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DISCUSSION PAPER

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Rethinking Anti-Tax Avoidance Measures in the European Union

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Abstract:

This study examines the evolving landscape of anti-tax avoidance measures in the European Union (EU), focusing on the interplay between the Anti-Tax Avoidance Directive (ATAD), the EU Blacklist Code of Conduct on Business Taxation, various unilateral regulations, and the global minimum tax. Drawing on a comprehensive survey of local tax experts, we investigate how Member States have implemented the five core ATAD measures – interest barrier rules, exit taxation, controlled foreign company (CFC) rules, hybrid mismatch provisions, and general anti-abuse rules (GAAR) – as well as the EU Blacklist and additional national provisions such as royalty deduction limitations. The findings reveal a generally consistent adoption of ATAD rules, albeit with notable variation in strictness and scope across Member States. Furthermore, the study evaluates the interplay with the newly introduced global minimum tax. While this global measure primarily targets rate-based profit shifting, our analysis indicates that it may reinforce or partially overlap the EU's other directives – especially for countries that have already implemented extensive anti-tax avoidance legislation. We conclude by highlighting areas where policy refinements could enhance coherence – reducing complexity, avoiding double regulation, and strengthening the overall framework for combating tax avoidance within the EU.

JEL: H25, H26, K34, F23

Keywords: Anti-Tax Avoidance, Taxation in the European Union, Global Minimum Tax

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List of Abbreviations

ATAD	Anti-Tax Avoidance Directive
BEPS	Base erosion and profit shifting
CFC	Controlled Foreign Company
CIT	Corporate income tax
EBITDA	Earnings before interest, tax, depreciation and amortization
EU	European Union
GAAR	General Anti-Avoidance Rule
OECD	Organization for Economic Co-operation and Development
MNE	Multinational enterprise

Country Abbreviations

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
ES	Spain
FI	Finland
FR	France
GR	Greece
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal

RO	Romania
SE	Sweden
SI	Slovenia

1 Introduction

In recent years, international tax policy has undergone significant changes to address the challenges posed by corporate tax avoidance. Multinational enterprises (MNEs), operating seamlessly across borders, can exploit gaps and frictions arising from the misalignment of national tax systems. Such opportunities, commonly labeled base erosion and profit shifting (BEPS), can undermine the fairness and sustainability of national tax regimes, raising concerns about revenue losses and competitive disadvantages. Against this backdrop, the Organization for Economic Co-operation and Development (OECD) initiated the BEPS Project, resulting in 15 Action Items designed to ensure that profits are taxed where economic activities occur. Building on these global efforts, the European Union (EU) has introduced the Anti-Tax Avoidance Directive (ATAD) and the EU Blacklist Code of Conduct on Business Taxation to create a minimum level of harmonized protection against harmful tax practices.

This study serves two primary objectives. First, it provides a comprehensive overview of the existing anti-tax avoidance regulations across the 27 EU Member States by examining the design and implications of ATAD measures and the EU Blacklist Code of Conduct. Beyond these harmonized initiatives, the study also documents unilateral anti-tax avoidance provisions – such as royalty deduction limitations – introduced by certain Member States. Second, it evaluates the interplay of these measures with the newly adopted global minimum tax in the EU. Specifically, the analysis explores how each country's distinctive tax-policy choices may interact with, complement, or potentially overlap with the global minimum tax, thus highlighting areas of redundancy or conflict.

Methodologically, the study draws on a detailed survey of local tax experts in each Member State, administered in collaboration with the international network of tax advisors from EY Tax GmbH Steuerberatungsgesellschaft (EY). Responses illustrate the degrees of freedom each Member State exercised when adopting common rules such as controlled foreign company (CFC) rules, interest barrier rules, exit taxation, hybrid mismatch provisions, general anti-abuse rules (GAAR), and the global minimum tax. The resulting country-level analyses shed light on how uniformly Member States have engaged with these anti-tax avoidance directives. The findings of our study aim to guide policymakers in identifying where simplifications, eliminations, or improvements to current rules may be necessary. In doing so, the study contributes to an emerging debate on designing a more coherent and efficient international corporate tax system within the EU.

This study proceeds as follows. Section 2 outlines the institutional background, presenting the evolution of anti-tax avoidance rules in both global and EU contexts. Section 3 then compares current anti-tax avoidance measures across the EU, with a focus on ATAD and EU Blacklist provisions, as well as additional unilateral approaches. Section 4 explores how these existing measures interact with the global minimum tax, shedding light on potential overlaps, inefficiencies, and areas for regulatory alignment. Building on these insights, Section 5 discusses the broader implications for policymakers and offers recommendations to foster coherence and effectiveness. Section 6 concludes.

2 Institutional Background

2.1 Overview

With the rise of globalization and the ongoing digital transformation, the OECD acknowledged the need for coordinated actions to ensure fair taxation worldwide. MNEs can exploit legal tax arbitrage opportunities to minimize their corporate tax burden relative to domestic enterprises. As taxation competence is a prerogative of each country, it can create frictions or gaps if it is not aligned with the legislation of other countries. This can result in either double taxation, when corporate profits are taxed in multiple jurisdictions, or no taxation, when gaps exist between national regulations regarding the scope of taxation. Although tax treaties between countries alleviate some of these concerns, a few misalignments and gaps persist.

BEPS activities reduce tax revenue to governments, introduce unfair competition between firms based on their ability to shift profits or reduce taxes, and can ultimately harm individual taxpayers by increasing the share of taxes they pay. The OECD/G20 BEPS Project aims to realign taxation with value creation and real economic activity, introducing a set of coordinated, consensus-based rules to address BEPS. The BEPS Action Plan of July 2013 identifies 15 Action Items to ensure a coordinated and comprehensive approach against MNEs' tax arbitrage opportunities (OECD, 2013). The Inclusive Framework on BEPS was established in 2016, allowing interested jurisdictions to participate in standard development, monitoring, and implementation of the initiative (OECD, 2017). Since then, over 140 countries (OECD, 2024a) have joined the Inclusive Framework and have continued to work on implementing the different Action Items in both national and international taxation. The most prominent initiative of the BEPS project is the global minimum tax, designed to address challenges posed by the digital economy (BEPS Action 1). Amid the political momentum of anti-tax avoidance initiatives, the EU also designed and implemented various directives targeting tax avoidance and aggressive tax planning, including the ATAD and the EU Blacklist Code of Conduct on Business Taxation. In addition to international initiatives, some countries unilaterally implement additional regulations, such as royalty deduction limitations. In the following, the international initiatives are described in chronological order.

2.2 ATAD I and II

The ATAD[1], consisting of ATAD I and II, is an EU directive that originates from the OECD BEPS initiative, implemented in 2016 and 2017, respectively. It encompasses a comprehensive set of legislative measures to counteract international tax avoidance, addressing the tax base. The overarching goal of the ATAD is to harmonize anti-tax avoidance measures across EU Member States, thereby ensuring consistency and fairness in international taxation. However, the implementation of ATAD measures varies across EU Member States, as the ATAD establishes only minimum standards, allowing national governments to adopt stricter rules and adjust the proposed measures to the specific features of their national tax systems.[2] The different ATAD measures comprise (1) controlled foreign company (CFC) rules, (2) interest barrier rules, (3) exit taxation, (4) provisions on hybrid mismatches, and (5) general anti-avoidance rules (GAAR).

(1) CFC rules ensure that the low-taxed income of controlled foreign subsidiaries may be taxed immediately at the level of the domestic parent company.
(2) Interest barrier rules limit the deductibility of interest payments if such payments exceed a certain percentage of earnings before interest, taxes, depreciation, and amortization (EBITDA).
(3) Exit taxation ensures that asset transfers to other EU Member States or third countries are subject to taxation even if the gain has not yet been realized.
(4) Provisions on hybrid mismatches regulate situations of qualification conflicts in cross-border arrangements, for example, arising from differences in the tax treatment of entities or instruments between two or more countries. These differences can lead to double deduction mismatches, where a tax deduction is claimed for the same payment in multiple countries, or deduction without inclusion mismatches, where a tax deduction is taken for a payment in one jurisdiction without the inclusion in taxable profit in another jurisdiction. In such cases, either the deduction of certain payments is prohibited, or the amount of the payment is included in income.

[1] Council Directive (EU) 2016/1164 of 12/07/2016 as amended by Council Directive (EU) 2017/952 of 29/05/2017.
[2] In her Opinion of May 22, 2025, in Case C-524/23, Advocate General Juliane Kokott expressed criticism concerning the legal basis on which the ATAD was adopted.

(5) The GAAR intends to discourage abusive tax practices in situations where specific provisions are not applicable.

All these measures harmonize the mechanism of the specific anti-abuse rules but only provide minimum standards. EU Member States can either implement these standards or introduce stricter legislation.

2.3 EU Blacklist and Code of Conduct Group (Business Taxation)

Since 2017, the EU has published a semi-annual list of non-cooperative jurisdictions for tax purposes (hereinafter, the *EU Blacklist*). This list includes jurisdictions that have either failed to meet or refused to adhere to tax good governance criteria within specified timeframes. These criteria relate to tax transparency, fair taxation, and anti-BEPS measures.[3] The primary purpose of this list is to incentivize positive changes in the tax legislation and procedures of these countries through cooperative efforts.

To reinforce this initiative, the Council of the EU has encouraged Member States to independently enact legislative defensive measures against non-cooperative countries, with each member state assuming responsibility for implementing at least one such measure.[4] In November 2019, the Code of Conduct Group (Business Taxation) identified four potential defensive measures for situations linked to a listed jurisdiction: (1) non-deductibility of expenses, (2) expansion of CFC legislation, (3) extended application of withholding taxes, and (4) limitation of participation exemption on profit distribution.[5] The group recommended that each member state should adopt at least one of these measures, illustrating the EU's commitment to promoting responsible tax practices and transparency while addressing issues related to non-cooperative jurisdictions.

2.4 Global Minimum Tax

As a result of BEPS Action 1, in 2021, more than 130 countries of the Inclusive Framework agreed on a fundamental reform of the international corporate tax system, known as the two-

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[3] The criterion of tax transparency is fulfilled if a jurisdiction participates in the automatic exchange of financial account information with all EU Member States, is able to exchange tax information on request, and is party to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters or has equivalent arrangements covering all Member States. The criterion of fair taxation is fulfilled if a jurisdiction does not maintain harmful preferential tax regimes and does not facilitate offshore structures or arrangements aimed at attracting profits without genuine economic activity. The criterion related to anti-BEPS measures is fulfilled if a jurisdiction commits to implementing the OECD's minimum standards on harmful tax practices, treaty shopping, country-by-country reporting, and dispute resolution, and demonstrates compliance with these standards, https://www.consilium.europa.eu/en/policies/criteria-for-establishing-the-eu-list-of-non-cooperative-jurisdictions-for-tax-purposes/ (20.11.2025).

[4] Annex 4, https://data.consilium.europa.eu/doc/document/ST-14114-2019-INIT/en/pdf.

[5] Annex 4, https://data.consilium.europa.eu/doc/document/ST-14114-2019-INIT/en/pdf.

pillar model (OECD, 2021a). Pillar One aims to (partially) reallocate taxing rights to market jurisdictions based on sales, while Pillar Two seeks to impose a minimum effective tax rate of 15% on profits generated by large companies in each country where they operate. The primary objective of the global minimum tax is to combat tax-induced profit shifting and mitigate international tax competition by addressing the tax rate. Only two days after the publication of the OECD/G20 proposal for the global minimum tax (Model Rules) (OECD, 2021b), the European Commission presented a draft of a Minimum Tax Directive for EU Member States (European Commission, 2021). With the final enactment of the Minimum Tax Directive (Council Directive (EU) 2022/2523) in 2022,[6] the European Commission requires EU Member States to transpose the directive into national law by the end of 2023. Consequently, the provisions apply to financial years beginning after December 30, 2023. However, for Member States with less than twelve ultimate parent entities of groups within the scope of the global minimum tax, Art. 50 Minimum Tax Directive provides for an election to delay the transposition of the directive until 2030.

The global minimum tax applies to affiliates of multinational and domestic groups with annual consolidated revenues above 750 Mio. EUR. The core element is the top-up tax, enforced if the group is effectively taxed at a rate below 15% in a country. The top-up tax equals the difference between 15% and the group's effective tax rate, determined under a jurisdictional blending approach, where all group affiliates in scope of the rules (Constituent Entities) in a jurisdiction are aggregated. However, a routine profit from substantial economic activity, i.e., tangible assets and employee-related costs, is exempt from this calculation (substance-based income exclusion).

To reduce the compliance burden and improve tax certainty for companies, the global agreement was amended to include a set of safe-harbour rules for calculating the top-up tax. While some of these rules apply only during a transition period, others grant permanent relief for specific cases. Art. 32 Minimum Tax Directive permits EU Member States to implement those safe harbours in their national legislation.

There are three main mechanisms for collecting the top-up tax. First, under the income inclusion rule (IIR), the residence country of the parent company imposes a top-up tax on all non-resident low-taxed Constituent Entities within the group.[7] Second, the undertaxed profits rule (UTPR)

[6] Council Directive (EU) 2022/2523 of 14/12/2022.
[7] Different to the global agreement Art. 5 para. 2 Minimum Tax Directive extends the scope of the IIR also to the Ultimate Parent Entity and Constituent Entities located in the same Member State, if low-taxed.

is applied as a backstop if the IIR is not implemented in the ultimate or intermediate parent company's residence country. Under the UTPR, certain intra-group payments are no longer tax deductible, or a top-up tax is imposed on the group's subsidiaries. Besides the IIR and UTPR, the third mechanism for collecting the top-up tax is the qualified domestic minimum top-up tax (QDMTT). This mechanism takes precedence over the IIR and the UTPR, allowing low-tax countries to directly impose a top-up tax on low-taxed Constituent Entities resident in their territory.

3 Comparison of Current Anti-Tax Avoidance Measures in the EU

3.1 Methodology and Scope of the Survey

Assessing tax regimes is a demanding task, as tax standards are complex and heterogeneous. Recent developments have added additional layers of complexity, making review and comparison at the international level more challenging. Putting different approaches taken by the EU Member States into perspective is therefore more meaningful than ever. Reviewing the legislative development across jurisdictions within the EU highlights both the degrees of freedom and discrepancies in the implementation process, as well as the challenges of legislative harmonization. Specifically, Member States may choose to implement directives with varying degrees of rigor, either strictly enforcing them or allowing for more flexible tax planning.

Keeping track of current developments and approaching recent dynamics holistically, we rely on the expert knowledge of local tax advisors. We follow the methodology used in Spengel and Zöllkau (2012). We thus surveyed experts to elicit legislative changes and implementation within the Member States that are caused by, or occur simultaneously with, the introduction of the ATAD, the EU Blacklist, and the global minimum tax. To identify a convenience sample of experts within the 27 countries, we partnered with EY Tax GmbH Steuerberatungsgesellschaft, i.e., the German branch of this international network of tax advisors. In collaboration with EY, we developed a carefully designed expert questionnaire and sent it to 27 identified EY tax advisors in the respective Member States.[8] We used the web-based survey program Qualtrics to distribute the expert questionnaires, which were delivered in spring and summer 2024. This first round of the survey yielded a full set of responses. Subsequently, a first analysis was undertaken, and open questions were addressed in a second-round follow-up. The final responses were received in September 2024.

[8] Capacity constraints made it necessary to pre-fill selected questionnaires. Subsequently, the experts reviewed the questionnaire and provided an answer consistent with the legal state in the respective member state.

The survey enables the collection of comprehensive, country-specific information on the implementation of anti-tax avoidance measures, such as those provided by the ATAD (see list (1)-(5) above), EU Blacklist, and additional unilateral anti-abuse rules. Specifically, the questionnaires assess the extent to which Member States have implemented ATAD standards (whether they meet the required minimum level or exceed it) and the scope of additional anti-tax avoidance rules in place. This approach allows us to provide a comprehensive overview of the degree of anti-tax avoidance legislation in EU Member States. Subsequently, we conduct a comparative analysis of the responses to identify commonalities and differences among the individual design choices made by Member States. Furthermore, we evaluate how these approaches interact with the global minimum tax at the country level. The findings from this study offer recommendations for potential adjustments, eliminations, or enhancements to policymakers, thereby contributing to simplifying the ongoing development of EU tax policy and enhancing its effectiveness in combating tax avoidance.

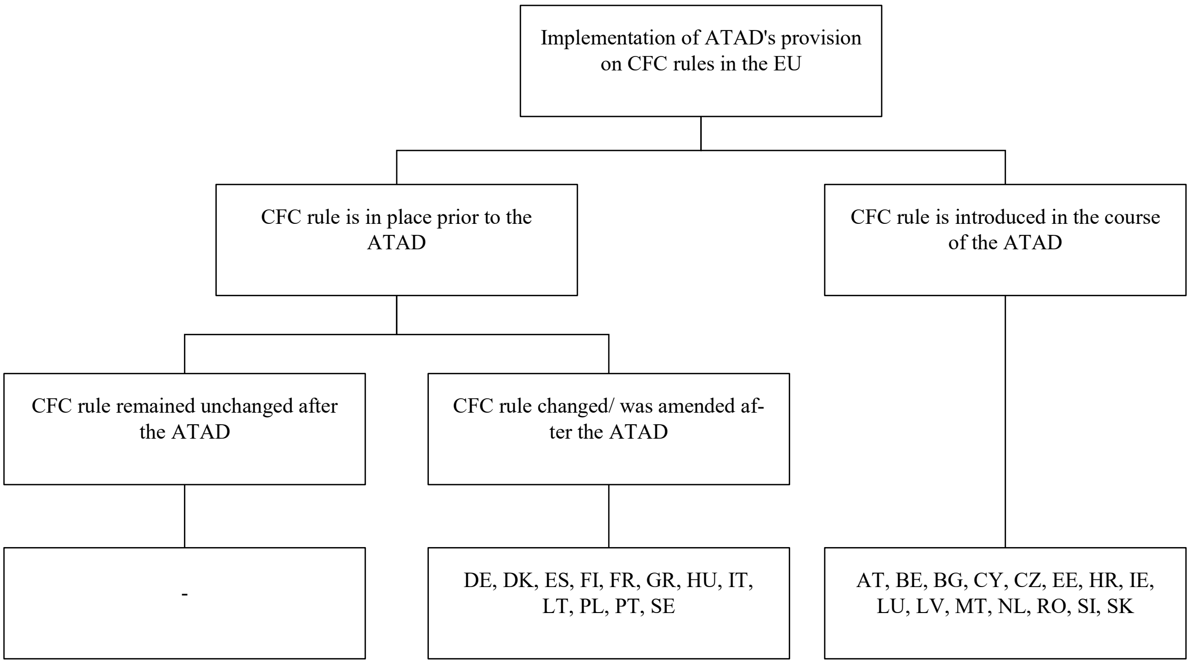
3.2 Comparative Analysis of ATAD Measures

3.2.1 Controlled Foreign Company (CFC) Rules

CFC rules seek to counter profit shifting by immediately taxing the profits of low-taxed controlled foreign subsidiaries in the country of the parent company. Thus, CFC rules elevate the tax level of such profits to the level of the higher-taxed parent company upon accrual.

