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OPINION STATEMENT

Opinion Statement CFE 2/2025 on Simplification of the Directive on Administrative Cooperation (DAC) & EU's Corporate Tax Directives

Issued by CFE Tax Advisers Europe
Submitted to the EU Institutions in August 2025

CFE Tax Advisers Europe is the European association of tax institutes and associations of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have regarding our Opinion Statement. For further information, please contact Eduardo Gracia Espinar, Chairman of the CFE Professional Affairs Committee, Jeremy Woolf, Chairman of the CFE Fiscal Committee, or Aleksandar Ivanovski, Director of CFE at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

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CFE Tax Advisers Europe welcomes the European Commission's initiative to modernise and simplify the EU framework for direct taxation. As a professional body representing tax advisers from across the European Union, we welcome the Commission's open engagement with stakeholders in the run-up to its proposals expected in 2026. The process comes at a time when the EU's corporate tax directives, and the Directive on Administrative Cooperation (DAC), have become dense and practically difficult to navigate, with accumulated amendments and inconsistent implementation across Member States.

CFE's recommendations seek to preserve the objectives of the directives while making them clearer, more consistent and administratively easier to apply for taxpayers, tax advisers and tax administrations alike.

1. EXECUTIVE SUMMARY

CFE supports the EU's efforts to simplify and reform secondary EU law in the area of direct tax policy, in line with the needs of structural reform presented by President Von der Leyen and the Report of Mario Draghi. The existing directives and DAC iterations have grown over time into a complex patchwork of legislation. This complexity often leads to fragmented implementation and administrative burden that is posing issues for taxpayers, particularly for SMEs and cross-border operators. At the same time, the absence of clear guidance and uniform concepts, such as "beneficial ownership" or "subject to tax", exacerbates disputes and undermines the legal certainty the directives were designed to provide.

CFE therefore supports:

- A recast of the DAC framework to consolidate and clarify obligations;
- Targeted amendments to the corporate tax directives (PSD, IRD and TMD), with a focus on aligning scope, definitions and holding requirements;
- Codification of the anti-abuse and beneficial ownership tests across directives;
- Meaningful reforms to the Merger Directive to resolve long-standing issues with share swaps, tax deferrals and application to non-standard entities.

Our aim is to support the Commission in producing legislation that fosters compliance and preserves the integrity of the internal market, while being mindful of the real-world limitations faced by tax advisers when advising taxpayers in the Single Market.

2. DAC REFORM: DIRECTIVE ON ADMINISTRATIVE COOPERATION

CFE fully supports a recast of the DAC framework and the introduction of DAC 10 in 2026. In its current form, DAC is fragmented and difficult to navigate, having been modified multiple times. We welcome the Commission's acknowledgement that simplification is now necessary. We would also welcome central guidance on the interpretation of concepts, definitions and hallmarks (comparable to the Commentary to the OECD Model Tax Convention). From our perspective, the following elements are key:

- **Consolidation and Regular Review**: Each new DAC amendment should be accompanied by a consolidated version. This would prevent confusion caused by layering multiple amendments on a single Directive. From CFE's perspective, recast should be a continuous exercise accompanying each new DAC iteration to prevent confusion from multiple amendments.

- **Hallmark Rationalisation in DAC6**: Several hallmarks, especially those duplicating ATAD or generating defensive over-reporting, should be reviewed and, where appropriate, removed. Hallmarks B2 (hybrids), E3 (cross-border transfers) and C1(b)(ii) (low-tax jurisdictions) are particularly problematic and yield limited value.

- **Hallmark D**: The recent adoption of the OECD's Multilateral Competent Authority Agreement (MCAA) on Beneficial Ownership (BO) will allow automatic exchange of BO information between participating jurisdictions, including EU Member States. In principle, this could address many of the risks Hallmark D was intended to capture, especially where corporate ownership chains are no longer shielded from tax administrations. However, the MCAA is still in an early stage of adoption, and its global coverage is incomplete. Once implemented, the Commission could consider introducing a rebuttable presumption or safe harbour for arrangements subject to automatic BO information exchange under the MCAA, while retaining reporting obligations for structures involving jurisdictions or intermediaries outside its reach. This would maintain the integrity of the EU's preventive framework under DAC6, reduce compliance burdens, and ensure that DAC6, which originally implemented BEPS Action 12, remains aligned with evolving international standards.

