N S D
N Ä R I N G S L I V E T S
S K A T T E -
D E L E G A T I O N

Finansdepartementet
Skatte- och tullavdelningen
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Remissyttrande

The European Commission 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

Introduction in Swedish

Yttrandet är på engelska i sin helhet för att undvika oklarheter med översättning och underlätta fortsatt beredningsprocess i internationella fora.

Opinion

Näringslivets skattedelegation (NSD) welcomes the Taxation Omnibus (COM(2026) 560 final) as an ambitious attempt to address structural deficiencies in the EU's direct tax framework. The package correctly identifies that competitiveness, legal certainty, and a genuinely integrated internal market are prerequisites for European growth and investment.

NSD:s starting point is that each Member State’s sovereignty on tax policy is paramount and that the primary responsibility for direct taxation rests with the Member States. NSD is principally skeptical of increased EU-level harmonization in the area of direct taxation. For harmonization to be justified, it must demonstrably lead to genuine and measurable simplification for businesses operating across borders. Uniformity of rules does not in itself reduce the compliance burden if the

harmonized rules add complexity or remove the flexibility that national systems currently provide. NSD therefore takes the view that each element of the Omnibus must be assessed on its own merits: harmonization should be supported where it produces clear simplification benefits and resisted where it does not.

Assessed against this standard, NSD supports several elements of the proposal while raising significant concerns about others. Overall, NSD supports the proposal subject to the amendments set out below.

In summary, NSD's key positions are as follows:

Withholding tax exemption: NSD fully supports the proposed EU-wide exemption from withholding tax on intra-EU dividends, interest, and royalties between associated companies. The current system — requiring businesses to navigate 27 different national refund procedures — is a textbook barrier to the internal market. The proposed eight-year transition period is, however, unacceptably long. NSD urges that this period be reduced to no more than two to three years.

Beneficial ownership definition: NSD considers it a significant shortcoming that the proposal does not address the lack of harmonization of the beneficial ownership concept, on which the availability of the withholding tax exemption will in practice depend. Divergent national interpretations generate legal uncertainty for taxpayers and compliance costs for financial intermediaries. NSD urges the Government to request authoritative interpretative guidelines from the Commission on this concept. Such guidelines are essential for the exemption to function effectively in practice.

ATAD — Interest limitation: NSD welcomes the mandatory application of the 30% EBITDA threshold, the EUR 3 million de minimis safe harbour, the group escape rule, and the carry-forward mechanism. NSD also welcomes the exclusion of low-risk third-party loans and the targeted exclusion for qualifying defense activities. However, the low-risk third-party loan exclusion should be broadened so that it also covers financing obtained externally by a parent or treasury company and subsequently channeled within the group through ordinary intra-group loans, cash-pooling arrangements or capital contributions, where the intra-group financing is negotiated at arm’s length and does not present a material risk of base erosion.

ATAD — CFC rules: NSD welcomes both new exemptions from the CFC rules: the carve-out for groups subject to the Pillar 2 tax regime and the new SME group exemption. Parallel compliance with both ATAD:s CFC rules and Pillar 2

creates unnecessary complexity without commensurate revenue protection. NSD also welcomes the standardization of the categorical income approach (Model A) as mandatory.

ATAD — GAAR extension: NSD is very critical of the proposal to extend the General Anti-Avoidance Rule to cover Pillar 2 top-up taxes. Applying a broad GAAR alongside the already comprehensive and specific Pillar 2 rules creates legal uncertainty and contradicts the package's simplification objectives. NSD urges that this expansion be removed from the proposal.

ATAD — R&D allowance: NSD acknowledges the Commission's ambition to improve the tax treatment of R&D investment but is skeptical that this provision will deliver true simplification. The proposal introduces harmonization in a new area, risks adding complexity through an EU-level R&D definition, and may not benefit Member States such as Sweden that already have favourable treatment. If introduced, the provision must be framed as a floor, preserving full national freedom to go further, including e.g. labour costs.