Pursuant to Article 7 in conjunction with Article 11(1) of the ATAD, Member States are mandated to implement CFC rules by December 31, 2018. While some countries had CFC rules in place prior to the ATAD and modified their rules in the course of the ATAD, others introduced new rules.

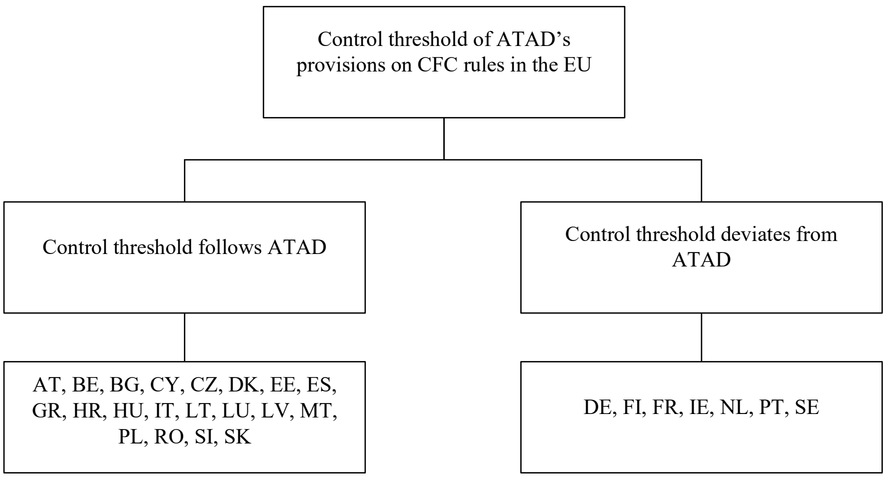
Figure 1: Implementation of ATAD's provision on CFC rules in the EU



Notes: This figure displays the implementation of ATAD's provision on CFC rules in the EU.

Figure *1* illustrates the implementation of CFC rules by EU Member States under the ATAD. Before the ATAD, twelve Member States had already implemented CFC rules. All of these countries amended their CFC legislation in response to the ATAD. 15 countries introduced CFC rules for the first time. Both the initial introduction and the adjustments to CFC rules in the course of the ATAD became effective between 2018 (Romania) and 2022 (Germany), with most countries enacting the new law in 2019.

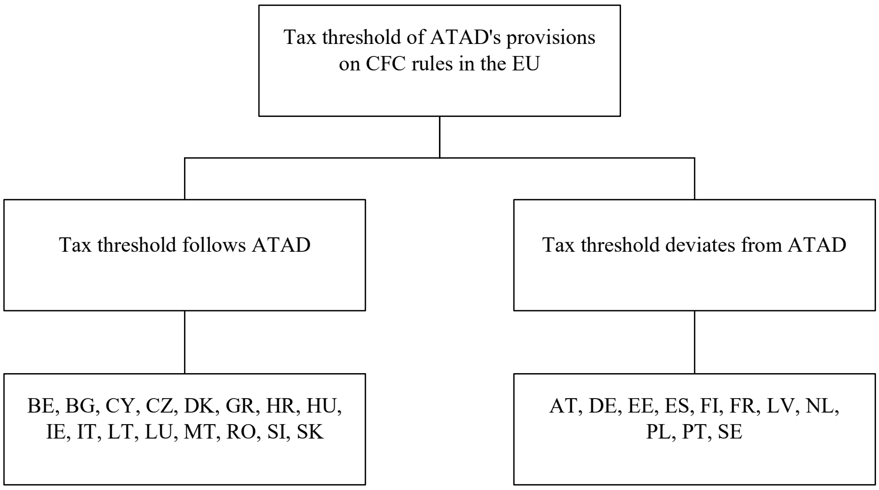
Figure 2: Control threshold of ATAD's provisions on CFC rules in the EU



Notes: This figure displays the control threshold of ATAD's provisions on CFC rules in the EU.

For the application of the CFC regime, the ATAD establishes two criteria that must be met. First, the control threshold stipulates that foreign entities[9] are classified as CFCs if the taxpayer, either alone or with associated enterprises, directly or indirectly holds more than 50% of the voting rights, capital, or profit entitlement of an entity (Art. 7 (1) lit. a) ATAD). Figure *2* shows that 20 Member States follow the ATAD definition of the control threshold, while seven countries deviate from it. Finland, Portugal, and Sweden provide the most significant deviations, lowering the control threshold to 25%. France lowers the threshold to 5% if French companies hold more than 50% of the foreign shares. Ireland extends the definition of control to situations where the taxpayer has the right to acquire more than 50% of the votes, capital, or profits. Germany expands the ATAD definition to include cases in which the taxpayer is indirectly entitled to more than 50% of the company’s liquidation proceeds. Additionally, in Germany and the Netherlands, an individual can also be considered associated with a taxpayer.

Figure 3: Tax threshold of ATAD's provisions on CFC rules in the EU



Notes: This figure displays the tax threshold of ATAD's provisions on CFC rules in the EU.

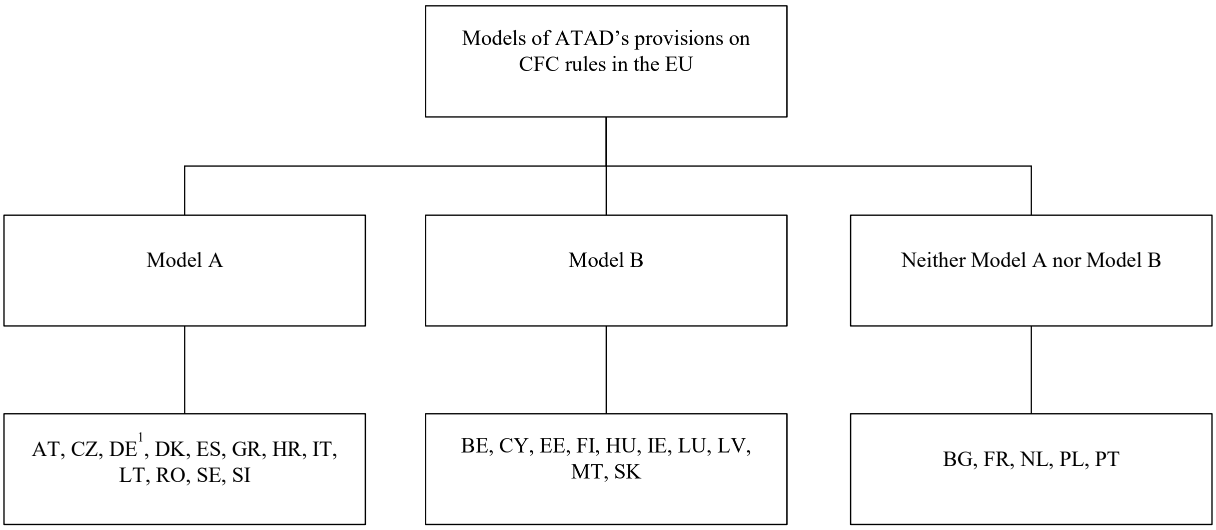
Second, the ATAD specifies a tax threshold for foreign entities to be classified as CFCs. Low taxation can be assumed if the foreign entity pays less than 50% of the corporate tax that would have been charged in the Member State of the controlling entity (Art. 7 (1) lit. b) ATAD). Figure *3* illustrates the implementation of the tax threshold across EU Member States. 16 countries follow the ATAD’s definition of the tax threshold, while eleven countries deviate. Among the deviating countries, five countries adhere to the general concept but set stricter thresholds.[10]

[9] According to Art. 7 (1) ATAD, the CFC rules apply to entities or permanent establishments whose profits are tax exempt or not subject to tax in the Member State of the taxpayer. For simplicity, we refer to these entities collectively as “foreign entities” in the following chapter.

[10] Spain and Poland specify the tax threshold to be less than 75%; Finland and France, less than 60%; and Sweden, less than 55%.

Three countries specify an absolute tax rate.[11] Portugal incorporates a blacklist for certain jurisdictions, while the Netherlands combines an absolute tax rate with a blacklist to determine the scope of the CFC regulation. Estonia and Latvia do not specify a tax threshold, meaning that, in principle, all controlled entities of Estonian and Latvian companies can fall under the CFC rules.

Figure 4: Models of ATAD's provisions on CFC rules in the EU



1: The ATAD stipulates categories of income considered to be passive. In contrast, the German law provides a list of different types of income that are deemed to be active, i.e., not subject to the CFC rules, while any other non-mentioned income is deemed passive, i.e., subject to the CFC rules. This difference in legislation does not lead to a substantial difference in the functioning of the rules.

Notes: This figure displays the models of ATAD's provisions on CFC rules in the EU.

If the requirements to be classified as a CFC are met, the income of the CFC is included in the taxpayer’s tax base on which the domestic corporate income tax (CIT) rate is applied, with a tax credit granted for the foreign tax paid. To determine the CFC’s income that must be included in the taxpayer’s tax base, the ATAD allows Member States to choose between two models. Model A, known as the categorical approach (Art. 7 (2) lit. a) ATAD), requires the taxpayer to include the CFC’s non-distributed passive income in the tax base. The passive income categories comprise, inter alia, income from interest, royalties, dividends, and the disposal of shares. Model B, referred to as the transactional approach (Art. 7 (2) lit. b) ATAD), requires the taxpayer to include the CFC’s income from non-genuine arrangements in its tax base. The activities of a foreign entity are considered non-genuine to the extent that they generate income through ownership of assets and the assumption of risks that it would not generate if it were not owned by the taxpayer performing the significant people functions.

[11] Austria 12.5%, Germany 15%, and the Netherlands 9%.

Figure *4* illustrates the implementation of Models A and B across EU Member States. Twelve Member States have adopted Model A, while ten have chosen Model B. Five countries do not follow either Model A or Model B as specified in the ATAD. Bulgaria, France, Poland, and Portugal include the CFC's entire income in their tax bases, thereby broadening CFC taxation. The Netherlands adopts a combination of the two models.

Table 1: Exemptions of ATAD's provisions on CFC rules in the EU

Countries	Model A exemptions				Model B exemptions	
	Substantive economic activity exemption		Passive income exemption	Financial undertakings exemption	Absolute profits exemption	Relative profits exemption
	Application	Extension to third countries				
Model A countries						
AT	✓	✓	✓	✓		
CZ	✓	✓				
DE	✓		✓[1]			
DK	✓[2]	✓	✓			
ES	✓					
GR	✓		✓			
HR	✓		✓	✓		
IT	✓		✓			
LT	✓	✓				
RO	✓			✓		
SE	✓					
SI	✓		✓			
Model B countries						
BE						
CY					✓	✓
EE					✓	
FI	✓	✓				
HU					✓	✓
IE					✓	✓
LU	✓	✓			✓	✓
LV					✓	
MT					✓	✓
SK	✓					
Neither Model A nor Model B countries						
BG	✓	✓				
FR	✓					
NL	✓	✓	✓	✓		
PL	✓[3]		✓[4]			

PT	✓	✓[5]

1: Germany applies a relative passive income threshold of 10% and an absolute threshold of 80,000 EUR.

2: Denmark applies a substance test to intellectual property. If the subsidiary conducts significant economic activity related to the intellectual property, and personnel, assets, and premises support this activity, the income from intellectual property does not fall under the CFC rules. The CFC rules also do not apply to other income from intellectual property that is a product of R&D activities carried out by the subsidiary or group-related companies located in the same jurisdiction as the subsidiary.

3: Poland exempts entities whose income does not exceed a formula-based threshold. The threshold is determined based on the value of the entity's assets, annual salary costs, and accumulated depreciation.

4: In addition to the one-third passive income exemption, Poland applies an exemption for entities whose passive income is less than 30% of the value of certain assets held. These assets include, among others, shares in another company, immovable or movable assets, intangible assets and receivables.

5: Portugal applies a relative passive income threshold of 25%.

Notes: This table displays the exemptions of ATAD's provisions on CFC rules in the EU.

Further, the ATAD provides exemptions from the application of CFC legislation. Table *1* summarizes the implementation of the different exemptions across Member States. Under Model A, one key exemption is the substantive economic activity exemption (Art. 7 (2) lit. a) ATAD). This exemption stipulates that a foreign entity located in the EU or European Economic Area (EEA) is not treated as a CFC if it engages in substantive economic activity supported by staff, equipment, assets, and premises. All twelve countries that adopted Model A have implemented this exemption, with Denmark applying it only to intellectual property (IP) income. Additionally, Finland, Luxembourg, and Slovakia, which follow Model B, and all countries that neither follow Model A nor Model B have included the substantive economic activity exemption in their CFC legislation. Furthermore, the ATAD allows Member States to extend the substantive economic activity exemption to entities in third countries. Eight of the 20 countries that adopted the exemption have extended it to third countries.

The second exemption under Model A is the passive income exemption (Art. 7 (3) ATAD), which allows a foreign entity not to be treated as a CFC if at most one-third of its income is classified as passive income. The exemption has been adopted by ten countries: seven Member States that follow Model A and three Member States that do not follow either model. Among these ten countries, Germany and Portugal deviate from the one-third rule by defining the threshold differently. A similar exemption applies to financial entities that derive income from transactions with the taxpayer or its affiliates (Art. 7 (3) ATAD). This exemption is applied by three Model A countries and the Netherlands.

Under Model B, the ATAD provides two exemptions. According to the absolute profits exemption (Art. 7 (4) lit. a) ATAD), a foreign entity is not treated as a CFC if it has accounting profits below 750,000 EUR and non-trading income of no more than 75,000 EUR. According to the relative profits exemption (Art. 7 (4) lit. b) ATAD), a foreign entity is not treated as a CFC if its accounting profits amount to no more than 10% of its operating costs for the tax period. Seven countries apply the first exemption with absolute values, and five of these countries have additionally adopted the second exemption with relative values.

Since the implementation of the ATAD and prior to the introduction of the global minimum tax, CFC legislation in most EU Member States has remained unchanged, with only two countries, France and Poland, introducing minor adjustments.

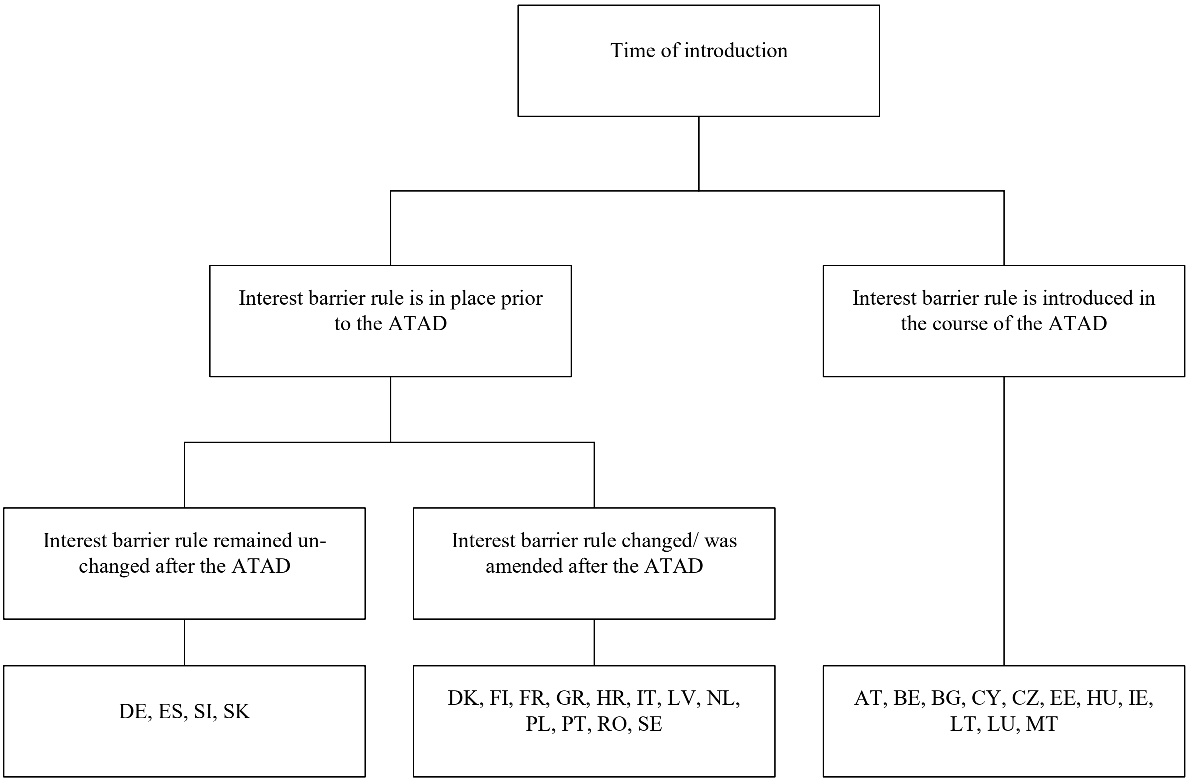
Overall, the implementation of CFC rules across the EU is largely consistent with the ATAD, with some countries adopting even stricter measures by expanding the control threshold, setting stricter or no tax threshold, and applying CFC taxation to all income types rather than just passive or non-genuine income. This consistent or stricter implementation of CFC rules across the EU Member States ensures a minimum level of protection against aggressive tax planning within the EU that aims to shift profits abroad.

3.2.2 Interest Barrier Rules

Interest barrier rules are designed to limit the deductibility of interest expenses from a company's tax base. As such, they serve as a mechanism to curb profit-shifting through excessive interest expenses, whereby companies reduce taxable income in high-tax jurisdictions by channeling interest to related entities in low-tax jurisdictions, eroding the high-tax country's tax base. When a company's borrowing costs[12] exceed a specified threshold, the amount exceeding this threshold is no longer deductible and, therefore, does not reduce the tax base, in accordance with Article 4 (1) ATAD. The ATAD's interest barrier rule applies to taxpayers subject to corporate income tax in one or more EU Member States (Art. 1 ATAD) and limits deductible net interest expenses to a maximum of 30% of EBITDA (Art. 4 (1) ATAD). It does not differentiate between borrowing costs from debt financing from domestic or foreign lenders, related parties, or third parties. The Directive mandated that EU Member States implement interest barrier rules by December 31, 2018.[13] However, if Member States already had an equally effective rule in place before August 8, 2016, they could defer the implementation of the ATAD's interest barrier rule until January 1, 2024 (Art. 11 (6) ATAD).

[12] Art. 2 (2) ATAD defines "exceeding borrowing costs" as the excess of deductible borrowing costs over taxable interest revenues and other economically equivalent taxable revenues. This definition allows the offsetting of interest expenses against interest income, so that only the net amount is relevant for the application of the interest limitation rule.
[13] Following Art. 11 (1) ATAD, the provision had to become effective in the Member States on January 1, 2019.

