how the proposed allowance will interact with the existing capital allowances regimes in Member States. For example, in Ireland companies can claim capital allowances and the R&D Tax Credit on the same expenditure where the relevant qualifying conditions are met. As the Irish capital allowances regime already contains balancing charge provisions, we consider that similar provisions are not needed in the R&D Tax Credit.

At a minimum, we suggest that the imposition of a balancing charge / recapture mechanism should be made optional for Member States and not mandatory.

Clawback of the relief

It is proposed that there would be a clawback of the R&D allowance where the qualifying expenditure is not used wholly and exclusively for R&D purposes for a continuous period of at least three years, or where the allowance is incorrectly claimed. As currently drafted, the clawback provision would apply to recapture the allowance claimed in scenarios where the expenditure is used up before the end of the three-year period, or where the plant or equipment becomes obsolete within

that period. We would welcome clarification on the policy intention for excluding assets with a useful life of less than three years from the new R&D allowance.

The three-year clawback is not applicable in cases of either force majeure or circumstances beyond the reasonable control of the taxpayer. We consider that this is too high of a standard in practice and it is inappropriate for the relief to be clawed back in scenarios where it is partly outside the control of the taxpayer. Guidance would be essential on what might be considered “beyond the reasonable control” of the taxpayer.

3.3 Controlled Foreign Company (CFC)

Exclusion for SMEs and groups in scope of Pillar Two

We welcome the proposal to exclude SMEs and groups within the scope of Pillar Two from the CFC rules. The proposed exemption for Pillar Two groups is an important step in removing duplicative compliance obligations and overlapping anti-avoidance measures.

The Pillar Two carve-out does not apply where the ultimate parent entity (UPE) is located in a jurisdiction with a “*qualified side-by-side regime*” and the controlled foreign company is not subject to qualified domestic top-up tax (QDMTT) or, where it is subject to a QDMTT, a refund or direct or indirect financial benefit is granted in relation to that tax. It is unclear how a UPE in a qualified Side-by-Side regime could obtain certainty regarding the requirement that the controlled foreign company is subject to a QDMTT with no related refund or benefit. As the qualified Side-by-Side regime concept is defined by reference to the OECD Central Record, it would be also important to have clarity on the date on which a taxpayer must assess if this condition is satisfied.

This approach could be considered contrary to the politically accepted equivalence of Side-by-Side regimes and Pillar Two and as a result, it could bring uncertainty

and complexity to the EU tax framework. Consideration should be given to respecting the politically agreed equivalence of the two regimes and extending the carve-out to groups in-scope of the Side-by-Side Safe Harbour on the same basis as it applies to Pillar Two groups.

Further guidance would be welcome on the treatment of low-taxed entities residing in Member States which have elected for a delayed application of the IIR and UTPR in accordance with Article 50 of the Minimum Tax Directive, to ensure that such entities do not trigger a CFC charge.

Proposal to remove the Model B approach

The proposed Directive would remove the optionality afforded to Member States to apply either the Model A or Model B approach. Under the proposal, Model B, which considers whether the CFC carries on genuine economic activities, would be withdrawn as an option. If the Directive is adopted in its current form, Member States that have adopted the Model B approach will be required to move to Model A, which examines specific categories of passive income.

The BEPS Action 3 – 2015 Final Report *Designing Effective Controlled Foreign Company Rules*¹ highlights that the substance-based analysis “*generally increase the accuracy of CFC rules, but this increased accuracy must be weighed against the increased complexity and expense of more fact-intensive substance analyses.*” Due to the widespread application of transfer pricing to internationally operated groups since this report was published in 2015, the additional administrative burden associated with implementing a substance-based CFC regime has reduced.

Model B is also consistent with the case law of the CJEU, which has established the principle that anti-abuse measures included in the direct tax systems of Member

¹ OECD (2015), *Designing Effective Controlled Foreign Company Rules*, Action 3 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241152-en>

States should apply only to “*a wholly artificial arrangement which does not reflect economic reality*”². Removing Model B as an option, despite its alignment with principles laid down by the CJEU, risks creating legal uncertainty and significantly increases the administrative burden on multinational groups that have structured their international operations to comply with the current CFC rules.

In our view, certain elements of the Model A approach are ambiguous and may result in differing interpretations applied by Member States. For example, one category of income in scope is “*income from insurance, banking and other financial activities*” but no clarity is offered as to what should be included or excluded from “*other financial activities*”.

In addition, there is an exception to the rules applying where “*the controlled foreign company carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances*” but no guidance is offered as to how this should be assessed. We believe such ambiguities could potentially give rise to significant disagreement between tax authorities in different Member States.

Significant resources will be required to adapt to the change for both taxpayers and tax administration. For Member States, like Ireland, who transposed their CFC rules based on Model B, moving to the categorical-income approach of Model A is not straightforward streamlining but in fact, a fundamental redesign of the existing regime, moving away from an approach closely aligned with the arm’s-length principle and, in some cases, altering the scope of the charge. While the Pillar Two and SME carve-outs reduce the practical impact of this change, affected companies would still face a significant change in approach, with a move to Model A creating substantial uncertainty, greater complexity and increased compliance obligations.

² This principle was established in the leading case of Cadbury Schweppes, C-196/04, and has been endorsed in recent judgments on anti-abuse measures in EU Member States.

