

Tax Decluttering in the common European market

Informal thoughts by Germany and the Netherlands, 11 December 2024.

Over the past years and decades, we saw **significant progress in the area of international tax cooperation**, especially with respect to the Anti-BEPS-measures. The political agreement on the two-pillar-solution is further proof that joint efforts at an international level are possible and we can be proud of these achievements.

At the same time, it is important to take stock and allow us to look at these achievements from a different perspective. Even though these measures made our respective tax laws more resilient and less vulnerable to tax fraud and aggressive tax planning, we have created increased **complexity and administrative burden for taxpayers and tax authorities** over the years.

We believe it is now time to act. In order to **increase EU competitiveness**, it is paramount that the administrative **burden is reduced and tax certainty increased** to foster growth and innovation of our businesses and make the environment for doing business in the internal market more attractive and more efficient. Therefore, we need to allow for adjustments to our tax systems that lead to more effectiveness through a significant reduction of complexity while **preserving the integrity and overall level of protection** against harmful tax competition and avoidance (“**tax decluttering**”).

Tax decluttering should be explored in close cooperation with Member States. Tax decluttering can, and should be explored on different levels and with different objectives in mind. Seeing that the EU transposed various political achievements in the area of direct taxation into binding European law (directives mostly), we believe that, on an EU level, a common starting point for tax decluttering actions should focus on the EU direct tax acquis first. With the aim of swiftly initiating and streamlining the process, we propose to adopt a **bottom-up approach**, where Member States can provide technical input with an emphasis on open discussions among respective technical experts. While fully appreciating the political dimension of the tax decluttering workstream in the overall decluttering framework, we view it as important that **adequate time for broad Member State engagement** is provided in order to reach higher acceptance and the best basis for these actions. In our view, tax decluttering should be a priority for the other proposals which are currently in Council for some time now.

The Global Minimum Tax should be the starting point. We view the introduction of the global effective minimum tax (GMT) in the EU as a particularly good starting point for the technical analysis. We agree that the new provisions will secure a broad level of protection against harmful tax competition and aggressive tax planning. At the same time, the GMT has certain overlaps with existing provisions. Primarily, we see broad potential for **simplification within the system of the GMT**. We support a collective engagement for permanent simplification beyond the transitional phase as well as the continuous work on interpretative guidance that add more clarity. This simplification should (first) also take place at the level of the IF/OECD. We see merit in collectively advocating for simplification. Secondly, we see the need to **simplify rules that overlap with the GMT**.

For reducing the administrative burden in relation to the EU direct tax acquis, we need to take a critical look at our tax systems and make an honest attempt to declutter by

- (1) Streamlining overly broad provisions and procedures,
- (2) Contributing to more clarity by creating targeted and coordinated interpretative and explanatory guidance on existing provisions,
- (3) Identify and abolish overlapping standards,
- (4) Coordinating and improving effectiveness of existing regulations and procedures, and
- (5) Evaluating prospective legislative proposals

(1) Streamline overly broad provisions and procedures

As an overall point, we observe that the agreed text of some directives may allow for diverging interpretations and procedural transpositions in different member states. In light of tax decluttering, we would like to **encourage a discussion platform** that allows for providing further guidance **beyond the pure agreement of material provisions**. This could include common procedural and interpretative assistance and guidance through a common forum (e.g. a Council Working Group) for Member States to discuss and exchange views on interpretative questions during and especially after the implementation phase of a direct tax directive.

(2) Contribute to more clarity

Looking at the **Anti-Tax-Avoidance-Directive** (ATAD1 and ATAD2, herein referred to as ATAD), we have identified a broad potential for tax decluttering action. We agree that there are several ways to accommodate both frameworks. On the **CFC rules**, it appears reasonable to discuss an alignment on a **(common) level of taxation** first, keeping in mind the level of protection. Secondly, the scope of CFC and the determination of the CFC tax base should form a central part of the discussion. A tax base that targets abuse more effectively may then merit discussions on open and unprecise norms that leave broad room for interpretation and diverging application among member states. These norms decrease certainty for both taxpayers and tax authorities and may lead to an unlevel playing field. Thirdly, we believe that overlaps between CFC rules and the GMT could also be explored. As there is interaction with the GMT and against the backdrop of decreasing administrative burden, this step appears significant.

Furthermore, the tax decluttering initiative should include the **Interest Limitation Rule** under the ATAD. As part of the current evaluation, we would advocate for more **clarity when it comes to interpretative questions**. A consistent application would level the playing field and decrease diverging interpretation.

Moreover, the interaction between GMT and the **anti-hybrid mismatch rules** requires detailed consideration. We identified potential for **clarification and consolidation**, particularly with regard to the relevant definitions and application of hybrid mismatch rules both under the GMT and the ATAD. Besides, there might be some tax decluttering potential regarding the rules against imported mismatches. Also, within the overall ATAD framework, the effects of CFC rules on hybrid mismatch arrangements should be examined and clarified. We would propose to address these aspects at EU level in order to give consistent answers and contribute to more aligned procedures among Member States.

(3) Identify and abolish overlapping standards

Aside from ATAD, we see merit in decluttering **all directives in the area of direct taxation**, such as the **Parent Subsidiary Directive, Interest Royalty Directive, Merger Directive**. Even

though these directives have different objectives, we observe that for example various directives provide for specific anti-abuse rules or exemption mechanisms and these may interact with the GMT. It might be worth exploring where and to which extent these questions allow for a collective rather than a directive-specific answer.

In addition, we would suggest to analyse the interactions between the **GloBE Information Return (GIR)** under the GMT and the **Country-by-Country Reporting (CbCR)** under DAC4, vis-à-vis OECD Action 13. While respecting that the quality and dissemination of the relevant information is not identical, we are open to **explore potential reliefs** for in-scope MNE or the **streamlining of data requirements**. With the aim of preserving the highest data standard, overlapping reporting and reporting of data with low additional informative value should be avoided.

(4) Coordinate and improving effectiveness of existing regulations and procedures

In the area of transparency, we appreciate the evaluation of the **hallmarks under DAC 6**. We believe that it is in our common interest not to extend DAC6 but rather to focus on areas where we could streamline the procedure, increase the **level the playing field**, and limit the effort by phasing out potentially non-effective hallmarks and, where needed, replace them by new hallmarks ("**replacement only approach**"). A coordinated approach to DAC6 will also **increase its effectiveness**, safeguarding protection against harmful tax practices.

Furthermore, formalistic, fragmented and time-consuming procedures lead to an increased administrative burden and decreased tax certainty. This may be mitigated by **coordination of procedures**. However, we view it as equally important to strike the right balance between **acceleration of procedure** on one hand **and the increase in the level of protection** on the other. The recently agreed **FASTER** directive could serve as a good discussion basis. Among others, the **Parent Subsidiary Directive, Interest Royalty Directive, Merger Directive** should form **part of this broader analysis**.

(5) Evaluate prospective legislative proposals

We are convinced that prospective directives in the field of direct taxation should have a **greater impetus on administrative aspects** for both taxpayers and tax authorities and should feed into the tax decluttering narrative. It is therefore important that for each prospective legislative proposal in the EU the above guiding principles of tax decluttering are taken into account. Against this background, we think that (re-)establishing a platform to discuss transfer pricing matters should be the topic which is discussed in relation to the **Transfer Pricing Directive**. Additionally, we would welcome discussions on procedural aspects from the resolution of tax disputes.

Furthermore, we would advocate to put more emphasis on the empirical analysis in order to better assess the tax effects of legislative proposals as well as existing legislation.