Figure 5: Implementation of ATAD's interest barrier rule in the EU

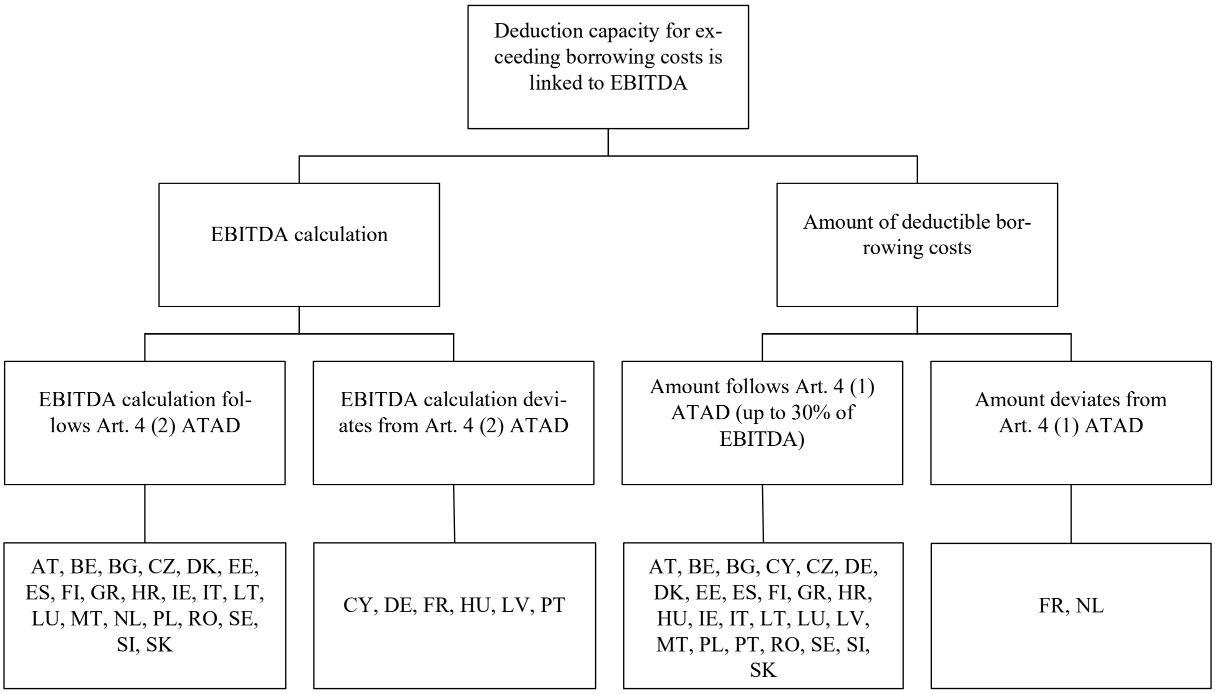


Notes: This figure displays the implementation of ATAD's interest barrier rule in the EU.

Figure *5* shows the profile of the implementation of the interest barrier rule in the EU Member States before and after the introduction of the ATAD. 16 Member States already had an interest barrier rule in place before the ATAD. 12 of those countries amended their interest barrier rules in 2018 or 2019 to comply with the minimum standard under Art. 4 ATAD. The four remaining countries, Germany (2008), Slovakia (2015), Slovenia (2004), and Spain (2012), already had equally effective interest barrier rules (in the following thin capitalization rules[14]) and therefore implemented the ATAD regulation at the later deadline of January 1, 2024. In Slovakia, both rules are applied simultaneously, whereby the interest barrier rule has priority over the thin capitalization rule. Slovenia and Spain already had existing rules compliant with the ATAD provisions. Of the Member States that newly introduced the interest barrier rule in the course of the ATAD, nine countries initially implemented the provision in 2019. Austria (2021) and Ireland (2022) opted for a later implementation of the ATAD’s interest barrier rule.

[14] Generally, an interest barrier rule can be designed as a thin capitalization rule or an earnings stripping rule. The former limits the deductibility of interest from the tax base based on a specific ratio of a company’s debt to equity or assets (Weichenrieder & Windischbauer, 2008; Blouin et al., 2014). The latter links the deductibility of interest to the company’s taxable earnings, typically EBITDA (Mardan, 2017).

Figure 6: Implementation of EBITDA deduction limit of ATAD's interest barrier rule in the EU



Notes: This figure displays the implementation of the EBITDA deduction limit of ATAD's interest barrier rule in the EU.

Figure *6* presents the link between the interest deduction limitation and a company's EBITDA. Taxable EBITDA is generally regarded as a measure of a company's financial and fiscal capacity, in particular its ability to sustain debt financing. The ATAD directly links the deductibility of borrowing costs to the level of taxable EBITDA (Art. 4 (1) ATAD). In general, all 27 EU Member States follow the ATAD's approach and link the calculations and the threshold of allowable interest deductibility to the EBITDA. For the calculation of EBITDA, 21 countries follow Art. 4 (2) ATAD.[15] The EBITDA calculations of six Member States, namely Cyprus[16],

[15] For the interest barrier rule, Slovakia follows the EBITDA definition in Art. 4 (2) ATAD; however, the thin capitalization rule considers the accounting EBITDA.
[16] The taxable income has to be calculated according to the Cypriot laws, but before the notional interest deduction on equity. Loss carry forwards or group loss reliefs are not considered.

France[17], Germany[18], Hungary[19], Latvia[20], and Portugal[21], deviate slightly from the ATAD's definition. However, these are only minor deviations, and the definitions largely coincide with Art. 4 (2) ATAD. Regarding the amount of deductible excess borrowing costs, 25 EU Member States follow Art. 4 (1) ATAD by allowing an interest deduction of up to 30% of the EBITDA.[22] France and the Netherlands apply deviating thresholds. France generally allows for a deduction of up to 30% of the EBITDA. However, in certain cases of thin capitalization, part of the exceeding borrowing cost is only deductible up to 10% of the EBITDA[23], thus, applying a stricter threshold. The Netherlands changed the deductible amount from 30% (as described in the ATAD) to 20% of the EBITDA, effective from 2022.

Table 2: Exceptions from ATAD's interest barrier rule implemented in the EU

Country	De minimis rule	Standalone Exception	Group escape 1 (Equity-ratio-escape)	Group escape 2 (Group-ratio -escape)	Financial undertakings exception	Exclusion of pre-existing loans	Exclusion of loans funding long-term public infrastructure projects	Further exceptions
AT	✓	✓	✓			✓	✓	
BE	✓					✓	✓	✓
BG	✓				✓			
CY	✓	✓	✓		✓	✓	✓	
CZ	✓	✓			✓			
DE	✓	✓	✓				✓	
DK	✓							
EE	✓	✓	✓	✓	✓		✓	
ES	✓				✓			

[17] According to French law, the EBITDA corresponds to the taxable income before any loss carry forwards. Specific net financing expenses and, to some extent, depreciation, provisions, and capital gains are not considered for the EBITDA calculation.

[18] Only specific depreciations and amortizations are considered to calculate the chargeable EBITDA, whereas the ATAD does not differentiate between different types of depreciation and amortization.

[19] EBITDA is the corporate income tax base calculated under general rules, increased by the exceeding borrowing costs, depreciation, and the previous years' decrease related to the interest limitation rules (however, not exceeding the net financing capacity for the given year). It is decreased by the corporate income tax base, increasing items related to the interest deduction limitation. Income from a long-term public infrastructure investment project is not considered for EBITDA calculations.

[20] It is not specifically prescribed in the Latvian laws that the profit is increased by the exceeding borrowing costs. Specifically, the law mandates that interest payments and depreciation are added back to the profit before tax.

[21] Under Portuguese law, EBITDA is calculated by adding back net interest expenses and deductible depreciation and amortization to the taxable profit or loss.

[22] For the interest barrier rule, Slovakia restricts the deduction of exceeding borrowing cost to 30% of the EBITDA; however, for the thin capitalization rule, the deduction of exceeding borrowing cost is limited to 25% of the accounting EBITDA.

[23] In France, thin capitalization is defined as a company exceeding a 1.5:1 related party debt-to-equity ratio. It cannot demonstrate that its overall debt-to-equity ratio is not more than two percentage points above the debt-to-equity ratio of the consolidated group. The share resulting from the following equation is subject to the 30% EBITDA limit, whereas the remaining exceeding borrowing costs are subject to the 10% EBITDA limit.

FI	✓	✓	✓		✓	✓	✓	
FR	✓	✓	✓	✓		✓	✓	✓
GR	✓	✓	✓	✓	✓		✓	
HR	✓	✓					✓	✓
HU	✓		✓	✓	✓	✓	✓	
IE	✓	✓	✓	✓	✓	✓	✓	
IT								
LT	✓	✓	✓		✓		✓	
LU	✓	✓	✓		✓	✓	✓	
LV								✓
MT	✓	✓	✓		✓	✓	✓	
NL	✓						✓	
PL	✓				✓			✓
PT	✓				✓			✓
RO								
SE	✓							✓
SI	✓	✓				✓	✓	
SK	✓	✓			✓	✓		✓

Notes: This table displays the exceptions from ATAD's interest barrier rule implemented in the EU.

Table *2* illustrates the exceptions from a country's interest barrier rule. The ATAD provides seven potential exceptions to the application of the interest barrier rule. First, the de minimis rule allows a taxpayer to deduct exceeding borrowing costs up to a specified threshold, independent of the EBITDA. If an entity is part of a fiscal unity, the rules and the corresponding threshold apply to the group as a whole. All EU Member States besides Italy, Latvia, and Romania have implemented the de minimis rule. Austria, Belgium, Bulgaria[24], Croatia, Cyprus, Estonia, France[25], Germany[26], Greece, Ireland, Lithuania, Luxembourg, Malta[27], and Slovakia[28] apply the 3 Mio. EUR threshold as mandated by Art. 4 (3) lit. a) ATAD, whereas the Netherlands, Portugal, Slovenia, and Spain implement a threshold of only 1 Mio. EUR. Finland adopted a stricter threshold, setting the limit at 0.5 Mio EUR. Countries that do not use the Euro

[24] The threshold applies to the individual taxpayer, not on a group basis.

[25] For certain cases of thin capitalization (the same as defined above), a de minimis threshold of 1 Mio. EUR applies to part of the exceeding borrowing cost (same part as defined above).

[26] Germany has implemented the de minimis rule under the ATAD's interest barrier provisions so that, once the threshold is reached, the entire amount of net interest expenses falls under the general interest limitation rule (i.e., deductible up to 30% of the taxable EBITDA). In contrast, under the de minimis rule set out in the ATAD, interest expenses up to the respective threshold remain deductible, even if the total amount exceeds the threshold.

[27] The threshold applies to the individual taxpayer and not on a group basis.

[28] The 3 Mio. EUR de minimis threshold applies under the interest barrier rule, whereas under the thin capitalization rule, a de minimis threshold of 1 Mio. EUR applies.

as their functional currency introduced limits close to 3 Mio. EUR (Czech Republic, Denmark, Hungary), except for Poland (0.7 Mio. EUR) and Sweden (0.5 Mio. EUR).

Second, the standalone exception as of Art. 4 (3) lit. b) ATAD allows the taxpayer to fully deduct exceeding borrowing costs if it is a standalone entity. This is fulfilled if an entity is not a member of a corporate group. 15 countries have opted for this standalone exception.

Third, group escape 1, the equity-ratio escape, as described in Art. 4 (5) lit. a) ATAD, is the first of two group escape options. It is tied to the equity ratio of the group and allows the full deduction of excess borrowing costs for a member of a consolidated group that has an equity-to-total-asset ratio equal to or higher than the equivalent ratio of the given group. The equity-ratio escape is implemented in twelve Member States.

Fourth, group escape 2, known as group-ratio escape, as of Art. 4 (5) lit. b) ATAD permits the deduction of exceeding borrowing costs that exceed 30% of the EBITDA for a member of a consolidated group. This amount is calculated as the group ratio, which is the excess borrowing costs of the group vis-à-vis third parties over the group's EBITDA, multiplied by the taxpayer's EBITDA. Estonia, France, Greece, Hungary, and Ireland have implemented the group-ratio escape.

Fifth, under Art. 4 (7) ATAD, financial undertakings, such as credit institutions, insurance companies, or retirement funds, may be excluded from the application of the interest barrier rule. This applies to both independent financial entities and members of a consolidated group. 16 countries apply this exception.[29]

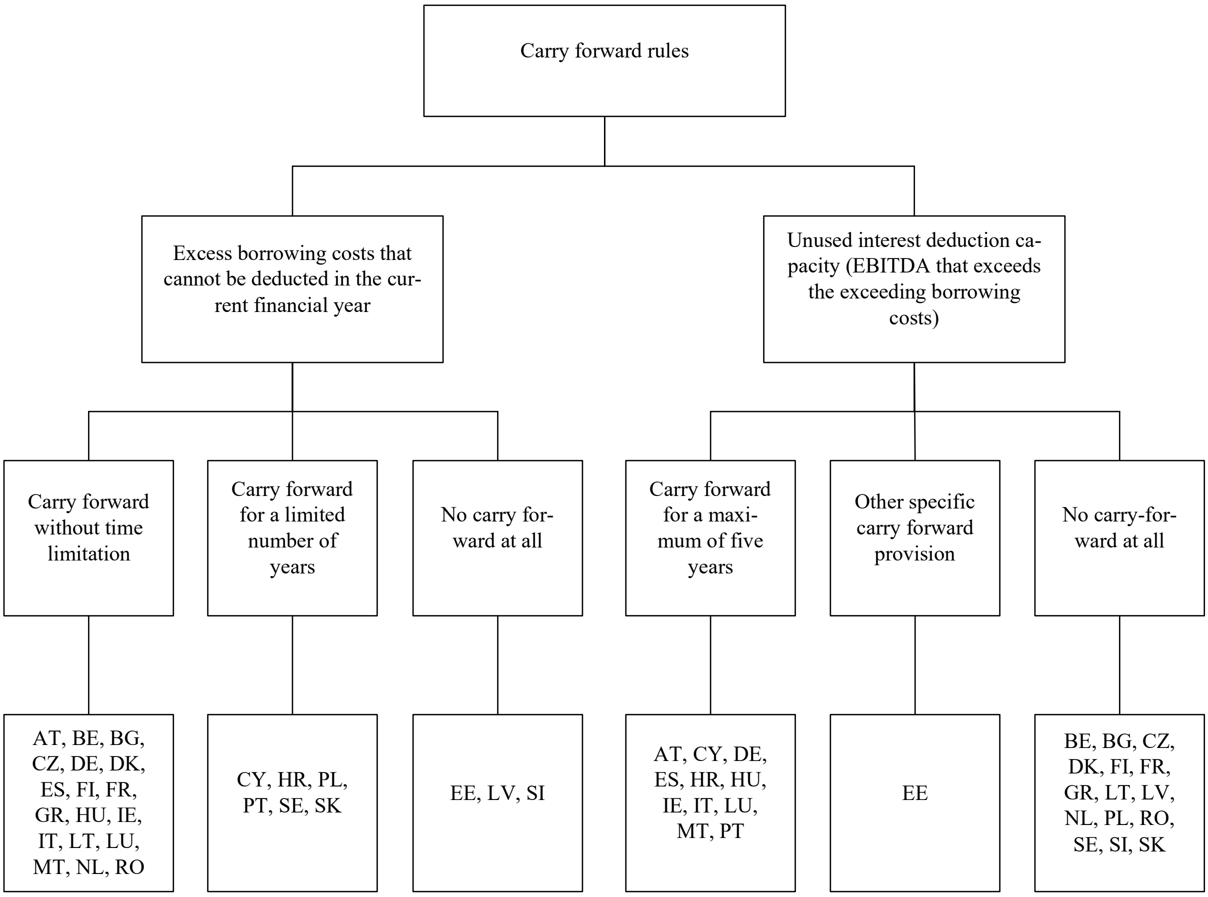
Sixth, Art. 4 (4) lit. a) ATAD offers exceptions for exceeding borrowing costs incurred on pre-existing loans.[30] Eleven Member States provide for this exception to the borrowing costs of pre-existing loans.

Seventh, Art. 4 (4) lit. b) ATAD provides an option to exclude exceeding borrowing costs from loans used to fund long-term public infrastructure projects from the scope of the interest barrier rule. It has been implemented by 16 Member States[31].

[29] Bulgaria, Poland, and Spain have narrower definitions of financial undertakings than those in the ATAD.
[30] Loans concluded before June 17, 2016, and not modified after that date.
[31] Austria, Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Croatia, Hungary, Ireland, Lithuania, Luxembourg, Malta, Netherlands and Sweden.

We further find that only five countries introduced additional exceptions to the ATAD’s interest barrier rule, namely Belgium[32], Latvia[33], Poland[34], Portugal[35], and Spain[36].

Figure 7: Carry forward provisions of non-deductible excess borrowing costs and unused interest deduction capacity under ATAD's interest barrier rule implemented in the EU



Notes: This figure displays the carry forward provisions for non-deductible excess borrowing costs and unused interest deduction capacity under ATAD's interest barrier rule implemented in the EU.