- **Proportional Penalties and Legal Certainty**: We support the establishment of harmonised penalty levels across the EU, with clearly defined minimum and maximum thresholds to ensure consistency, proportionality and legal certainty in enforcement practices. A coherent penalty framework is essential for maintaining a level playing field across Member States, reducing the risk of regulatory arbitrage and different outcomes in a Single Market.

  Equally, full protection of legal professional privilege (LPP) is necessary, as this principle safeguards the confidentiality of communications between clients and their advisers. While recent jurisprudence of the Court of Justice has clarified the scope of LPP, particularly with respect to (i) the reporting to other intermediaries for in-house and non-lawyer advisers (C – 694/20) and (ii) the scope of application of LPP on lawyers acting as tax advisers (C- 432/23), implementation at the national level remains fragmented. Some Member States maintain restrictive interpretations of LPP, particularly where tax advisers or other regulated professionals who are not formally qualified as lawyers are involved. The divergence risks undermining procedural rights and the effectiveness of legal representation in administrative and judicial proceedings, especially in cross-border cases. We therefore believe that EU minimum standard to ensure that a minimum LPP (i.e. without prejudice of the extensive scope of application of the LPP recognised by the Court of Justice to lawyers) is applied consistently across Member States would be beneficial, extending protections to all qualified professionals acting within a recognised tax advisory capacity. Such safeguards are crucial to upholding the right to a fair hearing, the proper administration of justice, and taxpayer rights in general.

- **Redundant Reporting and Cost Concerns**: Many of our members report that DAC6 creates excessive compliance burdens for arrangements that are low-risk or already disclosed under DAC3 or AML regimes. We urge the Commission to examine overlaps and remove redundant reporting requirements.

- **Professional Privilege**: Recent CJEU case law clarified that legal privilege only affects lawyers, creating discrimination between lawyers and non-lawyers providing similar tax advice. Some Member states are attempting to exclude tax advice entirely from legal privilege, which the Court has ruled as disproportionate. These issues need clarification, particularly regarding the scope of legal privilege application and how to address the disparity between lawyers and non-lawyers providing tax advice. This is also important for a level playing field in the market.

3. EU CORPORATE TAX DIRECTIVES

CFE's members broadly agree that the EU's corporate tax directives deliver results for taxpayers, however the Parent-Subsidiary Directive (PSD), Interest & Royalties Directive (IRD), and the Merger Directive (TMD) must be modernised to better reflect today's economic and legal reality.

Key priorities include:

- **Aligning Holding Thresholds**: The 10% shareholding threshold under the PSD is well-established. We recommend applying the same threshold in the IRD to avoid unnecessary complexity and divergent outcomes.

- **Digitalising Withholding Relief Procedures**: We strongly support the Commission's FASTER initiative and call for an EU-wide, standardised exemption/refund mechanism, including an electronic certificate of residence. This would eliminate duplicative and paper-heavy procedures under both PSD and IRD.

- **Codification of Anti-Abuse Rules and Beneficial Ownership**: The current approach leaves too much leeway for divergent application. Following the *Nordcurrent* and Danish cases, it is clear that domestic courts struggle with the scope of EU anti-abuse standards.[1] A uniform definition of abuse and beneficial ownership would greatly enhance legal certainty.

- **Harmonising "Company of a Member State" Definitions**: Currently, the list of eligible entities and taxes varies among directives, and across Member States. Some forms, such as cooperatives or limited liability partnerships, are arbitrarily excluded. Furthermore, the current EU corporate tax directives, including the Parent-Subsidiary Directive, the Merger Directive, and the Interest and Royalties Directive, contain a list of legal entities eligible to benefit from these Directives, as set out in the annexes. Societas Europaea (SE), established with Regulation (EC) No 2157/2001, is not expressly named. It is common understading that SE generally falls within the scope of EU's corporate tax directives, when it is tax resident in a EU Member State and subject to corporate income tax, without exemption options.