Tax Merger Directive: NSD welcomes the expansion of the TMD to include simplified mergers and divisions by separation and urges Member States to avoid gold-plating upon transposition.

FASTER: NSD welcomes the amendment to the FASTER Directive. For publicly traded securities held through financial intermediaries, paying companies often cannot verify exemption conditions at the time of payment, and withholding tax may still be levied on technically exempt payments. Under current FASTER rules, Member States may deny access to its fast-track procedures where a full exemption is claimed. The Omnibus removes this restriction, ensuring FASTER remains available as a refund backstop in such cases. FASTER's full benefit depends on the transition period for the underlying exemption being substantially shortened.

Dispute resolution and Pillar 2: NSD welcomes the procedural improvements to the DRM Directive but considers it essential that a dedicated dispute resolution mechanism for Pillar 2 conflicts be introduced. The current absence of such a mechanism constitutes a serious gap.

Background

The European Commission presented the Taxation Omnibus on 24 June 2026. The package follows the March 2025 Council conclusions on a "tax decluttering and simplification agenda" and forms part of the Commission's broader programme to

reduce administrative burdens for businesses by 25%, and by 35% for SMEs. It is also aligned with the priorities identified in the Draghi report on European competitiveness and the Commission's Competitiveness Compass.

The legislative vehicle is a single directive amending six corporate tax directives simultaneously: the Parent-Subsidiary Directive (PSD), the Interest and Royalties Directive (IRD), the FASTER Directive, the Anti-Tax Avoidance Directive (ATAD), the Tax Merger Directive (TMD) and the Tax Dispute Resolution Mechanisms Directive (DRM). Tax legislation at EU level requires unanimity in the Council (Article 115 TFEU).

The proposal in short

The six directives are amended through a single legislative act covering three substantive areas: withholding taxation on intra-EU payments (PSD, IRD and FASTER), anti-tax avoidance measures (ATAD), and corporate restructuring and dispute resolution (TMD and DRM). The package is estimated to deliver approximately EUR 6.6 billion in annual savings for EU businesses, comprising compliance and financial cost reductions of which EUR 2 billion per year relates specifically to administrative burdens.

The principal changes are: (i) an EU-wide exemption from withholding tax on intra-EU dividends, interest, and royalties between associated companies, with prior authorization abolished in favour of self-assessment and post-payment controls; (ii) amendment of the FASTER Directive to remove Member States' ability to deny access to its fast-track relief procedures where a full IRD or PSD exemption is claimed, ensuring FASTER remains available as a refund backstop where withholding tax is levied on technically exempt payments through financial intermediaries; (iii) harmonization of the ATAD interest limitation, CFC, and GAAR rules, including a mandatory 30% EBITDA threshold, a mandatory EUR 3 million de minimis safe harbour, a Pillar 2 carve-out from the CFC rules, and extension of the GAAR to all direct taxes; (iv) extension of the Tax Merger Directive to simplified mergers and divisions by separation; (v) procedural improvements to the DRM Directive; and (vi) a new EU-wide minimum standard for the tax treatment of R&D investment in tangible assets.

Comments

Withholding Tax Exemption — IRD and PSD

NSD fully supports the proposed exemption from withholding tax on intra-EU payments of dividends, interest, and royalties between associated companies. The current system — in which businesses must pay withholding taxes upfront and then seek refunds through 27 separate national procedures — is structurally incompatible with a genuine internal market for capital. The Commission's estimate of EUR 5.3 billion in annual savings in reduced red tape is likely conservative. When indirect costs, including foregone cross-border investment, are taken into account the merits are clearly larger.

The proposal removes the minimum holding period and minimum shareholding thresholds that currently condition the exemption under the IRD and PSD. Prior authorization requirements are abolished; compliance shifts to a self-assessment model combined with post-payment controls by tax administrations. The move from a refund-based to an exemption-based system represents a structural improvement consistent with the long-standing principles of free movement of capital set out in Article 63 TFEU.