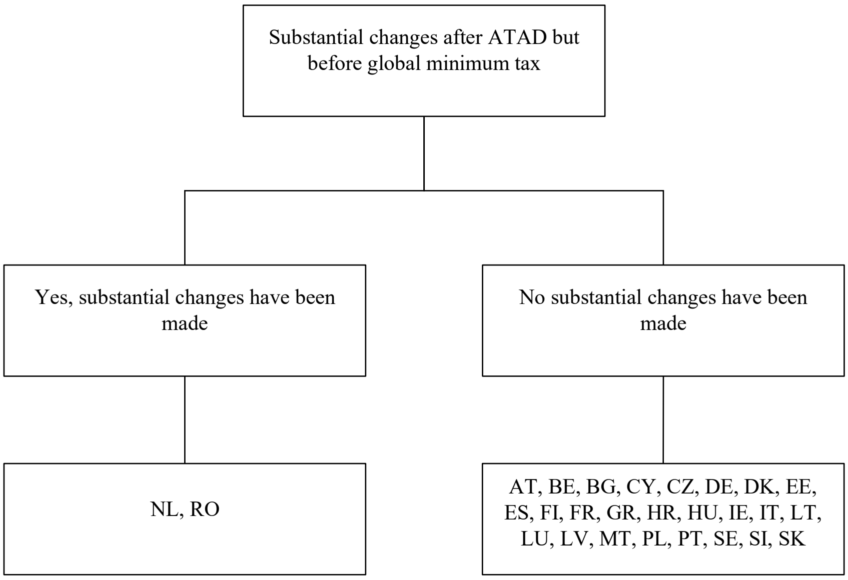
The ATAD contains options to carry forward excess borrowing costs that cannot be deducted in the current financial year and for unused interest deduction capacity, i.e., 30% of the EBITDA, which exceeds the exceeding borrowing costs. The profile of the implementation of these carry forward options is shown in Figure *7*. The ATAD specifies three alternative carry forward rules in Art. 4 (6). First, exceeding borrowing costs can be carried forward without time limitation (Art. 4 (6) lit. a) ATAD). Second, exceeding borrowing costs can be carried

[32] Belgium does not apply the interest barrier rule to domestic intra-group transactions.
[33] Latvia excludes exceeding borrowing costs in relation to loans from credit institutions and other institutions defined in the law.
[34] Poland excludes exceeding borrowing related to obtaining funds, directly or indirectly, from family foundations.
[35] Portugal does not apply the interest barrier rule to transactions within a Portuguese tax group.
[36] Spain excludes exceeding borrowing costs related to the liquidation of entities.

back for a maximum of three years and carried forward without time limitation (Art. 4 (6) lit. b) ATAD). Third, exceeding borrowing costs can be carried forward without time limitation, and, additionally, unused interest deduction capacity can be carried forward for a maximum of five years (Art. 4 (6) lit. c) ATAD). Even though the ATAD provides only these three options, the implementation of the carry forward options varies significantly across Member States. For the former, the carry forward of exceeding borrowing costs, we identified three categories. A carry forward of exceeding borrowing costs without a time limitation is the most common option. It has been implemented in 18 EU Member States[37]. Furthermore, six countries opted to carry forward excess borrowing costs for a limited number of years. Cyprus, Croatia, Poland, Portugal, and Slovakia allow a carry forward for a maximum of five years, while Sweden allows a carry forward for up to six years. Only three Member States[38] do not have carry forward options for excess borrowing costs in place. The carry forward options for the unused interest deduction capacity can also be classified into three response categories. Eleven EU Member States[39] allow for a carry forward of unused interest capacity for a maximum of five years. Moreover, Estonia is the only country that provides another specific carry forward provision.[40] In 15 Member States,[41] there is no possibility at all to carry forward unused interest capacity.

[37] Austria, Belgium, Bulgaria, Czech Republic, Germany, Denmark, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, and Romania.
[38] Estonia, Latvia, and Slovenia.
[39] Austria, Cyprus, Germany, Spain, Croatia, Hungary, Ireland, Italy, Luxembourg, Malta, and Portugal.
[40] If the borrowing costs of a tax period are below the EBITDA threshold, income tax may be recalculated on excessive borrowing costs from previous tax periods, allowing a refund of overpaid income tax. Such adjustments can be applied to the three preceding years.
[41] Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Lithuania, Latvia, Netherlands, Poland, Romania, Sweden, Slovenia, and Slovakia.

Figure 8: Substantial changes in the national adaptation of ATAD's interest barrier rule before the implementation of the Minimum Tax in the EU



Notes: This figure displays the significant changes in the national adaptation of ATAD's interest barrier rule before the implementation of the global minimum tax in the EU.

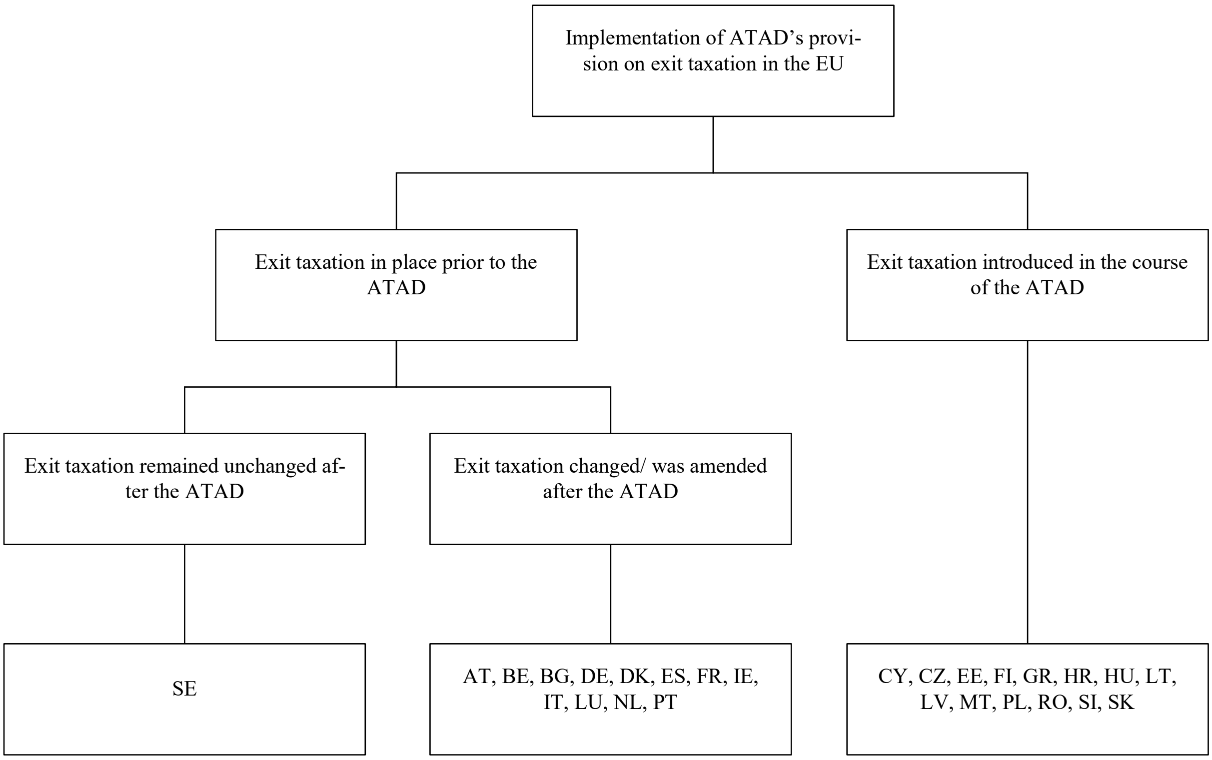
Figure *8* shows whether the EU Member States changed their countries' interest barrier rules significantly after the ATAD implementation but before introducing the global minimum tax. Only two of the 27 Member States changed their interest barrier rule, namely the Netherlands and Romania. The Netherlands reduced the EBITDA percentage to which excess borrowing costs can be deducted from 30% to 20% in 2022. Romania introduced a new threshold of 0.5 Mio. EUR for exceeding borrowing costs resulting from transactions with related parties in 2024. Before, the threshold was 1 Mio. EUR.

Overall, the implementation of the ATAD's interest barrier rule establishes a minimum standard of protection against profit shifting through excessive debt financing. Due to the multiple degrees of freedom in the ATAD, the implementation of the interest barrier rule differs across EU Member States in many respects. The calculation of the interest barrier varies slightly across countries due to differences in EBITDA calculations and limits. Moreover, the exceptions from the interest barrier rule are widely used but implemented differently, including several additional exceptions not mandated by the ATAD. The carry forward options also vary substantially between countries. Although the introduction of the interest barrier rule clearly restricts the potential for eroding the tax base in high-tax jurisdictions through excessive interest payments to low-tax jurisdictions, its implementation varies significantly across EU Member States, leaving a greater remaining leeway in some countries than in others.

3.2.3 *Exit Taxation*

In principle, taxpayers can intentionally or unintentionally relocate their assets and/or their tax residence out of a country's jurisdiction without legally transferring the assets or legally changing their statutory seat, thereby potentially terminating or limiting the right of this country to tax built-in gains accrued during the tax residency in this jurisdiction or during the allocation of the assets to the jurisdiction. Any subsequent sale or realization of built-in gains could then, generally, be taxed by the jurisdiction of the new location, even though the built-in gains have been generated in the first jurisdiction. Exit taxation aims to ensure that, in these cases, the countries of residence/of allocation of the assets can tax the economic value of any built-in gain accrued within their territory, even if the gain has not been legally realized at the time of exit.

Figure 9: Implementation of ATAD's provisions on exit taxation in the EU



Notes: This figure displays the implementation of ATAD's provisions on exit taxation in the EU.

Figure *9* shows the different timing of the implementation of exit taxation in the EU Member States before and after the introduction of the ATAD. In total, 13 Member States already had exit taxation in place before the ATAD. Twelve of these countries changed or amended their existing legislation in the course of the ATAD. Most of these countries changed or amended their exit taxation legislation with effect in 2019 or 2020; only Ireland (2018) and Spain (2021) reported different effective dates for their changes. Sweden is the only EU Member State that did not change or amend its legislation. 14 Member States introduced exit taxation provisions for the first time as part of the ATAD implementation. Eleven of these countries introduced exit taxation in 2020, while Romania, Slovakia (both in 2018), and Poland (in 2019) introduced the ATAD exit taxation provisions earlier.

Table 3: Coverage of transfers of ATAD's provisions on exit taxation in the EU

Country	Transfer of assets from head office to PE in another member state or third country	Transfer of assets from PE to head office or PE in another member state or third country	Transfer of tax residency to another member state or third country	Transfer of business by PE to another member state or third country
AT	✓	✓	✓	✓
BE	✓	✓	✓	✓
BG	✓	✓	✓	✓
CY	✓	✓	✓	✓
CZ	✓	✓	✓	✓
DE	✓	✓	✓	✓
DK	✓	✓	✓	✓
EE	✓			
ES		✓	✓	✓
FI	✓	✓	✓	✓
FR	✓	✓	✓	✓
GR	✓	✓	✓	✓
HR	✓	✓	✓	✓
HU	✓	✓	✓	✓
IE	✓	✓	✓	✓
IT	✓	✓	✓	✓
LT	✓	✓	✓	✓
LU	✓	✓	✓	✓
LV	✓	✓		✓
MT	✓	✓	✓	✓
NL	✓	✓	✓	✓
PL	✓	✓	✓	✓
PT		✓	✓	✓
RO	✓	✓	✓	✓
SE	✓	✓	✓	✓
SI	✓	✓	✓	✓
SK	✓	✓	✓	✓

Notes: This table displays the coverage of transfers of ATAD's provisions on exit taxation in the EU.

Art. 5 (1) ATAD defines four types of transfers that should be covered by exit taxation: (1) the transfer of assets from the head office to a permanent establishment in another Member State or third country, (2) the transfer of assets from a permanent establishment in one Member State to the head office or another permanent establishment in another Member State or a third country, (3) the transfer of tax residence to another Member State or third country, and (4) the transfer of the business carried on by a permanent establishment from a Member State to another Member State or to a third country. Table *3* shows the types of transfers implemented by each EU Member State. 23 Member States cover all four types of transfers in their exit tax legislation. The four countries with exceptions are Estonia, Portugal, Spain, and Latvia. Estonia's exit taxation only covers transfers of assets from a head office to a permanent establishment (Type 1), which is the only type of transfer not covered in the Portuguese and Spanish transpositions.[42] Latvia does not tax the transfer of tax residence.[43] Sweden additionally applies exit taxation when a business ceases its operations.

Table 4: Option to defer payment of ATAD's provisions on exit taxation in the EU

Country	Right to defer payment of exit tax available	Guarantee as a condition to grant the deferral	Country charges interest on deferred payment
AT	✓		
BE	✓		
BG	✓		✓
CY	✓	✓	✓
CZ	✓	✓	✓
DE	✓	✓	
DK	✓		✓
EE	✓		✓
ES	✓	✓	✓
FI	✓	✓	✓
FR	✓		
GR	✓	✓	
HR	✓	✓	✓
HU	✓	✓	
IE	✓	✓	✓
IT	✓	✓	✓
LT	✓		
LU	✓		
LV			
MT	✓	✓	✓
NL	✓	✓	✓
PL	✓	✓	✓
PT	✓	✓	✓

[42] Both countries apply worldwide taxation, making the inclusion of transfer of assets from the head office to a PE redundant.
[43] It is not possible for Latvian companies to change tax residency without being dissolved.

RO	✓	✓	✓
SE	✓	✓	✓
SI	✓	✓	✓
SK	✓	✓	✓

Notes: This table shows the option to defer payment of ATAD's provisions on exit taxation in the EU.

Further, Art. 5 (2) ATAD provides the right to defer the payment of an exit tax, allowing it to be paid in instalments over five years. This deferral option should be granted for all transfers within the EU or to countries that are party to the EEA agreement. Table *4* provides an overview of the Member States' implementation of the option to defer the payment. 26 EU Member States include a deferral option in their national legislation. Austria and Sweden have established different time allowances for the deferral period.[44] Latvia does not offer any deferral option.

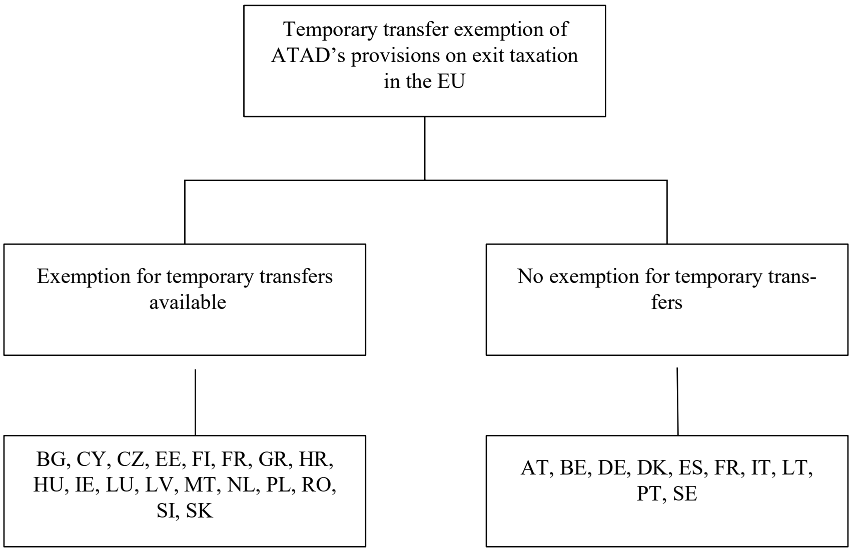
If the option for deferral is included in national law, EU Member States may also require a guarantee as a condition for granting the deferral according to Art. 5 (3) ATAD. 18 Member States include this option in their national implementation. It is important to note that, under ATAD, a guarantee should be requested only in cases of demonstrable and actual risk of non-recovery. Most countries implemented this condition accordingly. However, in some EU Member States, such as Croatia, Germany, Italy, and Poland, the guarantee is usually requested, indicating a stricter implementation of the ATAD provisions.

Additionally, Art. 5 (3) ATAD allows EU Member States to charge interest on deferred payments. 18 Member States implemented this option in their national law. The determination of the applicable interest rate varies substantially across Member States.[45]

[44] Austria requires a shorter deferral period of two years in the case of a transfer of current assets. In Sweden, the deferral of payment is based on a yearly basis.

[45] The interest rate can be determined on an annual, monthly, or daily basis, with reference to other rates such as the national bank's interest rate or inflation rates or as a fixed interest rate as defined in the respective national law.

Figure 10: Temporary transfer exemption of ATAD's provisions on exit taxation in the EU



Notes: This figure displays the temporary transfer exemption of ATAD's provisions on exit taxation in the EU.

In the case of a temporary transfer of assets, where the assets are set to revert to the original EU Member State within 12 months, Art. 5 (7) ATAD specifies an exemption from exit taxation for certain types of transfers. Figure *10* shows that 17 EU Member States have incorporated this exemption into their national laws for asset transfers related to the financing of securities, assets posted as collateral, or transfers made to meet prudential capital requirements or for liquidity management, in line with ATAD provisions. Ten countries, however, do not exempt temporary transfers from exit taxation.

Since the implementation of the ATAD and prior to the introduction of the global minimum tax, exit tax legislation has remained stable in most Member States. However, Sweden is the only member state to have amended its legislation in 2020 regarding the deferral of payments.

Overall, the implementation of exit taxation is homogeneous across EU Member States, as most deviations regarding the coverage of transfers stem from differences in the underlying national corporate tax systems. Article 5 (7) of the ATAD provides several application options on exit tax deferrals and exemptions for temporary transfers. Most EU Member States implemented these options fully or partially, thereby creating minor variations in the design of tax deferral and temporary transfer exemptions across countries.

3.2.4 Hybrid Mismatch Provisions

Hybrid mismatch provisions seek to counter base erosion by neutralizing tax advantages arising from differences in tax systems in the classification of payments, financial instruments, or entities. Thus, hybrid mismatch provisions ensure that profits are taxed at least once by resolving the outcomes of such classification differences between tax systems.

In terms of the personal scope, the hybrid mismatch provisions apply to all taxpayers subject to corporate income tax in one or more EU Member States, including the permanent establishments of entities resident in third countries (Art. 1 (1) ATAD).[46] The provisions require that the hybrid mismatch outcome arises between associated enterprises, between a head office and its permanent establishment, or in a structured arrangement (Art. 2 (9) lit. c) ATAD). Under ATAD's general definition, an associated enterprise is defined as an individual or entity that holds, directly or indirectly, at least 25% of the voting rights, capital ownership, or rights to a share of profit in another entity, or in the taxpayer itself. Where the same person or entity holds such a participation in multiple entities, all entities involved are regarded as associated enterprises. For the hybrid mismatch provisions,[47] a higher 50% threshold applies, and the definition is further extended to cover entities acting together in terms of voting rights or capital ownership, entities within the same consolidated group as the taxpayer, and cases of significant influence over the management of the taxpayer (Art. 2 (4) ATAD).

In terms of the material scope, the ATAD mainly addresses three types of mismatch outcomes and how they are neutralized. The first type is a double deduction, which describes the deduction of the same payment, expenses, or losses in two or more jurisdictions (Art. 2 (9) lit. b) ATAD). A double deduction is resolved by disallowing deductions primarily in the investor jurisdiction or, where the deduction is not denied in the investor jurisdiction, in the payer jurisdiction.[48] The second type is a deduction without inclusion, which refers to a deduction of a payment in one jurisdiction without including it as income in another jurisdiction (Art. 2 (9) lit. c) ATAD). Cases of deduction without inclusion are neutralized by denying the deduction of the payment in the payer's jurisdiction or, where the deduction is not denied in the payer's jurisdiction, the payment is included in the income in the payee jurisdiction (Art. 9 (2) ATAD).

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[46] Please note that, following Art. 1 (2) ATAD, in the case of reverse hybrid mismatches (Art. 9a ATAD), the personal scope extends to entities that are treated as tax transparent by an EU Member State.

