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OPINION STATEMENT

Opinion Statement CFE 4/2025 on Technical Simplification of EU's Anti-Tax Avoidance Directive (ATAD)

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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 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 welcomes the Commission's action on simplifying the Anti-Tax Avoidance Directive (ATAD) and we welcome the early-stage opportunity to comment on policy options. This initiative goes to the heart of how we can make the EU tax framework more coherent, proportionate and investment-friendly, while maintaining strong safeguards against tax avoidance.[1]

The Council Conclusions of 11 March 2025 on the Tax Decluttering and Simplification Agenda express unanimous political support for making EU tax law clearer, faster, and easier to apply.[2] CFE Tax Advisers Europe calls on Member States to translate this political declaration into a practical outcome, in line with the Commission proposals.

Specifically, in CFE's view, the following aspects merit attention:

1. Interest Limitation Rule (ILR)

The fixed 30% EBITDA ratio and the range of national implementation choices under Article 4 of ATAD have created a patchwork of inconsistent rules across the EU. At the same time, the ILR has become economically misaligned with current financial reality. The rule was designed in 2016, in a period of ultra-low interest rates and ample liquidity at disposal.

Today, the situation is completely different: interest rates have increased, the cost of capital is high, and many companies, especially in capital-intensive sectors, are legitimately highly leveraged. That leverage is not driven by tax planning, but by economic necessity. Companies need financing to invest in infrastructure, renewable energy, advanced manufacturing, digitalisation, and increasingly in defence and dual-use technologies, which have become strategic priorities under the EU's collective security efforts. These investments require large upfront capital but have long amortisation prospects.

For companies operating in multiple Member States, it also means not one ILR but 27 different interpretations, and as many calculation methods, reporting obligations, and administrative interactions. From a simplification perspective, this situation is unsustainable. Complexity has become both a compliance burden and an obstacle to cross-border investment. In this context, the 30% EBITDA cap, done for a different economic era, risks penalising legitimate investment and distorting financial decisions.

[1] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD); and,

Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (ATAD 2)

[2] Council Conclusions on a tax decluttering and simplification agenda which contributes to the EU's competitiveness 6703/25 of 11 March 2025

Companies with cyclical earnings or long project lifecycles may find that interest deductibility fluctuates arbitrarily with short-term profitability, even when their debt levels are economically justified.

CFE therefore strongly supports a targeted technical simplification of the ILR through the following reforms: mandatory carry-forward and carve-out for third party debt, across Member States. These mechanisms even out interest deductibility over time and across entities. They are crucial for sectors with volatile earnings or heavy capital expenditure. Making them mandatory would immediately reduce fragmentation, simplify compliance, and create a level playing field.

Subsidiarily, the €3m threshold should be increased to capture changes in current economic environment. Notably, the said threshold has not been adjusted since the adoption of ATAD, despite (i) the increase in inflation that has occurred since its inception, and (ii) the higher debt needs/ financing needs faced by companies in the current economic environment.

An upward adjustment would restore the proportionality originally intended by the legislator and prevent the regime from inadvertently capturing ordinary financing structures, particularly for SMEs and scale-ups.

a) ***Mandatory carry-forward of disallowed interest***

Allowing companies to carry forward disallowed interest without time limit (as in Germany or France) lets deductions align with the full investment cycle rather than one-year profitability. In this way, the temporal neutrality is restored and the rule is compatible with cyclical economic turns. CFE would recommend that unlimited carry-forward becomes a mandatory minimum standard across the EU.

In addition, CFE notes that once a company enters a formal liquidation process, the policy rationale behind interest-limitation rules no longer applies. At that stage, the investment cycle has ended and there is no risk of base-erosion through excessive debt financing. Several Member States already permit full deductibility of residual interest during liquidation for this reason. CFE considers that recognising full deductibility of interest at liquidation would ensure true temporal neutrality and prevent permanent taxation of financing costs that were economically incurred.

b) ***Carve-out for public infrastructure and third-party debt***

CFE supports public infrastructure exception to be included as a minimum standard, without opting out. CFE would also welcome introducing a clear carve-out for third-party debt. Borrowing from unrelated financial institutions does not present base erosion risks, as such

transactions occur on arm's-length terms and on real-economy need basis (eg. Bank loan). Interest on external loans with genuine market terms, particularly long-term financing for infrastructure, green transition, and defence investment, should be excluded from the ILR cap. This prevents the rule from constraining projects that serve EU policy priorities but have long payback periods and volatile returns.

Together, these measures would transform the ILR from a rigid tool into a proportionate standard, aligned with economic reality, investment priorities, and the EU's commitment to a competitive Single Market.

2. *De jure* SMEs carve-out

CFE strongly supports an SMEs carve-out under the simplification initiative, *de jure*.

Given that SMEs account for 99.8% of EU businesses but are responsible for only a negligible portion of cross-border aggressive tax planning, they do not need to be subject to the full complexity of the ATAD framework, particularly the ILR, CFC, and hybrid mismatch rules, which were designed for large multinationals. The compliance costs for SMEs are disproportionately high in relation to their risk profiles. In practice, smaller firms must rely on external tax advisers to interpret rules that are not relevant to their operations but still require costly analyses and documentation.

A targeted and *de jure* SME carve-out would be a straightforward yet powerful form of simplification. It would reduce unnecessary administrative effort, support competitiveness and capital creation in the EU, and uphold the principle of proportionality, without weakening the integrity of the anti-avoidance framework.

3. CFC, Hybrid Mismatches and GAAR

- *Controlled Foreign Company (CFC) Rules*

The coexistence of Model A and Model B under ATAD has created legal uncertainty and compliance duplication. Removal of CFC rules for groups subject to Pillar Two and crediting QDMTT against a CFC liability should be a priority rather than harmonisation of the CFC rules into a single model based on Model A.

- *Hybrid Mismatches*

These provisions are valuable but excessively complex. CFE recommends non-binding EU guidance on "imported mismatches", or their removal if cost-benefit analysis shows limited effectiveness.

- *General Anti-Abuse Rule (GAAR)*

Divergent national wording creates inconsistent application. Clarifying the scope of the GAAR is necessary, particularly concerning Pillar Two income, also to reduce duplication with OECD administrative guidance.

Legal certainty concerns remain in light of recent CJEU jurisprudence and the shift from tax benefits being the "main purpose" to "one of the main purposes". Aligning the GAAR wording across Member states and consistent interpretation with other EU corporate tax directives is necessary.

4. Turning commitments into tangible simplification

CFE Tax Advisers Europe calls on Member States to translate political declarations into practical outcomes. If simplification is to be meaningful, it must be built into how legislation is drafted, transposed, and applied.

We propose three guiding principles:

- **Reduce optionality, increase uniformity**: Optional clauses should be the exception, not the rule. Each option adds a layer of divergence and administrative burden. A truly simplified ATAD would provide fewer options, clearer definitions, and consistent mechanisms across the Union.

- **Complexity is inefficiency**: Complexity erodes compliance, increases litigation, and deters investment. These are measurable economic costs.

- **Ensure consistent transposition and review**: Simplification does not end with legislative adoption. It must be followed by consistent national implementation and post-adoption evaluation to verify whether administrative burdens are actually reduced.

Complexity is a form of inefficiency as it consumes resources that could otherwise be used productively by both taxpayers and administrations. Simplification, therefore, is an essential component of tax good governance. CFE welcomes the Commission's initiative and encourages Member States to make this a reality by adopting a coordinated approach to simplification. This means that once a political consensus exists, Member States should implement reforms faithfully, promptly, and consistently, avoiding gold-plating or last-minute exceptions that reintroduce complexity.