NSD considers the proposed eight-year transition period fundamentally incompatible with the urgency articulated by both the Commission and the Council. If measured from the date of transposition, businesses may wait until the mid-2030s before the most significant simplification in the package takes effect. NSD urges that the transition period be reduced to no more than two to three years.

NSD also notes with concern that the proposal does not harmonize the concept of beneficial ownership, on which the availability of the exemption will in practice depend. As NSD noted in its consultation response on the FASTER Directive, the absence of a common beneficial ownership definition is a central impediment to the efficient functioning of EU withholding tax rules. Where the concept is assessed differently by different Member State administrations, taxpayers face the risk of simultaneous denial in the source state and taxation in the residence state — precisely the double-taxation outcome the exemption is designed to eliminate.

The absence of a common beneficial ownership definition also generates significant compliance costs for financial intermediaries — banks, custodian banks, and clearing houses that must apply withholding tax rules at source for large numbers of clients simultaneously and across multiple Member State jurisdictions. Divergent national criteria for establishing beneficial ownership multiply their documentation requirements and create liability risk where a determination proves incorrect.

NSD recognizes that legislative harmonization of beneficial ownership is legally complex, given the diversity of national approaches and the divergence between civil law and common law traditions within the Union. The absence of primary legislation does not, however, preclude an administrative remedy. NSD urges the Government to request authoritative interpretative guidelines from the Commission, setting out the criteria that national administrations and taxpayers are to apply when assessing beneficial ownership under the EU withholding tax framework. Such guidelines would reduce interpretive divergence and improve legal certainty without requiring a further legislative initiative and should be published in parallel with the directive's entry into force.

FASTER — Interaction with the Withholding Tax Exemption

The FASTER Directive (EU 2025/50) provides standardized fast-track procedures for relief-at-source and quick-refund of withholding tax levied on dividends and interest from publicly traded securities. The Omnibus amends FASTER's scope to address a practical tension with the new withholding tax exemption. In principle, the new IRD and PSD exemptions would eliminate withholding tax for qualifying associated-company payments. In practice, however, paying companies dealing with publicly traded securities held through financial intermediaries and nominee accounts are frequently unable to verify at the time of payment whether the conditions for the exemption are met — particularly where ownership information concerning portfolio investors is not available. Withholding tax may therefore still be levied on payments that technically qualify for the exemption.

Under the FASTER Directive as currently enacted, Member States may deny access to the standardized fast-track procedures where a full exemption from withholding tax is claimed. Applied to the new exemptions, this would prevent investors from using FASTER's procedures to obtain refunds of withholding tax on technically exempt payments — leaving them without an effective relief mechanism. Article 6 of the Omnibus removes this denial option, ensuring that FASTER's procedures remain available for refunds even where the payment qualifies for an exemption under the IRD or PSD.

NSD welcomes this amendment. Without it, investors in publicly traded securities could find themselves outside the scope of both regimes: unable to obtain the automatic exemption because the paying company cannot verify conditions upfront, and denied FASTER access because a full exemption has been claimed. The Omnibus resolves this gap, ensuring FASTER operates as an effective backstop. NSD notes that

this benefit is contingent on the swift entry into force of the underlying exemption, reinforcing the case for substantially shortening the eight-year transition period.

Anti-Tax Avoidance Directive — Interest Limitation

NSD welcomes the Commission's ambition to simplify and modernize the interest limitation rule in the Anti-Tax Avoidance Directive. In particular, NSD welcomes the proposal to make the 30 per cent EBITDA threshold mandatory, thereby preventing Member States from applying lower thresholds, and to make the EUR 3 million safe harbour mandatory and subject to regular indexation. These measures can improve predictability and reduce unnecessary compliance burdens, especially for smaller businesses.

NSD welcomes the proposed exclusion for low-risk third-party loans from the scope of the interest limitation rule. The proposal rightly recognizes that borrowing from non-associated lenders, including bond issuances subject to specific regulatory oversight, generally presents a limited risk of base erosion and profit shifting.