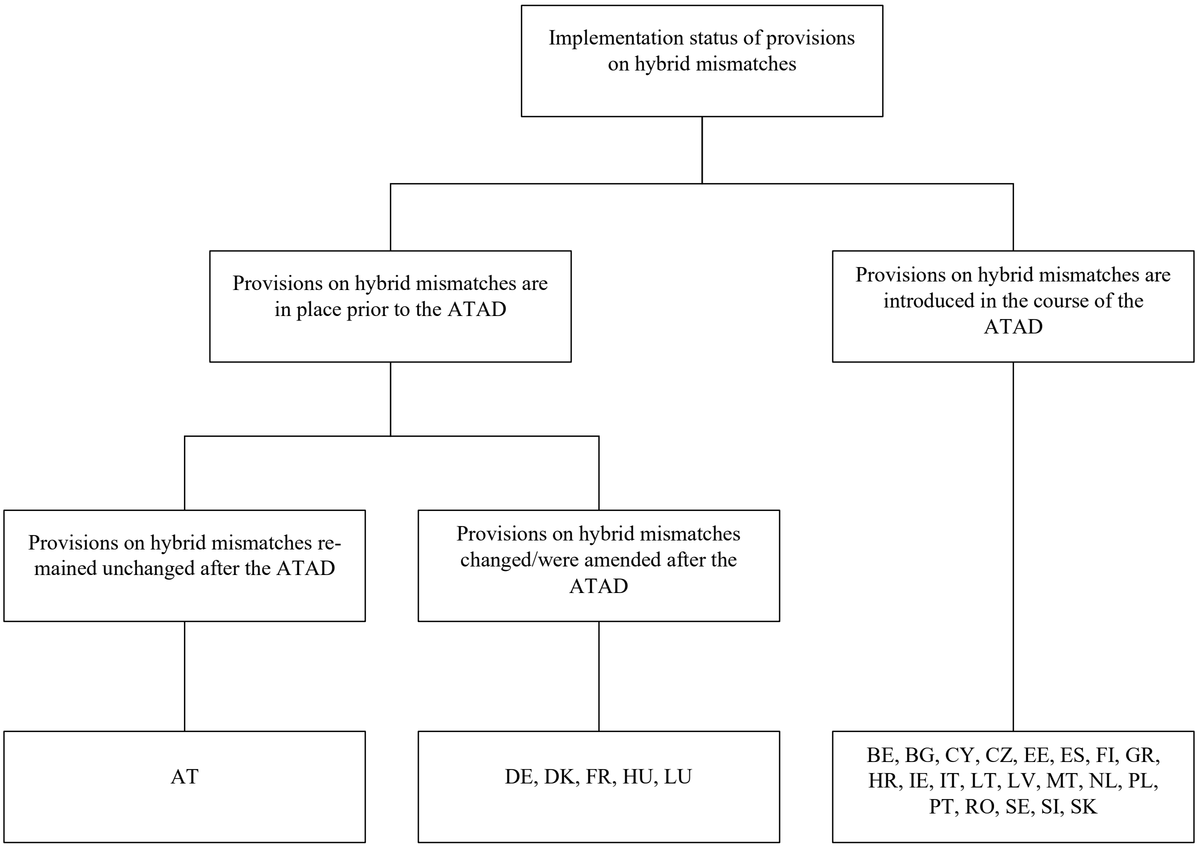
[47] Please note that this extension does not apply to tax residency mismatches (Art. 9b ATAD).

[48] Art. 9 (1) ATAD. Additionally, there is the option to set off any such deduction against dual inclusion income, whether arising in a current or subsequent tax period.

The third case is imported hybrid mismatches, which shift the effect of a hybrid mismatch between parties in third countries into the jurisdiction of an EU Member State through the use of a non-hybrid instrument, thereby undermining the effectiveness of hybrid mismatch provisions. Imported hybrid mismatches are resolved by denying deductions for payments that directly or indirectly fund deductible expenditure giving rise to a hybrid mismatch, unless an equivalent adjustment has already been made in another jurisdiction (Art. 9 (3) ATAD). ATAD I[49] covered the first two types of hybrid mismatch outcomes. ATAD II[50] subsequently expanded the scope of the rules in 2017.[51] Most notably, it also introduced specific provisions for further cases, including **r**everse hybrid mismatches (Art. 9a ATAD) and tax residency mismatches (Art. 9b ATAD).

[49] Council Directive (EU) 2016/1164 of 12/07/2016.
[50] Council Directive (EU) 2017/952 of 29/05/2017.
[51] Council Directive (EU) 2016/1164 of 12/07/2016 (ATAD I) initially introduced EU-wide rules targeting certain hybrid mismatches, but it was limited in scope. It addressed mainly mismatches within the EU and only a subset of hybrid arrangements. Recognizing the need for broader coverage, Council Directive (EU) 2017/952 of 29/05/2017 (ATAD II) amended ATAD I by significantly expanding the framework. It extended the hybrid mismatch rules to cover mismatches involving third countries (non-EU jurisdictions), introduced provisions on imported mismatches, and widened the categories of arrangements subject to neutralization. As a result, ATAD II does not operate independently; rather, it supplements and amends ATAD I. Therefore, throughout this chapter, we refer to both Directives when analyzing the implementation of the ATAD's hybrid mismatch provisions.

Figure 11: Implementation of ATAD's provisions on hybrid mismatches in the EU

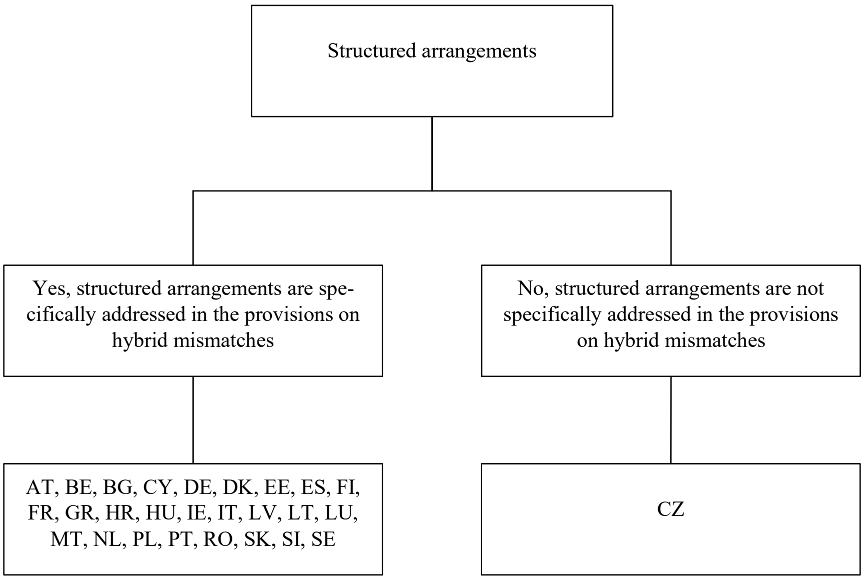


Notes: This figure displays the implementation of ATAD's provisions on hybrid mismatches in the EU.

Hybrid mismatch provisions have the latest implementation deadline among the ATAD measures, due to the expansion in 2017. The regulations had to be implemented by December 31, 2019, and effective by January 1, 2020, except for the provisions on reverse hybrid mismatches that had to be implemented by December 31, 2021, and effective by January 1, 2022. Figure *11* illustrates the implementation status of ATAD’s hybrid mismatch provisions in the EU Member States. Prior to the ATAD, six countries already had national laws addressing hybrid mismatches. Among these, five EU Member States[52] amended their existing policies to comply with ATAD by 2020, while Austria left its provisions from 2011 unchanged. The remaining 21 countries[53] introduced hybrid mismatch provisions for the first time under ATAD, with most becoming applicable in 2020. Only the provisions of Belgium (2019) and Slovakia (2018) became effective ahead of the implementation deadline, while Poland (2021) and Spain (2021) introduced theirs after the implementation deadline.

[52] Germany, Denmark, France, Hungary, and Luxembourg.
[53] Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Spain, Finland, Greece, Croatia, Ireland, Italy, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, and Slovak Republic.

Figure 12: Implementation of ATAD's provisions on structured arrangements



Notes: This figure displays whether provisions on hybrid mismatches in the EU specifically address the case of structured arrangements.

While the general framework of the personal scope of ATAD's hybrid mismatch provisions applies across all EU Member States, individual jurisdictions may provide additional specifications for certain cases to reinforce their national rules. The hybrid mismatch provisions apply to hybrid mismatch outcomes involving pairs of associated enterprises, but to broaden the personal scope of the provisions, also apply to structured arrangements. A structured arrangement is defined as an arrangement involving a hybrid mismatch where the mismatch outcome is priced into the terms of the arrangement, or an arrangement that has been designed to produce such an outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the resulting tax benefit (Art. 2 (11) ATAD).

Figure *12* shows that the concept of structured arrangements is explicitly included in the domestic legislation of all EU Member States except the Czech Republic, where the legislative wording and related guidance remain very general.

Table 5: Regulation of specific cases of hybrid mismatches addressed in ATAD's provisions on hybrid mismatches implemented in the EU

Country	Disregarded permanent establishment / Hybrid permanent establishment mismatch	Hybrid transfer / Hybrid financial instruments mismatch	Reverse hybrid mismatches	Tax residency mismatches
AT	✓	✓	✓	✓
BE	✓	✓	✓	
BG	✓	✓	✓	✓
CY	✓	✓	✓	✓
CZ				
DE	✓	✓	✓	✓
DK	✓	✓	✓	✓
EE	✓	✓	✓	✓
ES	✓	✓	✓	✓
FI	✓	✓	✓	✓
FR	✓	✓	✓	✓
GR	✓	✓	✓	✓
HR	✓	✓	✓	✓
HU	✓		✓	✓
IE	✓	✓	✓	✓
IT	✓	✓	✓	✓
LT	✓	✓		
LU	✓	✓	✓	✓
LV				✓
MT	✓	✓	✓	✓
NL	✓	✓	✓	✓
PL	✓	✓	✓	✓
PT	✓	✓	✓	✓

RO	✓	✓	✓	✓
SE	✓	✓	✓	✓
SI	✓	✓	✓	
SK	✓	✓	✓	✓

Notes: This table displays the regulation of specific cases of hybrid mismatches addressed in ATAD's provisions on hybrid mismatches implemented in the EU.

Also for the material scope of the ATAD, individual jurisdictions may provide additional specifications to reinforce their national provisions. The ATAD specifically addresses several specific cases of hybrid mismatches and how they should be resolved. Table 5 outlines how EU Member States' national laws address these specific cases of hybrid mismatches defined in the ATAD. The first case are disregarded permanent establishments and hybrid permanent establishment mismatches. These occur when entities are recognized as permanent establishments in their head office's jurisdiction but not in the jurisdiction where the permanent establishment operates (Art. 2 (9) lit. n) ATAD). This mismatch results in non-inclusion of income and is resolved by including the income in the EU Member State in which the taxpayer is resident for tax purposes (Art. 9 (5) ATAD). They are explicitly covered by tax law in all EU Member States, except in the Czech Republic and Latvia.

The second case are hybrid transfers or hybrid financial instrument mismatches, which occur when a financial asset is transferred, and multiple parties simultaneously are treated as the owner of the return and can simultaneously claim tax relief at source (Art. 2 (9) lit. 1) ATAD). This deduction without inclusion is resolved by limiting the tax benefit in proportion to the net taxable income regarding such payment in the EU Member State of the taxpayer (Art. 9 (6) ATAD). All EU Member States except the Czech Republic, Latvia, and Hungary cover hybrid transfers and financial instrument mismatches.

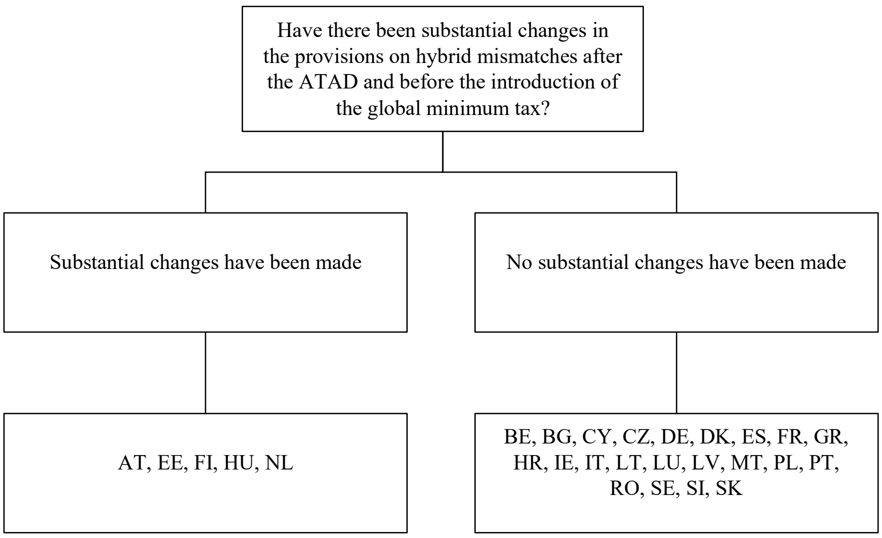
The third case are reverse hybrid mismatches, which arise when an entity that is tax-transparent in its jurisdiction of incorporation is treated as a taxable entity in the jurisdiction where its non-resident associates are located. Reverse hybrid mismatches result in non-inclusion of income and are resolved by including the income in the tax base of its jurisdiction of incorporation (Art. 9a ATAD). They are regulated in specific provisions in all EU Member States except the Czech Republic, Latvia, and Lithuania.[54]

[54] Reverse hybrid mismatches are not explicitly addressed but are still covered by the general hybrid mismatch provisions of the Czech Republic, Latvia, and Lithuania.

Finally, tax residency mismatches arise when a taxpayer is considered a tax resident in two or more different jurisdictions simultaneously and deducts the same payments, expenses, or losses in several jurisdictions. To resolve the double deduction, the EU Member State of the taxpayer shall deny the deduction, or, if both jurisdictions are EU Member States, the one in which the taxpayer is not deemed to be a resident according to the double taxation treaty between the two Member States (Art. 9 ATAD). There are specific provisions in all EU Member States except Belgium, the Czech Republic, Lithuania, and Slovenia.[55]

In addition to the previous specific types of hybrid mismatches asked for in our questionnaire, Austria, the Czech Republic, Germany, Greece, Ireland, and Luxembourg indicate that they also specifically address imported hybrid mismatches.[56]

Figure 13: Substantial changes in the national adaptation of ATAD's Provisions on hybrid mismatches before the implementation of the Minimum Tax in the EU



Notes: This figure displays significant changes in the national adaptation of ATAD's provisions on hybrid mismatches before the implementation of the global minimum tax in the EU.

Figure *13* presents an overview of significant changes in hybrid mismatch provisions after the implementation of the ATAD but before the introduction of the global minimum tax. Only five EU Member States made significant changes to their provisions. Austria, Finland, Hungary, and the Netherlands introduced regulations on reverse hybrid mismatches in line with ATAD II in 2022. Estonia amended its hybrid mismatch provision in 2024 by adding a collective investment vehicle hybrid exemption, retroactively effective from January 1, 2023. Additionally,

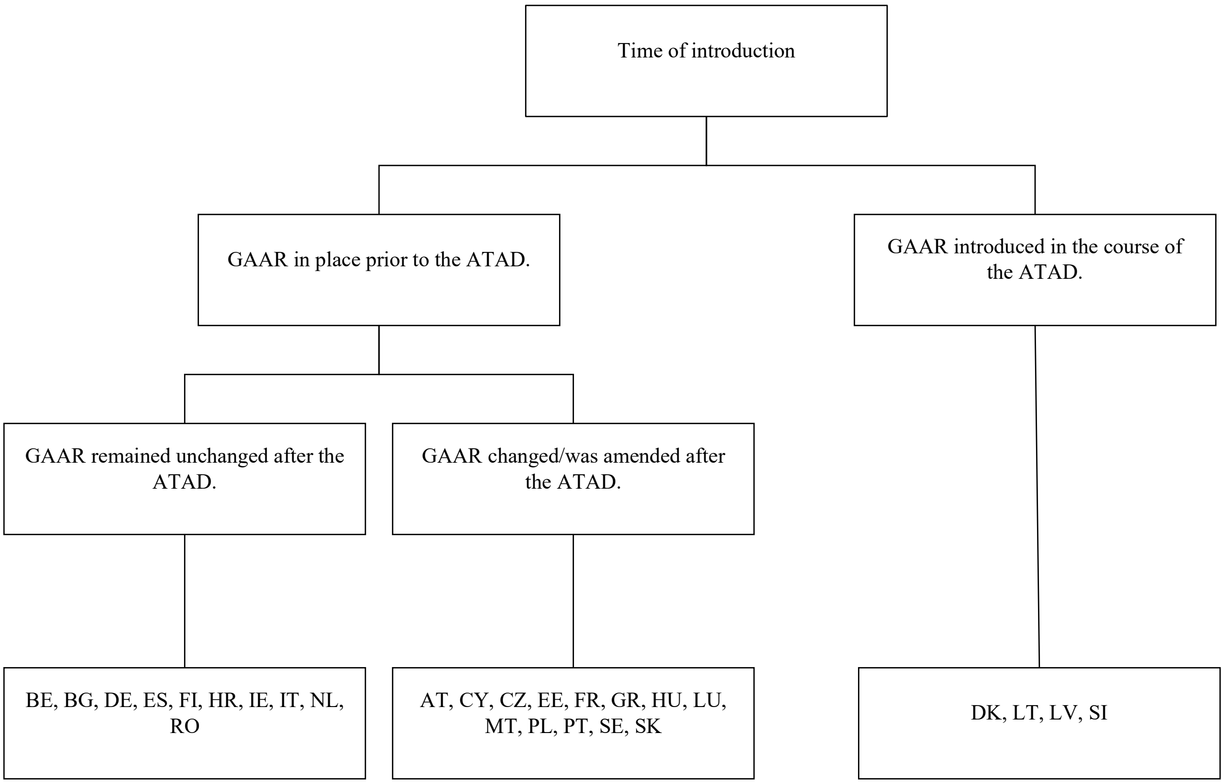
[55] Tax residency mismatches are not explicitly addressed but are still covered by the general hybrid mismatch provisions of the Czech Republic and Lithuania.
[56] Please note that we cannot determine based on our survey results whether the remaining EU Member States have legislations specifically addressing imported hybrid mismatches.

from 2024 onwards, specific hybrid mismatch situations are allowed to the extent that they are set off with a dual income inclusion. Overall, the ATAD established a legal basis across the EU to neutralize tax effects arising from hybrid mismatches, prompting countries to introduce new provisions or align their existing ones with the ATAD's requirements. Regarding the personal scope, all EU Member States except the Czech Republic explicitly address structured arrangements in their legislation, ensuring that the rules apply not only to associated enterprises but also to such arrangements. In terms of the material scope, most EU Member States have implemented detailed provisions covering specific types of hybrid mismatches outlined in the ATAD, complementing the broadly phrased general rules intended to capture a wide range of hybrid mismatches. In contrast, the Czech Republic, Latvia, and Lithuania appear to have vaguer national hybrid mismatch provisions. Altogether, these developments indicate a largely consistent implementation of the ATAD's hybrid mismatch provisions across the EU, without instances of much stricter implementations of the provisions.