  However, the absence of explicit mention could lead to legal uncertainty, particularly in the context of cross-border mergers and intra-group transactions. Other business forms

1 CFE Opinion Statement ECJ 2/2025 on the Interpretation of the Anti-abuse Provision in the Parent Subsidiary Directive in Case C-228/24, Nordcurrent, available at: https://taxadviserseurope.org/project/opinion-statement-ecj-2-2025-on-the-interpretation-of-the-anti-abuse-provision-in-the-parent-subsidiary-directive-in-case-c-228-24-nordcurrent/

such as cooperatives and limited liability partnerships (LLPs), including the European Cooperative Society (SCE) and some hybrid entities face similar uncertainty despite being subject to corporate tax in a EU Member State and economically active in same way as other legal entities.

These issues should be addressed through an updated Annex and shared definitions. Another potential option would be to adopt a functional defintion, without the forms listed in annexes, which is based on objective criteria such as tax residence, liability to corporate tax and an explanation of eligible corporate elements or features. This would potentially contribute to the Union's objectives of facilitating cross-border business in the Single Market.

3.1 Merger Directive

The Merger Directive (TMD) remains a cornerstone of cross-border corporate restructuring in the EU. Yet, CFE members regularly report unresolved technical issues that give rise to disputes and tax uncertainty. We highlight the following areas for reform:

- **Clarify Scope in Share Swaps**: The TMD should clearly state whether it applies when either the acquiring or transferring entity is located in a non-EU country or in the same Member State. It should also clarify that the shareholder's tax residence does not preclude application of the deferral regime.

- **Reconsider the Article 3(c) Taxation Requirement**: For share swaps, the requirement that both entities be subject to tax often blocks legitimate transactions without safeguarding Member State revenues. Removing or narrowing this rule would improve the Directive's functionality.

- **Avoid Double Deferral**: Guidance is needed on the valuation of shares received by the acquiring company, to prevent a cascading deferral that may later give rise to double taxation.

- **Exit Tax and Post-Swap Residence Changes**: Changing residence after a qualifying share swap should not trigger an exit tax or cancel the deferral. This point should be clarified in line with the principles of the internal market.

- **Cash Compensation and the 10% Threshold**: CFE suggests specifying whether the 10% limit applies per shareholder or per transaction. The tax consequences of any excess compensation should also be clarified.

- **Treasury Stock and Business Reasons**: The TMD should explicitly permit the use of treasury stock in share exchanges and recognise valid business reasons at shareholder level when assessing the anti-abuse clause.

- **Subjective Scope Extension**: In some Member States, notably Spain, the domestic restructuring regime covers entities excluded from the TMD. We support broadening the Annex I list to include all entities subject to corporate income tax in a Member State.

- **Alignment of definitions:** The anti-abuse definition in the TMD should be aligned with the PSD definition.

3.2 Dispute Resolution Mechanism (DRM)

CFE supports the objectives of the DRM Directive and its MAP procedures. However, in practice, taxpayers face limited access and procedural uncertainty.

We urge the Commission to:

- Clarify the application of Article 16(6) exclusions for fraud, wilful default, and gross negligence, which are often interpreted expansively by revenue authorities.
- Ensure real-time taxpayer access to files, including the right to submit evidence and respond to tax authority positions, in line with basic procedural rights.
- Promote the adoption of a standardised template and procedural framework for initiating and managing DRM claims across the EU.

Furthermore, the effectiveness of the DRM Directive in resolving cross-border tax disputes depends largely on the efficiency and predictability of the arbitration phase. While the Directive provides for the establishment of an Ad Hoc Advisory Commission to resolve disputes where competent authorities cannot reach agreement, Article 10 offers Member States the option to set up a permanent Advisory Commission. This mechanism, which is of a voluntary nature under the current rules, can reduce delays and administrative burdens. A permanent body would ensure institutional continuity, greater expertise, and procedural consistency, while lowering costs for both tax administrations and taxpayers.

For these reasons, a permanent Advisory Commissions under Article 10 would contribute to a more efficient and taxpayer-friendly EU tax dispute resolution framework. This step would also complement broader efforts to enhance legal certainty and the investment climate in the Single Market.

4. CONCLUSION AND NEXT STEPS

CFE Tax Advisers Europe welcomes the opportunity to contribute to this legislative process and encourages the Commission to pursue a bold but practical reform agenda. A simplified, harmonised and digitally streamlined direct tax framework will support the EU's competitiveness and reduce unnecessary burdens on taxpayers.

We stand ready to assist the Commission in the further design and implementation of the proposed measures, including through further engagement with our technical committees and member associations. We look forward to the next phase of consultation and legislative drafting.