(Observera att den svenska översättningen av direktivet i den föreslagna artikel 4.2a felaktigt anger att medlemsstaterna "får" undanta lågrisklån från räntebegränsningsreglerna. Den korrekta översättningen ska vara "skall". Se den engelska version av direktivförslaget som anger att medlemsstaterna "shall exclude".)

However, NSD has a fundamental concern regarding the condition that the debt must be used to finance the borrower's own activities and that channelling such debt to finance associated enterprises would disqualify the third-party loan as a "low risk loan" in the lending entity itself as well as in the associated enterprise. As currently drafted, this condition risks making the exclusion of limited practical significance for many large groups. In particular, where the proceeds of an external loan are used to finance another group company, placed in a treasury or cash-pooling arrangement, or used to make a capital contribution or other equity contribution to a related group company, the financing would appear to be disqualified as a low-risk third-party loan. The interest would consequently remain subject to the interest limitation rule even though the underlying borrowing was obtained from an independent lender on market terms and does not, in itself, involve an artificial intra-group debt arrangement.

In many large Swedish groups, external financing is arranged centrally by the parent company or a treasury company and is subsequently made available to the rest of the group through intra-group loans, cash-pooling or similar internal financing

arrangements, and, where appropriate, capital contributions. This is ordinary commercial practice. Centralized financing may reduce the cost of capital because the parent or treasury company normally has a stronger credit rating than individual subsidiaries, and banks and other credit institutions will often prefer to lend to the group parent because of the stronger security and credit profile. The proposed restriction would exclude precisely the type of external financing that the carve-out should protect, and could make the exclusion largely ineffective for a significant number of Swedish and other European groups.

NSD therefore considers that the operational scope of the exclusion should be revised or clarified so that externally raised financing remains eligible where it is used to fund genuine commercial activities within the group, including through ordinary intra-group lending, treasury-pooling arrangements or capital contributions, provided that the external borrowing is from a non-associated lender and is not part of an arrangement designed to shift profits or create an artificial tax advantage.

NSD further welcomes the intent of the proposal to better reflect legitimate financing needs. This includes making the group escape rule mandatory, thus enabling it for companies and groups that are highly leveraged for genuine commercial reasons, as well as mandatory carry-forward mechanisms for unused interest capacity and non-deducted borrowing costs. It is important that companies with long-term investment cycles, volatile profitability or substantial capital requirements are not disproportionately affected by rules designed to address base erosion and profit shifting.

NSD welcomes the proposal to introduce a mandatory, unlimited carry-forward of disallowed exceeding borrowing costs. NSD also supports the possibility for Member States to allow the carry-forward of unused interest capacity and to introduce a carry-back mechanism. These measures would improve the neutrality and resilience of the interest limitation rules, particularly for businesses with volatile earnings or long-term investment cycles.

Furthermore, NSD supports the proposed treatment of long-term public-benefit projects and the targeted temporary exclusion for qualifying defense activities. An additional rationale to facilitate such investments is that they often generate positive externalities. The proposed measures can therefore help ensure that the interest limitation rule does not unintentionally hinder investments which are important for competitiveness, public welfare and the strategic preparedness of the Union.

At the same time, NSD considers it essential that the proposed amendments do not unduly restrict the ability of Member States to maintain or introduce nationally

adapted solutions. Member States have different tax systems, legislative frameworks and economic conditions. EU rules should provide a clear common framework but must not prevent national legislators from adopting complementary rules better suited to local circumstances. It is equally important that the Tax Omnibus initiative does not adversely affect existing national legislation or already prepared domestic reform proposals concerning interest deduction limitation. The Government should work to ensure that the final rules combine greater EU-wide predictability with preserved tax sovereignty, sufficient national flexibility, and that relevant Swedish reforms can be implemented without delay.