3.2.5 General Anti-Avoidance Rule (GAAR)

The GAAR under Article 6 of the ATAD intends to discourage abusive tax practices in situations where specific provisions, such as the ATAD measures discussed in the previous chapters, are not applicable and, therefore, serves as a substitute norm. The GAAR targets transactions lacking economic substance (are not genuine) and requires three elements to be applicable: (1) The transaction generates tax benefits, (2) the transaction is abusive or undermines the intention of the law, (3) the main purpose or one of the main purposes of the transaction is tax avoidance (Waerzeggers & Hillier, 2016; Cowx & Kerr, 2023). If the requirements for a non-genuine arrangement are met, the arrangement shall be ignored for the purpose of calculating the corporate tax liability.

Figure 14: Implementation of GAAR in the EU

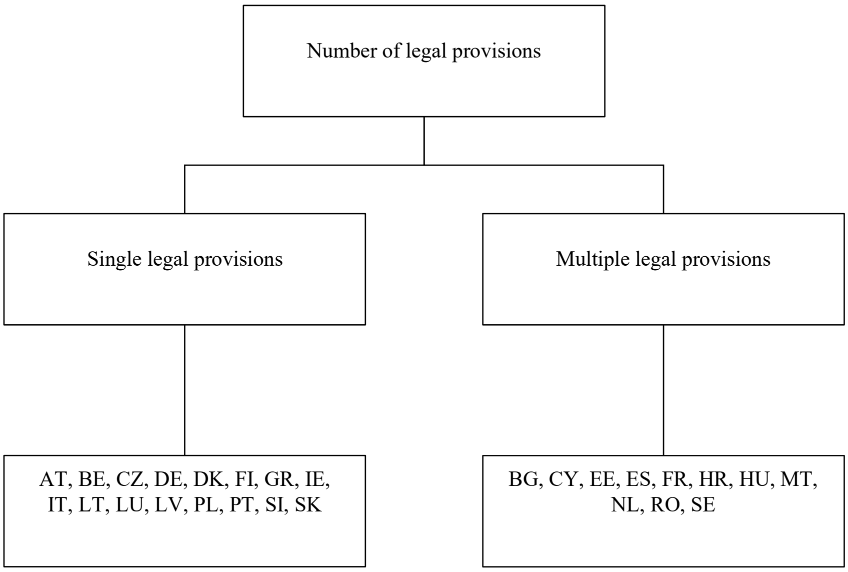


Notes: This figure shows the implementation of GAAR in the EU.

Figure *14* shows the GAAR implementation status in the EU Member States under ATAD. Prior to the introduction of the ATAD, 23 countries already had general anti-abuse provisions in place. While the provisions of 13 countries underwent minor amendments under ATAD,[57] ten provisions remained unchanged.[58] It is also notable that many GAARs established before the ATAD were first introduced in the 20th century.[59] Only Denmark (2019), Latvia (2018), Lithuania (2019), and Slovenia (2019) newly introduced the GAAR in the course of the ATAD implementation.

[57] The GAAR was amended through the ATAD in the following EU Member States: Austria (2019), Cyprus (2019), the Czech Republic (2019), Estonia (2019), France (2019), Greece (2019), Hungary (2019), Luxembourg (2019), Malta (2019), Poland (2019), Portugal (2019), Slovakia (2018), and Sweden (2016).
[58] The GAARs of Belgium (2013), Bulgaria (2007), Croatia (2016), Finland (1968), Germany (1977, first in 1919), Ireland (1989), Italy (2015), the Netherlands (1900), Romania (2004), and Spain (2003) were unaffected by the introduction of the ATAD.
[59] Countries that introduced their general anti-avoidance provisions already in the 20th century include Austria (1962), Cyprus (1979), the Czech Republic (1900), France (1941), Germany (1977), Hungary (1996), Ireland (1989), Malta (1978), Luxembourg (1934), Portugal (1999), and Sweden (1995).

Figure 15: Number of legal provisions related to GAAR

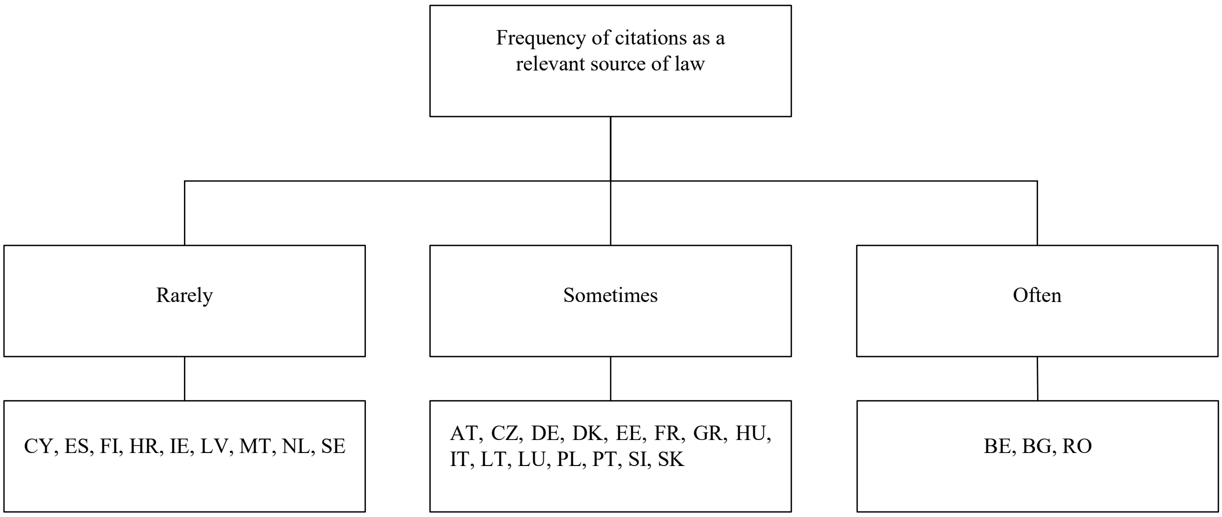


Notes: This figure shows the number of legal provisions related to GAAR.

Figure *15* outlines whether the GAAR is codified in a single or multiple provisions in the EU Member States. While 16 countries have implemented the GAAR through a single legal provision, Bulgaria, Croatia, Cyprus, Estonia, France, Hungary, Malta, Romania, Spain, and Sweden have incorporated the GAAR through multiple legal provisions, suggesting a more complex and potentially ambiguous implementation within their tax laws. An exception is the GAAR in the Netherlands. Here, the GAAR has not been codified, but is incorporated into the legal system through the doctrine of fraus legis, using similar hallmarks to the codified GAAR provisions of other EU Member States.[60]

[60] In the view of the Netherlands, the unwritten fraus legis doctrine suffices as the implementation of the EU GAAR. This doctrine asserts that when actions are deemed to contravene the underlying purpose of the law, any associated tax benefits should be denied. The authors agree with this position that the fraus legis does cover the EU GAAR. Please note that some may argue that the Dutch fraus legis does not cover the complete EU GAAR, and should therefore be assessed separately.

Figure 16: Frequency of citations as a relevant source of law



Notes: This figure shows the frequency of citations as a relevant source of law.

Figure *16* provides an overview of how frequently the GAAR has been cited as a relevant legal source by courts or prosecutors following the implementation of the ATAD, based on the perceptions of the tax experts questioned. The importance of the GAAR varies widely across EU Member States. In Croatia, Cyprus, Finland, Ireland, Latvia, Malta, the Netherlands, Spain, and Sweden, the GAAR is used only rarely in legal proceedings, consistent with its initial idea as a substitute for other anti-tax avoidance rules. On the other hand, in Belgium, Bulgaria, and Romania, the GAAR is applied more often as a source of law. The Bulgarian GAAR (Art. 16 CITA) is an exceptional provision, as it targets three distinct tax arrangements: (1) Agreements for granting the right to use tangible or intangible property free of charge, (2) interest-free loans or loans where the applied interest rate differs from the market interest rate, (3) any remuneration or compensation accrued for services, without such services being rendered. Hence, the Bulgarian GAAR goes beyond a general anti-tax avoidance rule implemented as a provision of last resort.

In summary, the provision of a GAAR as a fallback mechanism was widely provided through the tax systems of all but four EU Member States prior to the ATAD implementation. The legal implementation of GAARs varies across the EU, with the provisions being incorporated into one or more legal provisions depending on the EU member state. The applicability of the GAAR is decided upon on a case-by-case basis, with cases of prevalence serving as a benchmark for the stringency of application within an EU member state. In that regard, the current assessment by Navarro (2024) views the most likely outcome of the ATAD GAAR implementation as increased judicial dialogue and, therefore, as a means of limited harmonization. Perceptions of surveyed experts suggest that the GAAR is frequently applied in Belgium, Bulgaria, and Romania.

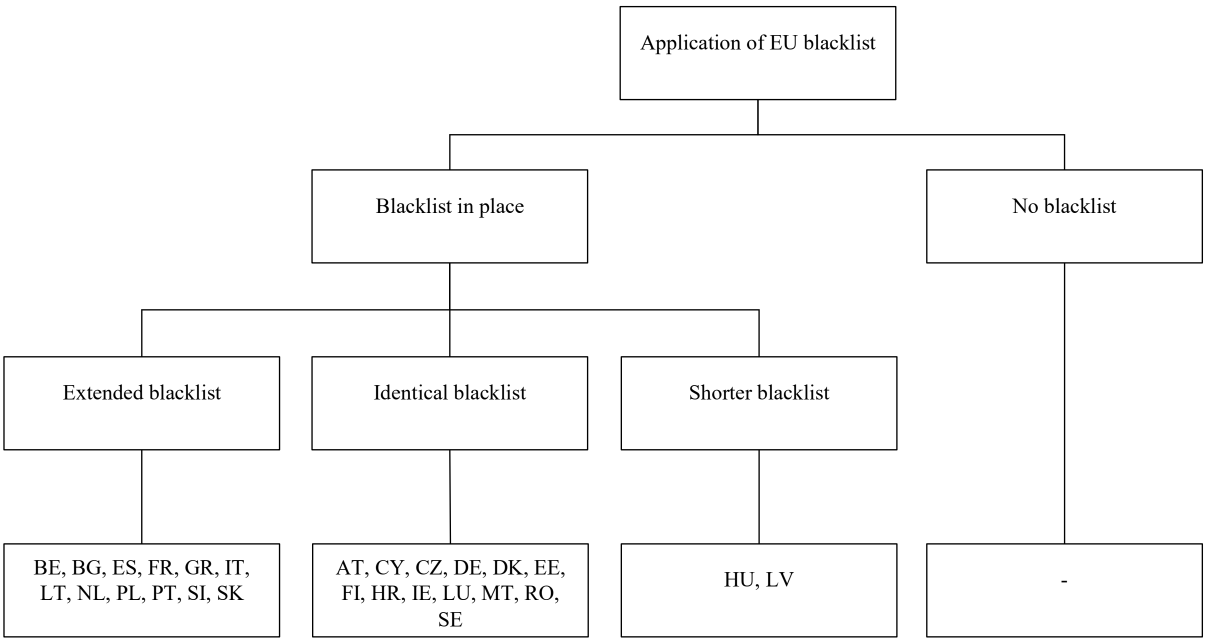
3.3 EU Blacklist and Code of Conduct Group (Business Taxation)

The EU Blacklist is part of the EU's efforts to combat tax evasion and harmful tax practices and lists jurisdictions that have failed to comply with good tax governance standards. The EU Blacklist aims to persuade listed jurisdictions to reform their tax systems towards better tax governance by putting pressure on them through defensive measures such as denying the deductibility of expenses, extending the application of CFC legislation, applying higher or targeted withholding tax rates, or denying or limiting the participation exemption.

3.3.1 Application and Scope

All Member States apply defensive measures against non-cooperative jurisdictions. As shown in Figure *17*, the definition of non-cooperative jurisdictions is identical to the EU Blacklist in 13 of the 27 EU member states that apply such measures. Twelve countries define more jurisdictions as non-cooperative than the EU Blacklist does. Only in Hungary and Latvia, the list of non-cooperative jurisdictions covers fewer jurisdictions than that of the EU.

Figure 17: Application and extent of EU Blacklist measures



Notes: This figure displays the application and extent of EU Blacklist measures.

The criteria according to which countries with a longer blacklist determine the additional jurisdictions vary across Member States. In most cases, these criteria relate to tax rates, the conclusion of agreements on the exchange of information in tax matters with these jurisdictions, or the existence of harmful profit determination regulations in these jurisdictions.

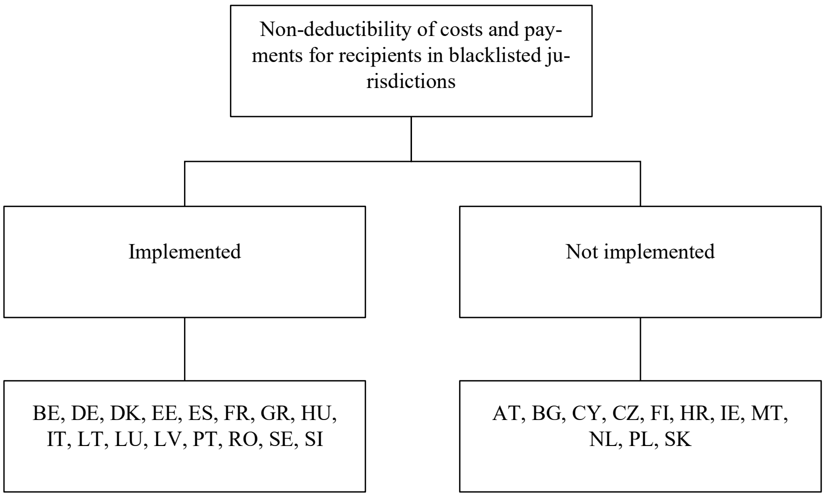
The most widely applied criterion is the tax rate. However, the specific provisions are structured differently. Some countries define an absolute threshold in the statutory tax rates of their respective jurisdictions, below which a jurisdiction is added to the blacklist. This is the case in Slovenia (12.5%), the Netherlands (9%), and Slovakia (0%), for example. The threshold value for the statutory tax rate differs here, leading to a heterogeneously stringent expansion of the blacklist. Other countries apply a threshold relative to their own tax rate. Portugal classifies countries as non-cooperative that tax profits at less than 60% of the Portuguese corporate tax rate. In Lithuania, a jurisdiction is added to the blacklist if the applicable tax rate is less than 75% of the own tax rate. Fewer countries focus on the exchange of information and profit determination rules when defining additional non-cooperative jurisdictions. France, in particular, focuses on the exchange of information, i.e., the existence or non-existence of an administrative assistance agreement and, if such an agreement exists, its effectiveness. Lithuania and Portugal also consider the efficiency of information exchange when assessing whether a jurisdiction is cooperative or non-cooperative. Even though the following analysis focuses on the defensive measures contained in the EU Council's Code of Conduct, it should be noted that individual Member States may have introduced extended or additional countermeasures against non-cooperative jurisdictions listed on the EU Blacklist.

3.3.2 Non-Deductibility of Expenses

Figure *18* provides an overview of the introduction of a non-deductibility rule for usually deductible expenses incurred in Member States when the recipient is a resident of a blacklisted jurisdiction, in accordance with the Council of the European Union Conclusions of 26 November 2019 (ST 14115/19). 16 of the 27 EU Member States have implemented such a measure, while the remaining countries have refrained from doing so.

Non-deductible expenses can include, for example, interest and license fees related to non-cooperative jurisdictions. However, some countries that have implemented this measure have introduced an escape clause, allowing the deduction of costs paid to recipients in non-cooperative jurisdictions if the taxpayer can demonstrate sufficient economic activity and substance in those entities. Country experts from France, Hungary, Lithuania, Portugal, and Spain stated in the survey that this is the case in their respective countries.

Figure 18: Non-deductibility of expenses



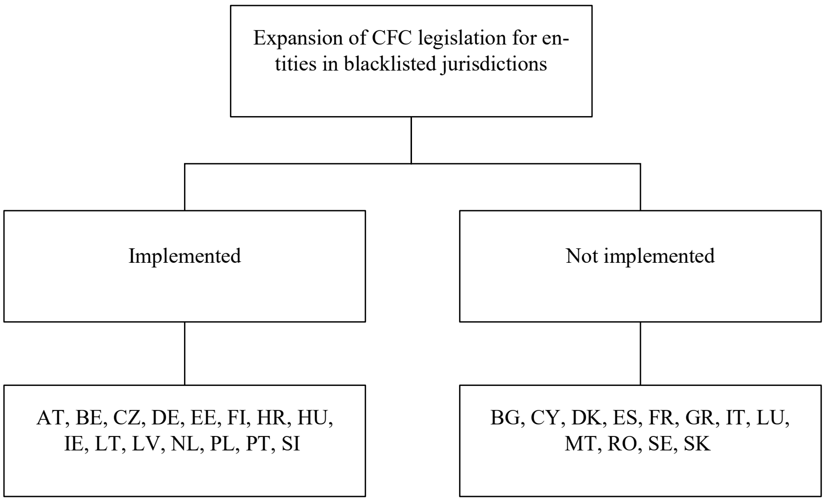
Notes: This figure displays the member states that implemented the non-deductibility of expenses as a defensive measure.

3.3.3 Expansion of CFC Legislation

Figure *19* shows the Member States that opted to expand their CFC legislation for entities located in blacklisted countries. While 15 EU Member States have extended the application of the CFC legislation to non-cooperative jurisdictions, twelve Member States have not.

Among the countries that introduced this measure, none of the experts provided information on a safe harbor regulation applicable to blacklisted countries. In contrast, multiple countries, such as Slovenia and Hungary, deliberately deny economic substance safeguards in such cases. Thus, any entity resident in a blacklisted jurisdiction that meets the respective requirements of the local (expanded) CFC legislation is, irrespective of its economic substance, subject to CFC legislation.