As recognised in the BEPS Action 3 Report, Model B produces more accurate CFC outcomes. We firmly believe that optionality should be retained. Notably, Model A and Model B were presented as alternatives when ATAD was adopted, and neither was purported to be more effective in countering avoidance. Indeed, Recital 12 of ATAD suggested that the choice of Model A or Model B would depend “*on the policy priorities of that State.*”

If it is agreed that the Model B approach can no longer be used by Member States, it will be vital that Model A provides for a substantive economic-activity carve-out which is robust and clearly defined, so that genuine activity can be reliably excluded. It will also be necessary to give Member States impacted by the change sufficient transition time to implement it.

4. Parent–Subsidiary Directive (PSD) & Interest and Royalties Directive (IRD)

We welcome the proposed amendments to the PSD and the IRD to extend the scope of these Directives, remove the association and holding requirements and the prior authorisation procedures. We consider that these measures will significantly reduce administrative burdens for businesses.

We are concerned that the proposed transposition date of 1 January 2037 is too long a lead time for implementation and risks creating uncertainty for businesses and investors. We also consider the list of eligible companies able to access the benefits of both the PSD and the IRD should be extended to reflect the company forms currently available in Member States.

New safeguard to prevent double non-taxation

The proposed Directive would introduce a safeguard in the IRD which is intended to prevent situations of double non-taxation. Member States would be required to either levy withholding tax or deny the deductibility of interest and royalty payments at source, where the recipient of the payment is established in a jurisdiction that

does not levy corporate income tax or applies a zero tax rate to income flows of interests and royalties, where the Member State of source does not levy withholding tax either.

It is proposed that an exclusion from the safeguard would apply where the recipient of the payment is subject to a QDMTT and does not receive any refund or direct or indirect financial benefits in relation to that tax, or is part of an MNE group which is within the scope of the Pillar Two Directive, or for third-country jurisdictions, the OECD Model Rules. In this context, the Explanatory Memorandum notes, the protective measure may still apply if the ultimate parent entity of the MNE group is located in a jurisdiction with a qualified Side-by-Side regime for the tax period.

Our members are concerned that the proposed safeguard could make new and existing debt instruments and investments inefficient tools for capital markets. Established and regulated investment fund jurisdictions, such as the Cayman Islands, are often used by non-EU investors including sovereign funds and exempt pension funds, for commercial, legal, and regulatory reasons to make investments.

In most countries, funds are normally tax exempt to ensure their tax neutrality, but their income and gains are generally subject to appropriate tax under the tax regimes in the country of residence of the ultimate investor. The exclusion from the safeguard will have limited application as investment funds are only exceptionally consolidated and therefore, the exclusion does not take into consideration scenarios where the income of the fund is taxed in the hands of the ultimate investor, typically under the US Net CFC Tested Income (NCTI) Rule for groups or QDMTT under Pillar Two Rules. At a minimum, the rules need to recognise that the exclusion should apply where the ultimate investor is within the charge to tax on payments from the investment funds.

Where investment funds use special purpose vehicles or investment platforms for commercial or legal reasons, any debt used to finance those vehicles could, under the proposal as drafted, give rise to withholding tax on interest or result in the interest being non-deductible. As a result, there is a concern that the proposal could

encourage investment managers to choose investment platforms in countries that do not have a similar rule, over existing EU investment hubs. Such an outcome would appear contrary to the objective of the SIU.

The proposal could result in common capital markets instruments becoming more expensive for companies that require financing due to the costs and administrative burden of applying withholding tax, or the cost of interest no longer being deductible. For instance, there may be a significant administrative burden associated with identifying the recipient; verifying whether the new rules apply; putting appropriate documentation in place; applying withholding tax or denying a deduction; and going through a refund process if the holder is identified as based in a country that is not a zero rate country.

To the extent that withholding tax applies to pre-existing debt, it is likely that the debtor would be required under the terms and conditions for many bonds to gross up the payment, meaning the financing would become substantially more expensive.

We understand that the proposal seeks EU-wide adoption of an ‘outbound payments’ rule similar to the provisions in Ireland, which have been approved by the European Commission. Consideration should be given to amending the proposed change to include similar features to those in the Irish regime that already address the above commercial issues.

We consider that the policy rationale for the application of the safeguard is unclear in circumstances where the ultimate investor is subject to appropriate taxation or is a pension fund. The interaction of the provision with Double Taxation Agreements (DTA), which may provide for withholding tax to be applied at a specified rate, must also be clarified. Overall, the proposed safeguard would appear to be contrary to the objective of the Tax Omnibus Directive of simplifying the EU framework on direct taxation and supporting growth and competitiveness of the EU.

5. Tax Merger Directive

We welcome the proposed alignment of the Tax Merger Directive with recent developments in EU company law, including the extension of tax neutrality to cross-border conversions. In our view, these changes should facilitate cross-border reorganisations and provide greater legal certainty for taxpayers operating across multiple jurisdictions.

6. Conclusion

The Irish Tax Institute supports the Tax Omnibus Directive as a welcome opportunity to modernise and simplify the EU's corporate tax framework. We believe a coordinated approach which eliminates duplication of measures, clarifies definitions and reduces administrative burdens for businesses will strengthen the functioning and competitiveness of the Single Market.