Anti-Tax Avoidance Directive — CFC Rules and Pillar 2

NSD welcomes the two separate exemptions from the CFC rules in ATAD. The first exempts MNE groups already subject to the Pillar 2 minimum tax regime. ATAD was designed in a pre-Pillar 2 environment, and the CFC rules address substantially the same concerns as the income inclusion rule under Pillar 2. Parallel compliance imposes costs without commensurate revenue protection. The Commission estimates savings of EUR 160 million per year in reduced red tape from this change.

The second exemption covers small and medium-sized groups as defined in Directive 2013/34/EU. The impact assessment of the Commission confirms that administrations across Member States have had almost no CFC enforcement cases involving SMEs in the approximately ten years since ATAD entered into force. Removing SMEs from the scope of CFC rules is proportionate and administratively rational.

NSD also welcomes the proposal to standardize CFC rules by making the categorical income approach (Model A) mandatory and abolishing the entity approach (Model B). The current divergence between Member States on which model applies creates unnecessary complexity for cross-border groups.

Anti-Tax Avoidance Directive — GAAR Extension

NSD is strongly opposed to the proposal to extend the ATAD General Anti-Avoidance Rule (GAAR) to cover all direct taxes, including Pillar 2 top-up taxes. The Pillar 2 global minimum tax framework was designed as a comprehensive and self-contained system — a structured body of objective rules, thresholds, and carve-outs developed through extensive multilateral negotiation under the OECD Inclusive Framework. The income inclusion rule, the undertaxed profits rule, and the qualified domestic minimum top-up tax together constitute the specific legislative response to profit

shifting to low-tax jurisdictions. NSD finds it inappropriate to overlay a broad and inherently vague general anti-avoidance rule on top of a framework that already incorporates comprehensive and targeted anti-avoidance safeguards.

The GAAR in ATAD applies where an 'arrangement or series of arrangements' is not 'genuine' and is put in place with 'the main purpose or one of the main purposes of obtaining a tax advantage'. When this test is applied to Pillar 2, it would require tax administrations to assess whether business structures that are fully compliant with the objective effective tax rate calculations of Pillar 2 were nonetheless motivated by an impermissible tax purpose. This introduces a subjective overlay on a system specifically designed to produce calculable and predictable outcomes. Pillar 2 compliance is binary and rule-based; GAAR assessments are inherently discretionary. The combination produces a regime in which compliant behaviour remains exposed to challenge, and in which the incentive effects of Pillar 2 — particularly the QDMTT, which was intended to give source countries the first right to collect top-up taxes — are undermined.

The principle of lex specialis — that a specific legal rule takes precedence over a general one — is a fundamental principle of legal interpretation that applies directly here. Where a specific regime such as Pillar 2 has already determined the conditions under which a specific course of action is permissible, a general anti-avoidance rule adds nothing but uncertainty. The Court of Justice has consistently recognized that anti-avoidance provisions must respect the principle of legal certainty: taxpayers must be able to know in advance whether their transactions fall within the scope of a rule. The proposed GAAR extension fails this test when applied to Pillar 2, because there is no principled limit to the range of fully compliant arrangements that an administration could characterize as 'non-genuine'.

The proposed extension directly contradicts the Omnibus's simplification objective. It would expose businesses operating in good faith under Pillar 2 to a new layer of tax risk, increase the volume and cost of disputes with tax administrations, and undermine the attractiveness of EU as a location for investment and headquarters operations. NSD urges that this proposal be removed from the Omnibus in its entirety.

The Anti-Tax Avoidance Directive – R&D deduction

NSD welcomes the ambition of the Commission to strengthen R&D activities within the EU, thereby contributing to greater innovation capacity and stronger international competitiveness. The Commission estimates that the measure could increase GDP by 0.2 per cent in the long term. However, NSD questions whether the

proposed provision would in practice lead to simplification. It is also doubtful whether it is appropriate for the Commission, through a binding tax directive, to regulate in detail how Member States' R&D incentives should be designed. Such regulation risks limiting nationally adapted solutions and creating new legal and administrative boundary issues.