Figure 19: Expansion of CFC legislation

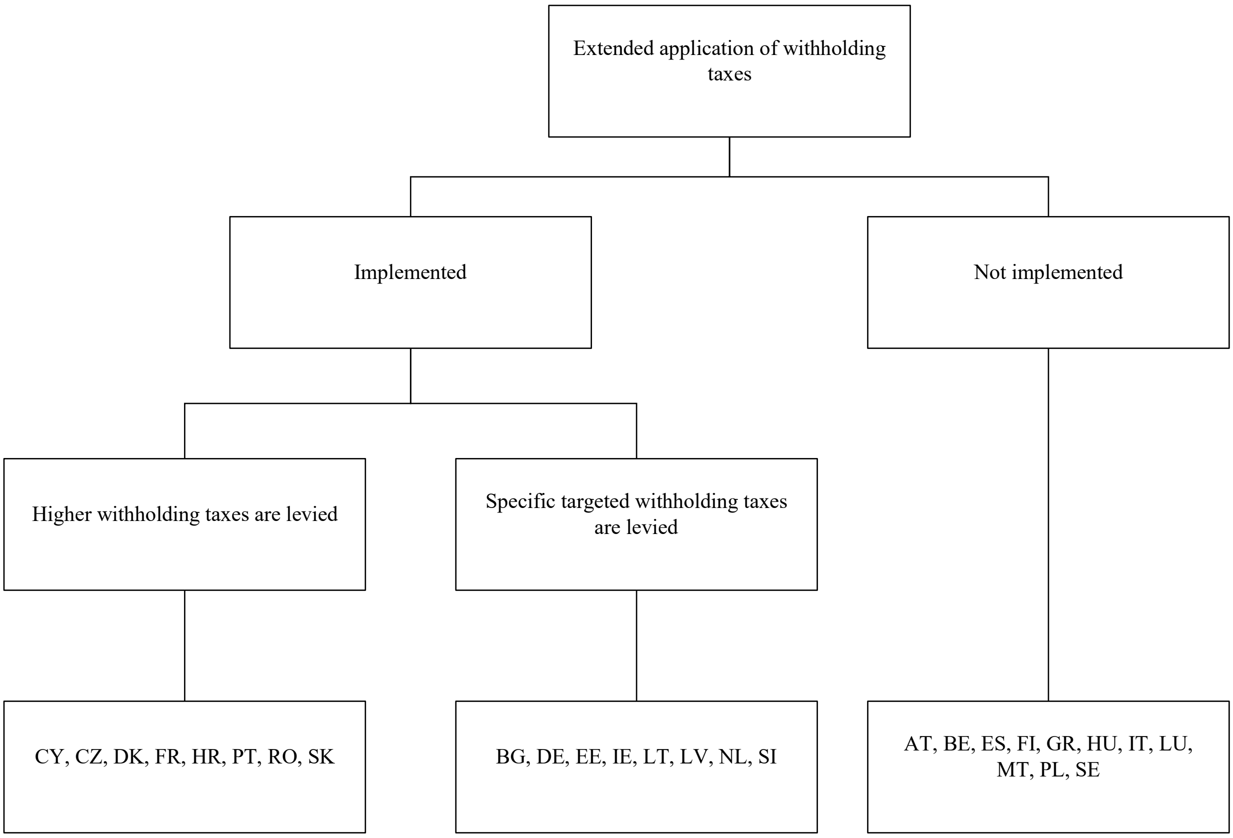


Notes: This figure displays the expansion of CFC legislation.

3.3.4 Extended Application of Withholding Taxes

Figure *20* shows the extended application of withholding taxes for payments from EU Member States to blacklisted jurisdictions. Eight Member States apply a higher withholding tax rate, and eight apply a specific targeted withholding tax rate when payments are made to residents of non-cooperative jurisdictions. The Czech Republic, for example, increased its withholding tax rate from 15% to 35%; Denmark from 27% to 44%; and France applies a withholding tax rate of 75%, which is by far the highest recorded in the questionnaire. The level of the targeted withholding tax rate varies across Member States.

Figure 20: Extended application of withholding taxes

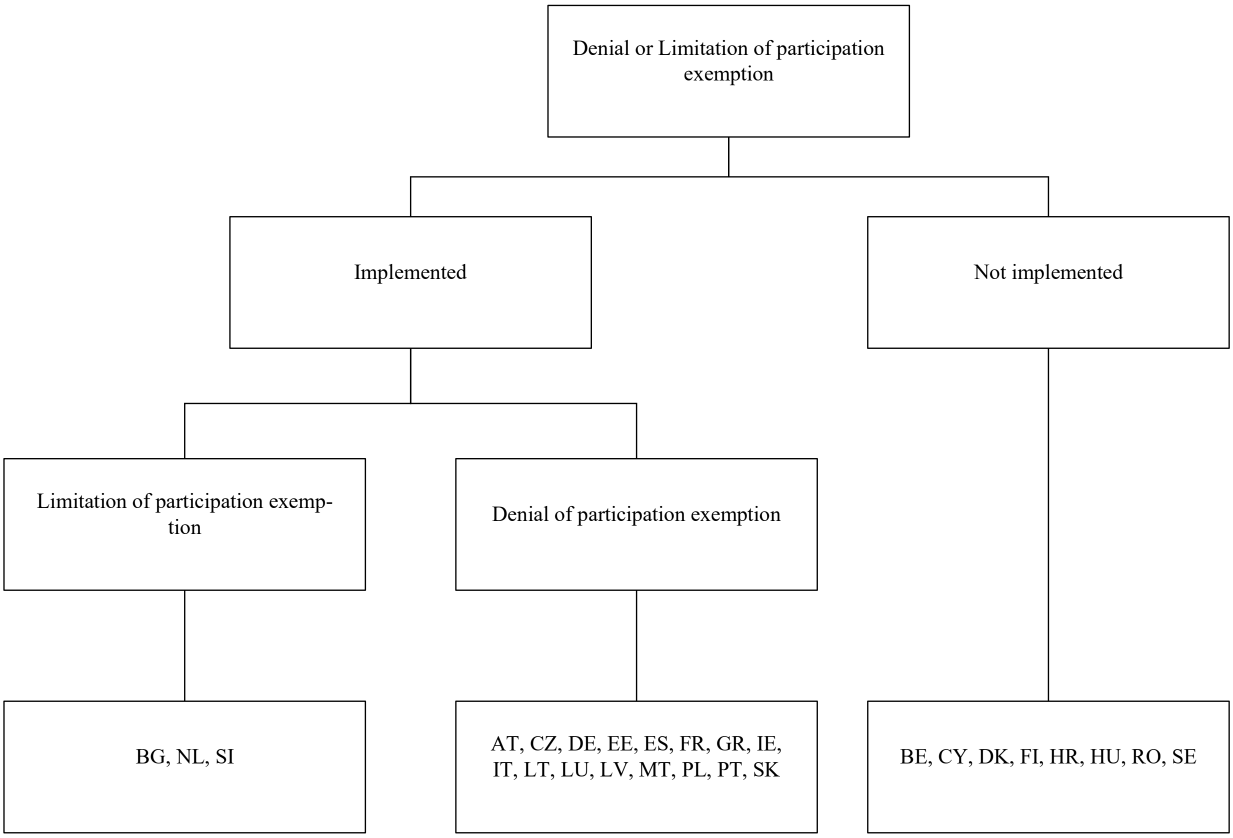


Notes: This figure displays the extended application of withholding taxes.

3.3.5 Denial or Limitation of the Participation Exemption

Figure *21* illustrates the member states that implemented denial or limitations of their participation exemption on profit distributions received from subsidiaries in non-cooperative jurisdictions. 16 EU Member States deny the participation exemption in such case, while three Member States limit it. This generally applies to both dividends and capital gains on the disposal of shares. Some Member States allow the participation exemption to be applied after all by means of a substance test and proof of economic activity in the respective jurisdictions. Country experts from France, Italy, Malta, and the Netherlands stated that their jurisdiction grants the possibility of such a substance test.

Figure 21: Denial or limitation of participation exemption



Notes: This figure shows the jurisdictions that implemented the denial or limitation of participation exemption.

Overall, the jurisdictional scope of the blacklists and the consequences of being listed on the respective blacklist of a member state vary widely across EU Member States. While all Member States apply a blacklist, some add more jurisdictions based on determinants such as low tax rates or the exchange of information, i.e., the lack of an administrative assistance agreement, or the low effectiveness of such an agreement, if it exists. Estonia, Germany, Latvia, Lithuania, Portugal, and Slovenia are the only Member States that decided to implement all four blacklist measures, whereas Cyprus (extended withholding taxation), Finland (expansion of CFC legislation), Malta (limitation of participation exemption), and Sweden (non-deductibility of expenses) only implemented a single measure, respectively. Of the remaining Member States, 13 opted to implement two measures, while four opted to implement three measures.

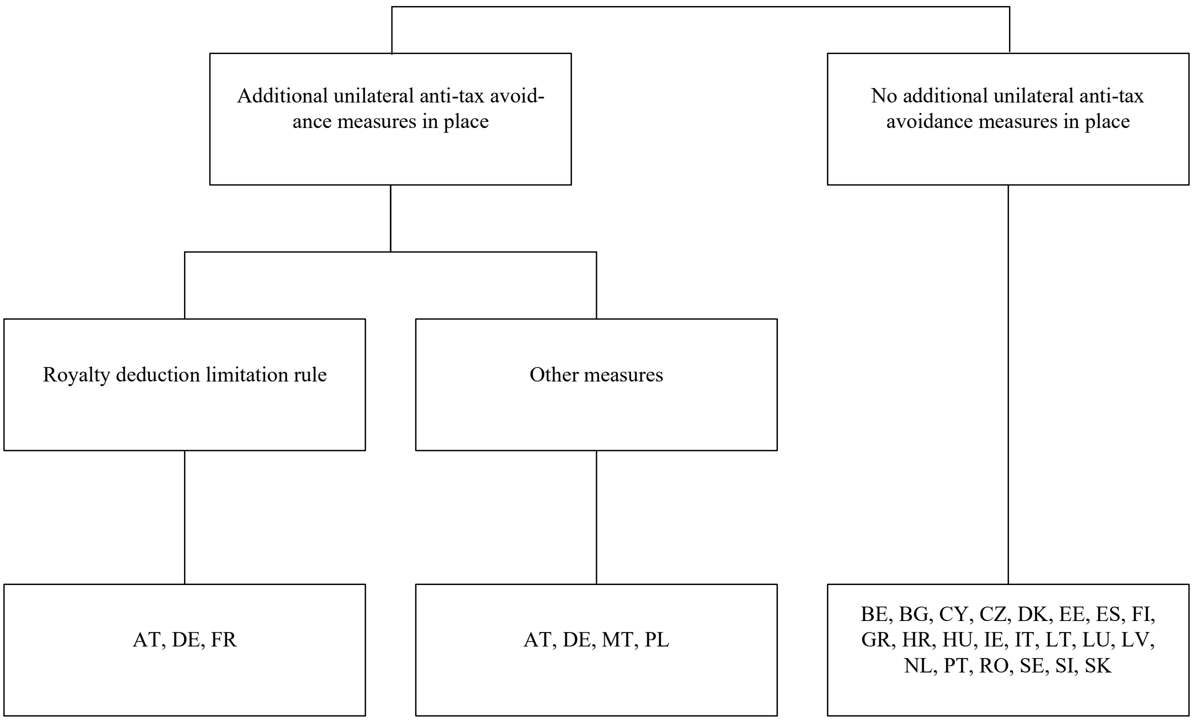
Among the four measures, the limitation of participation exemption is the most widely applied (implemented by 20 Member States), followed by the extension of withholding taxes and the non-deductibility of expenses (both implemented by 17 Member States, respectively). The expansion of CFC legislation is the least favored measure, implemented by 15 Member States.

It is important to note that some Member States have included escape clauses when implementing such a measure. These clauses prevent the respective Member States from applying stricter withholding taxation, stricter non-deductibility of expenses, or limitations or denials of participation exemptions on profit distributions if taxpayers can demonstrate economic activity and substance in the respective blacklisted jurisdictions. Interestingly, however, no country expert stated that economic substance safeguard regulations concerning the extension of CFC legislation have been introduced in their respective jurisdictions.

3.4 Additional Unilateral Measures

While all measures implemented in the context of the ATAD and the EU Blacklist followed a minimum harmonization approach, some countries also implemented unilateral measures that are not harmonized across EU Member States. Figure *22* gives an overview of the status quo of Member States' unilateral measures. While 22 countries have not implemented any unilateral measures, five Member States introduced additional non-harmonized provisions.

Figure 22: Additional anti-tax avoidance measures



Notes: This figure displays the additional anti-tax avoidance measures.

Table *6* provides descriptions of the unilateral measures implemented. Three countries, namely Austria, Germany[61], and France, have introduced rules limiting the deductibility of royalty payments. These rules aim to counter tax avoidance through the use of intellectual property by limiting the deductibility of royalty payments from the tax base of the licensee, depending on the tax rate of the licensor. Austria has a second anti-tax avoidance measure in place that excludes the participation exemption in cases where dividends are deductible in the source country. Poland introduced a shifted profits tax of 19%, which applies to specific costs, such as interest and royalties. Malta has introduced a special-interest deduction restriction on loans used to finance Maltese immovable property.

Table 6: Overview of unilateral anti-tax avoidance measures

Countries	Introduction year	Scope of the anti-tax avoidance measures
AT	2011	The measure comprises an exclusion of the participation exemption in case dividends are deductible in the source country.
AT	2014	The measure comprises a non-deductibility of interest and royalties paid to low-taxed countries.
FR	2019	The deduction of royalties paid to a related company is limited if the related company is not subject to an effective taxation of at least 25%, is not established in the EU or EEA, and benefits from a tax regime regarded as harmful by the OECD.
DE	2017	The provision denies the deduction of expenses arising from profit transfers or similar payments to related parties if the corresponding income is not taxable at the level of the recipient due to preferential rules or tax exemptions.
DE	2018	The provision partially limits the deduction of royalties from the tax base. It applies in cases where the royalty is paid to an associated enterprise resident in a country with a non-Nexus IP box and a corresponding tax rate below 15% (25% prior to December 2023).
MT	2010	A taxpayer cannot claim a deduction of any interest expenditures if: (1) the interest is payable to a person not resident in Malta; (2) the loan or credit finances the acquisition, development, construction, refurbishment, renovation, or immovable property situated in Malta or any right thereon; (3) the payor and the payee are related persons.
PL	2022	A mechanism for identifying and taxing shifted profits with 19% rate is in place. It contains a list of costs subject to shifted profits tax, which includes, e.g., interest, royalties, and costs of certain intangible services. The aim of implementing this tax was to enact provisions to counteract tax avoidance by transferring income to jurisdictions with a lower or negligible income tax rate.

Notes: This table displays unilateral anti-tax avoidance measures.

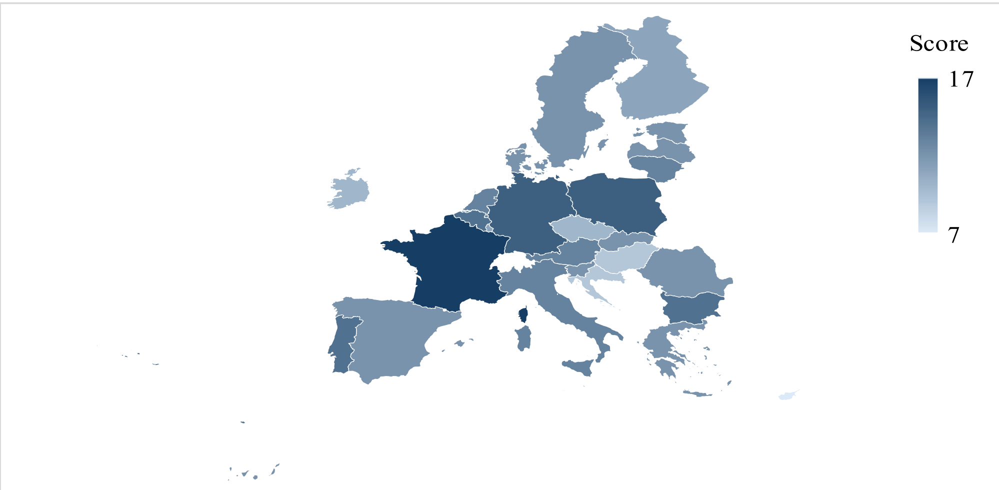
Overall, most countries adhere to the measures set out in the ATAD to combat tax avoidance. Only a minority of countries go beyond this and lay down further regulations.

[61] As part of a draft bill by the German federal government to amend the Minimum Tax Act, the so-called "Minimum Tax Adjustment Act" or "Mindeststeueranpassungsgesetz", the removal of the royalty deduction barrier is planned to take effect from the assessment period 2025 (as of 17 December 2025).

3.5 Country-level Analysis of Anti-Tax Avoidance Measures

The previous analysis suggests that all measures provide a minimum level of protection for the EU Member States' tax bases against aggressive tax planning. However, there is considerable variation in the implementation across Member States. First, this variation stems from different options set out in the ATAD and from rules that exceed the ATAD's minimum standard. Second, the EU Blacklist has been adopted differently by Member States. In this section, we therefore transition from a measure-level analysis to a country-level analysis of anti-tax avoidance measures to examine which countries implemented the measures more, respectively, less strictly. To achieve this, we develop a scale that assigns countries a value for each anti-tax avoidance measure: 1 (lenient implementation), 2 (moderate implementation), or 3 (strict implementation). The specific definitions for assigning scores to each measure are laid out in more detail in Appendix 1. For the seven anti-tax avoidance measures in total, comprising the five ATAD measures, as well as the blacklist and unilateral measures, a country can achieve a maximum score of 21 if all measures are implemented in the strictest form, while the minimum score of 7 reflects particularly lenient implementation. Figure *23* visually represents these results, with darker-shaded countries indicating stricter implementations and lighter-shaded countries indicating more lenient implementations.

Figure 23: Strictness of anti-tax avoidance measures across the EU



Notes: This figure shows the country-level analysis of anti-tax avoidance measures.

The average strictness score in the EU is 12.04, indicating an on average moderating implementation of anti-tax avoidance measures. Notably, the large, industrialized Member States such as France, Germany, Italy, the Netherlands, Portugal, and Spain opted for stricter implementation. This was to be expected, as these countries (1) typically levy higher CIT rates,[62] and (2) were key initiators of the BEPS program and, consequently, of the ATAD measures. The active role these nations played in shaping international tax reform initiatives is reflected in their more rigorous implementation of the measures.

France (17), Germany (15), and Poland (15) have the highest scores, reflecting the strictest implementations, while Croatia, Hungary, and Malta (each scoring 9) adopted more lenient approaches. Cyprus, with a score of 7, obtained the lowest score across all measures. The significant heterogeneity in implementation strictness across the EU undermines the objective of ATAD and the EU Blacklist, which aim to establish a coordinated and harmonized defense against harmful tax practices. This variation hampers the effectiveness of the measures by creating opportunities for regulatory arbitrage. Yet, a minimum level of protection and some degree of harmonization is achieved in the majority of countries.