The proposal introduces an EU-law definition of research and development covering basic research, applied research and experimental development. The categories broadly correspond to the structure of the Frascati Manual, although the draft directive does not expressly refer to that manual. The definition is already used in other EU frameworks, including State aid rules and Horizon Europe. What is new is that the definition is now proposed to be introduced into a binding tax directive. Its interpretation would therefore ultimately fall to the Court of Justice of the European Union, rather than to national courts and authorities. This risks creating a new layer of EU-law interpretation as to what constitutes R&D for tax purposes and thereby complicating, rather than simplifying, the Swedish tax treatment of R&D.

The EU proposal targets an asset-based incentive by allowing full deduction for certain R&D-related investments already in the year in which the expenditure is incurred. This should be viewed against the fact that, according to Statistics Sweden's R&D survey, a substantial share of companies' R&D expenditure consists of labour costs. An incentive focused on the asset side therefore does not necessarily correspond to the cost structure that characterizes companies' R&D activities. Nor does it align with the super-deduction recently proposed by the Swedish Government, which concerns R&D labour costs. NSD sees a clear risk that a system with several parallel R&D incentives will increase legislative complexity. If Member States must take account of both national R&D concepts and incentives, as well as an EU-law definition and a specific asset-based deduction, the result may be a less transparent regulatory framework rather than genuine simplification.

NSD's overall assessment is that the provision, in its current form, does not meet the Omnibus package's objective of genuine simplification. NSD also believes that this specific proposal risks encroaching on national tax sovereignty. Unlike the other parts of the package, it entails harmonization in an area that has so far not been regulated through EU tax law. If the provision is retained, it should be expressly designed as a minimum standard and must not restrict the ability of Member States to introduce more generous or differently designed R&D incentives. An alternative and more appropriate approach would be for EU law to ensure that tax incentives for R&D activities, in general, do not result in a less favourable EBITDA calculation when applying the interest deduction limitation rules. Such a solution could strengthen R&D incentives without the EU regulating Member States’ tax incentive systems in

detail. At the same time, NSD wishes to emphasize that the work on the Tax Omnibus must not delay already fully prepared proposals for strengthened R&D incentives in Sweden. The Government should ensure that relevant Swedish proposals are implemented without delay.

Tax Merger Directive

NSD welcomes the expansion of the Tax Merger Directive to include simplified mergers and divisions by separation as qualifying transactions. These transaction types were introduced into EU company law by the 2019 Mobility Directive but were left outside the TMD's scope, creating a significant tax law gap: companies restructuring through simplified mergers — typically the absorption of a wholly-owned subsidiary by its parent without the need to issue new shares — or through divisions by separation — the transfer of part of a company's assets to a newly formed subsidiary while the parent retains ownership — could not be certain of obtaining the same tax deferral treatment as standard qualifying transactions. This mismatch forced companies engaged in cross-border restructurings to use more roundabout transaction structures, adding cost and legal uncertainty. The Omnibus closes the gap by extending the TMD to cover all restructuring transactions permitted under the company law framework introduced by the Mobility Directive.

NSD calls on Member States to avoid gold-plating the directive upon transposition, as divergent national implementations would recreate the fragmentation that the reform seeks to address.

Tax Dispute Resolution Mechanisms

NSD welcomes the procedural improvements to the DRM Directive. Under the current directive, companies experiencing double taxation — for example where a transfer pricing adjustment by one Member State's tax administration is not matched by a corresponding adjustment in the other Member State — must file a complaint 'simultaneously' with all relevant competent authorities. The term 'simultaneously' is, however, interpreted inconsistently across Member States: some require submission on the same calendar day, while others accept filings made within the same week or month. This interpretive divergence creates procedural uncertainty and has contributed to the under-use of the DRM relative to the older EU Arbitration Convention. The Omnibus addresses this by replacing 'simultaneously' with a clear, uniform 30-day submission window within which all relevant filings must be completed. This seemingly technical change has real practical importance:

complaints previously rejected as inadmissible purely on procedural grounds can now proceed to be assessed on the merits.

The proposal further expands alternative dispute resolution mechanisms and introduces harmonized statistical reporting requirements that will improve transparency on the functioning of cross-border dispute resolution across Member States. Faster and more accessible resolution of tax disputes is essential for businesses operating across borders.

NSD considers it crucial that the proposal be complemented by a dedicated dispute resolution mechanism for conflicts arising under the Pillar 2 framework. As Pillar 2 is implemented across Member States and tax administrations begin to apply the effective tax rate calculations, disputes will arise with increasing frequency. The current DRM Directive does not adequately cover such disputes. NSD calls on the Government to request a dedicated EU-level dispute resolution mechanism for Pillar 2 conflicts to be brought forward without delay.

Impact Assessment and Legislative Quality

NSD recommends that a thorough impact assessment and competitiveness check be carried out for any substantive amendment to the proposal introduced during the legislative process. The Commission's stated objective to reduce administrative burdens by 25%, and by 35% for SMEs, must not be eroded by amendments that introduce new complexity. The Government should ensure that the Commission measures and reports how each substantive amendment affects the administrative burden reduction targets.

Concluding Remarks

The Taxation Omnibus represents a significant opportunity to address structural deficiencies in the EU's direct tax framework. NSD fully supports the Commission's ambition to reduce administrative burdens, improve legal certainty, and strengthen the functioning of the internal market. The projected savings of EUR 6.6 billion per year in reduced red tape — and the broader competitiveness benefits of a simpler, more coherent tax framework — are objectives that deserve the political effort required to achieve them.

At the same time, NSD considers it essential that the Omnibus be assessed against the principle that direct taxation remains primarily a national competence. The Treaties assign tax harmonization to the Council under unanimity (Article 115 TFEU),

and the principle of subsidiarity requires that EU action be taken only where Member States cannot sufficiently achieve the objective acting individually. This is not a merely formal constraint. It reflects a substantive concern: that harmonized rules may eliminate flexibility that Member States use to tailor their tax systems to national economic conditions, labour market structures, and social policy choices.

The internal market can function effectively with coordinated national rules; it does not require identical ones. EU-level intervention is justified where cross-border market failures demonstrably cannot be addressed by Member States acting alone — not as a general instrument of tax policy convergence.

Assessed against this standard, the Omnibus's strongest elements — the elimination of withholding taxes on intra-EU payments, the removal of redundant CFC compliance burdens, and the procedural improvements to dispute resolution — address genuine cross-border market failures. The weakest elements — the extension of the GAAR and the new R&D harmonization — expand EU competence into areas where the market failure rationale is considerably less compelling.

To realize the package's benefits in full, NSD urges that the eight-year transition period be substantially shortened, authoritative interpretative guidelines on beneficial ownership be issued by the Commission, the GAAR extension to Pillar 2 be removed, and the third-party financing exclusion under ATAD be extended to allow third-party loans to be used for intra-group financing. These changes would ensure that the Omnibus delivers on its stated objectives and provides European businesses with the legal certainty and simplicity they urgently need.

NSD also wishes to draw attention to a structural concern about the legislative design of the Omnibus. By amending six directives in a single act, the package links measures of very different political sensitivity. Several provisions — notably the elimination of withholding taxes on intra-EU company payments and the extension of the GAAR — have historically been among the most contested in EU tax negotiations. Bundling these with less controversial simplification measures, such as e.g. the procedural improvements to the DRM Directive and the TMD extension, risks holding the uncontroversial elements hostage to negotiations on the politically sensitive provisions.

Given that tax legislation requires unanimity in the Council, NSD calls on the Government to advocate in the Council that the presidency and Member States consider whether the package could be structured in a way that secures early implementation of widely agreed simplification measures while negotiations on the contested provisions continue.

NSD is available to provide further analysis on any of the issues raised above and welcomes continued dialogue with the Ministry and other relevant stakeholders.

NÄRINGSLIVETS SKATTEDELEGATION




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