3.6 Summary of the Comparative Analyses

The preceding sections highlight that EU Member States have implemented a diverse range of anti-tax avoidance measures through the harmonizing provisions of the ATAD and the EU Blacklist, as well as through unilateral measures. Examining these measures from both a measure-specific (Sections 3.2–3.4) and a country-level perspective (Section 3.5) reveals several important insights. First, the ATAD introduced a baseline of anti-tax avoidance rules, such as CFC rules, interest barrier rules, exit taxation, hybrid mismatches legislation, and the GAAR, well before the global minimum tax was introduced. In many instances, these rules already curtail profit-shifting behavior within the EU. By setting minimum standards that Member States were compelled to adopt, the ATAD effectively pre-empts certain avenues for aggressive tax planning. Second, as shown in the comparative analysis, numerous Member States either introduced entirely new anti-tax avoidance rules or significantly amended existing ones to align with ATAD requirements. These collective efforts have resulted in a more uniform framework across the EU than existed previously, although considerable differences remain in terms of strictness and scope. Member States that historically lacked certain provisions – such as formal CFC rules or interest barrier rules – have now established these regimes, contributing to a broader EU-wide standard. Third, our data indicates that many Member States have moved beyond the ATAD's minimum thresholds, seeking to strengthen local tax bases and curtail the

[62] See Spengel et al. (2024) for a ranking of corporate income tax rates across EU countries. The correlation between the strictness scores and the CIT rates collected by Spengel et al. (2024) amounts to 0.33, statistically significant at the 10%-level.

use of excessive debt financing in lower-tax jurisdictions. This underscores the growing consensus that these measures effectively target key channels through which MNEs shift profits.

While the ATAD imposes minimum standards for rules such as CFC legislation, the EU Blacklist frequently goes even further. It can prompt Member States to, among other things, deny deductions or apply higher withholding taxes when transactions involve blacklisted jurisdictions. Notably, the EU Blacklist also places pressure on non-EU jurisdictions to reform their tax regimes, complementing the EU's internal harmonization efforts. Lastly, the simultaneous operation of ATAD measures and the EU Blacklist can create complexity. On the one hand, blacklist-driven restrictions, such as denying participation exemptions or applying stricter withholding taxes, reinforce ATAD provisions. On the other hand, they can introduce complexity for MNEs and national tax authorities alike. Member States that opt for more stringent measures under either framework may encourage other EU countries to follow suit. Still, they also risk imposing additional compliance burdens on businesses with cross-border operations.

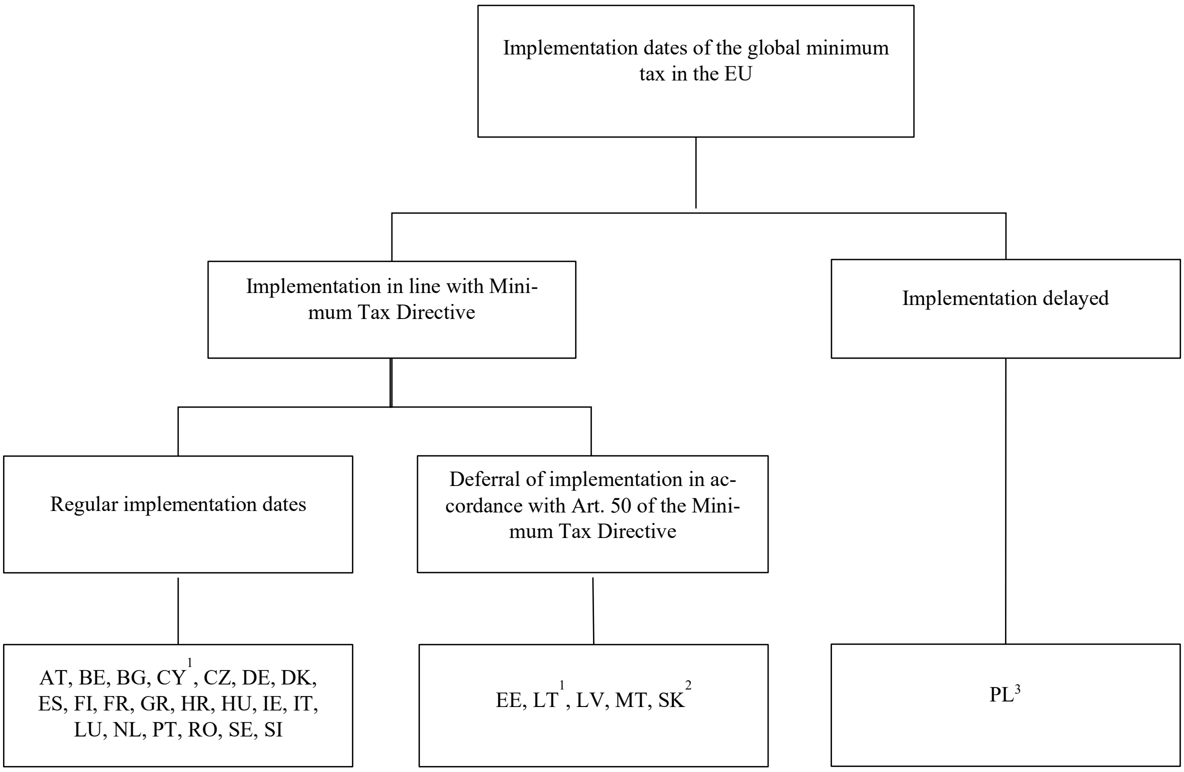
In summary, the EU's multifaceted approach through several anti-tax avoidance mechanisms already curtails key avenues of profit shifting. While variations in national implementations persist, a minimum level of protection is embedded across the Union. The global minimum tax may complement or negate the relevance of these existing instruments. As the EU continues to refine its tax policy framework, understanding the interplay of ATAD, the EU Blacklist, and the global minimum tax will be essential for designing coherent, effective strategies to combat tax avoidance.

4 Interactions of Current Anti-Tax Avoidance Measures in the EU with the Global Minimum Tax

4.1 Comparison of the Implementation of the Global Minimum Tax in the EU

The global minimum tax aims to combat tax-induced profit shifting and mitigate international tax competition by imposing a minimum effective tax rate of 15% on profits generated by large companies. While the implementation of the global minimum tax is mandated by the Minimum Tax Directive for all EU Member States, the timing of its introduction varies across countries.

Figure 24: Transposition of three main collection mechanisms



1: Implementation of QDMTT in 2025.

2: Implementation of QDMTT in 2024.

3: Planned implementations of IIR, QDMTT and UTPR in 2025, legislative process still ongoing.

Notes: This figure displays the transposition of three main collection mechanisms.

Figure *24* illustrates the initial application dates of the three main mechanisms for collecting the top-up tax: IIR, UTPR, and QDMTT. In accordance with the Minimum Tax Directive, Figure *24* shows that 21 out of 27 EU Member States have implemented the IIR and UTPR as proposed. Consequently, the IIR is applicable in these countries from January 01, 2024, and the UTPR from January 01, 2025. All of these countries have also implemented a QDMTT effective from January 01, 2024, except for Cyprus, where it will be effective from January 01, 2025.

Five Member States, namely, Estonia, Latvia, Lithuania, Malta, and Slovakia, delay the application of the IIR and UTPR in accordance with Art. 50 Minimum Tax Directive. Thus, these countries are unlikely to apply the IIR or UTPR before January 01, 2030. Nonetheless, Slovakia and Lithuania have opted to introduce a QDMTT in 2024 and 2025, respectively.[63] Poland has

[63] In our survey, we do not ask about the potential application of Art. 50 Minimum Tax Directive for a given country. Consequently, we cannot make statements about EU Member States which would be eligible for Art. 50 Minimum Tax Directive but opt for the implementation of the minimum tax at the regular implementation dates.

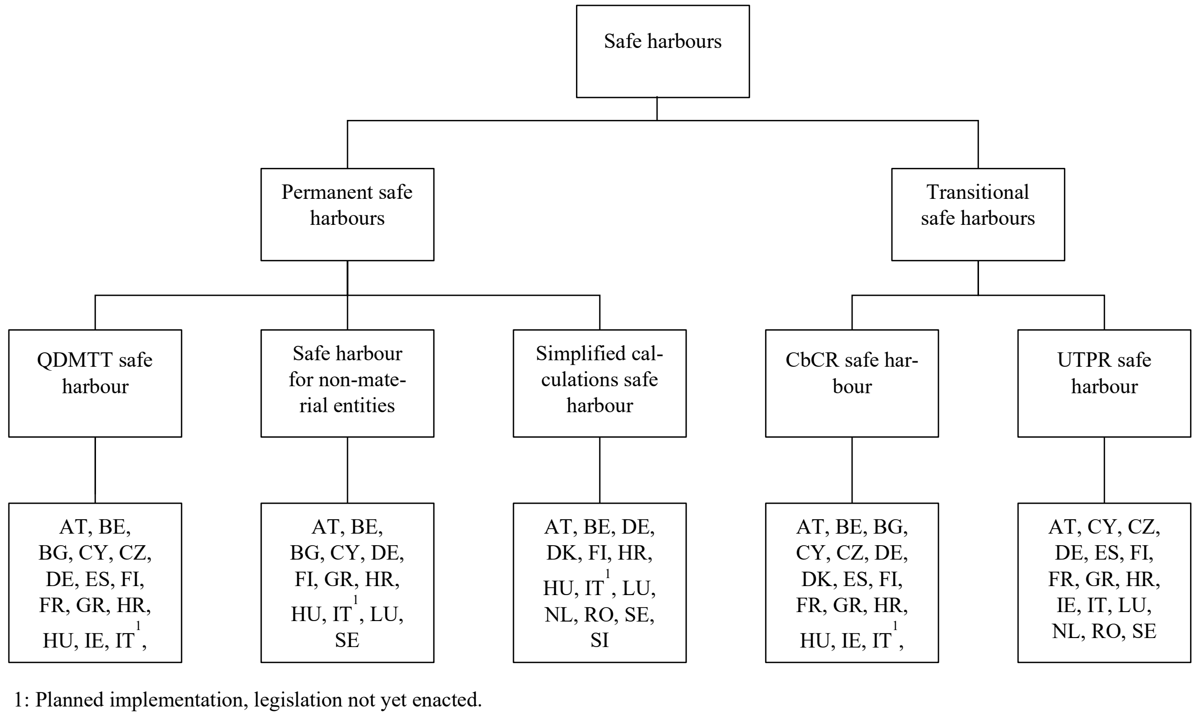
passed its minimum tax law delayed at the end of 2024 and applies it by 2025 with an option of a voluntary earlier application in 2024.

Due to the complexity of the regulations, simplified calculations, known as safe harbour tests, were introduced after publication of the Model Rules by subsequent Agreed Administrative Guidance to decrease the compliance burden associated with the global minimum tax.[64] While some safe harbours apply only during a transition period, others grant permanent relief under specific circumstances. Transitional safe harbour tests include the country-by-country reporting (CbCR) and UTPR safe harbours. The CbCR safe harbour allows using existing CbCR data as a basis, rather than a newly compiled minimum tax-specific data set, to calculate the effective tax rate for minimum tax purposes. This simplification is valid for three years. The UTPR safe harbour delays the application of the UTPR for countries where the ultimate parent company is resident provided that the country has a nominal tax rate of at least 20%. Permanent safe harbours include the QDMTT safe harbour, the safe harbour for non-material constituent entities, and the simplified calculations safe harbour. The safe harbour for non-material constituent entities aims to simplify data collection for entities excluded from consolidated financial statements due to materiality considerations. For these entities, simplified calculations based on CbCR can be applied. The QDMTT safe harbour eliminates the need to undertake an additional calculation at the ultimate parent entity level if a QDMTT is applied and necessary calculations have already been made in the respective country. Lastly, the simplified calculations safe harbour shall serve as a follow-up simplification to the transitional CbCR safe harbour, but details of this safe harbour still need to be defined by the Inclusive Framework.

As the Minimum Tax Directive passed the Council before the Inclusive Framework agreed on the safe harbour rules, the Directive only includes a reservation that top-up tax due by a group in a jurisdiction is deemed zero for a fiscal year if one of the internationally agreed safe harbours is met (Art. 32 Minimum Tax Directive). Further, preamble No. 24 of the Directive encourages Member States to implement the globally agreed safe harbours.

[64] Spengel et al. (2023a) estimate the compliance costs for 454 MNEs based in Germany, which are affected by the global minimum tax, at around 319.3 Mio. EUR one-off and 97.3 Mio. EUR annually.

Figure 25: Safe harbours



Notes: This figure displays the different types of safe harbours.

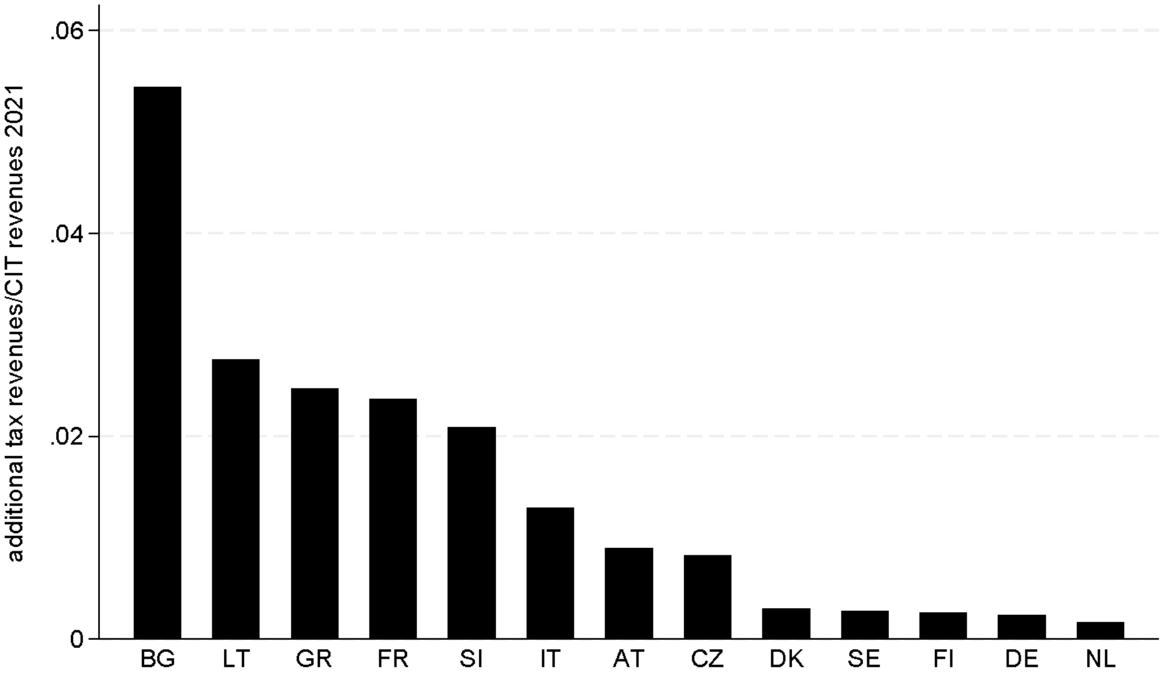
Figure *25* displays the heterogeneous adoption of safe harbours across EU Member States. We do not observe any pattern or trend in the adoption of safe-harbour rules for specific countries. However, it becomes evident that some safe harbours are more often implemented by countries than others. 19 of 22 countries[65] have implemented the QDMTT safe harbour, while only twelve countries have introduced the safe harbour for non-material constituent entities. Similarly, only 13 Member States have adopted the simplified calculations safe harbour. Slovenia's QDMTT safe harbour is unique for being the only one linked automatically to the OECD's review process for recognizing foreign domestic minimum top-up taxes. All other countries either adopted the OECD requirements directly or require detailed information on a foreign domestic minimum top-up tax regime before accepting it as a QDMTT.

All Member States have adopted at least one transitional safe harbour, with the CbCR safe harbour being the most popular. It has been transposed into national law by all countries that

[65] The total number of countries is 27. However, in the following analysis, we exclude those five EU Member States that make use of Art. 50 Minimum Tax Directive and have therefore not yet transposed the global minimum tax into national legislation with the exception for QDMTT legislation.

have published laws as of the date of this survey.[66] Additionally, 15 out of 22 Member States have implemented the UTPR safe harbour.

Figure 26: Revenue estimates from the global minimum tax



Notes: This figure displays the revenue estimates from the global minimum tax relative to the taxes on corporate income, profits, and capital gains for the year 2021. For the data source, see footnote 67.

In addition to the transposition of the global minimum tax provisions, we also explore the potential tax revenues countries anticipate from implementing the global minimum tax. Figure *26* displays these estimated additional revenues as a proportion of each member state's corporate income tax revenue.[67] None of the surveyed Member States expects the global minimum tax to significantly impact total corporate income tax revenues. The ratio of approximated additional tax revenues to total corporate income tax revenues ranges from 0.16% in the Netherlands to 5.44% in Bulgaria. Lithuania follows with the second-highest estimate at 2.76%, approximately

[66] Please note that this does not include Member States that apply Art. 50 Minimum Tax Directive and implement the minimum tax at a later point in time. Thus, no information is available on which safe harbours will be adopted in the national legislation.

[67] The survey examines the estimated additional tax revenue in the respective global minimum tax (draft) implementation legislation. These are compared with the taxes on income, profits, and capital gains of corporations for the year 2021, as calculated by the OECD. Insofar as the estimated additional tax revenues from the global minimum tax are differentiated with regard to behavioral adjustments (i.e., two different tax estimates are made), the estimate excluding behavioral adjustments is used for the further analysis.

half of Bulgaria's estimate.[68] The average (median) additional tax revenue across all countries is estimated at around 1.49% (0.90%).[69] These figures suggest that the revenue impact of the global minimum tax will be modest for most EU countries.

The introduction of the global minimum tax may lead to ambiguous effects on the international tax system (Spengel et al., 2023b). Therefore, countries may amend existing regulations to align with the global minimum tax. First, countries that currently apply low corporate income tax rates, potentially resulting in effective tax rates below 15%, might increase the tax rates to avoid the application of a top-up tax. At the time of our survey, no EU member state had expressed plans to change the generally applicable corporate income tax rate. Instead, with the introduction of the QDMTT, countries ensure a minimum level of taxation for multinational enterprises within the scope of the global minimum tax, without abolishing low corporate income tax rates for smaller firms out of scope.

Second, countries might also change existing tax incentives and preferential regimes. Prior to the introduction of the global minimum tax, countries implemented preferential tax treatments to attract foreign direct investment (FDI) (e.g., Celani et al., 2022). Tax incentives and preferential regimes can significantly reduce a company's effective tax rate by either decreasing the tax base or the tax rate. They are often centered around IP and research and development activities (R&D) but also cover more general business activities. Figure *27* highlights various preferential tax regimes implemented in EU Member States.[70] As of 2024, 13 Member States have implemented IP box regimes that apply reduced tax rates to IP income or partially exclude it from the tax base, and are, therefore, considered output-based incentives. Additionally, 22 Member States incentivize R&D activities by providing super deductions, often for R&D expenses, or other input-based tax incentives. We identify at least 10 countries that offer both input-based and output-based incentives. Some Member States also provide (re-)investment incentives or tax-privileged economic zones with reduced or zero corporate tax rates. In addition, tax regimes that allow for the deduction of notional interest also have the potential to reduce the effective tax rate and are applied in various EU Member States. With the introduction of the global minimum tax, preferential tax regimes and tax incentives that reduce the effective

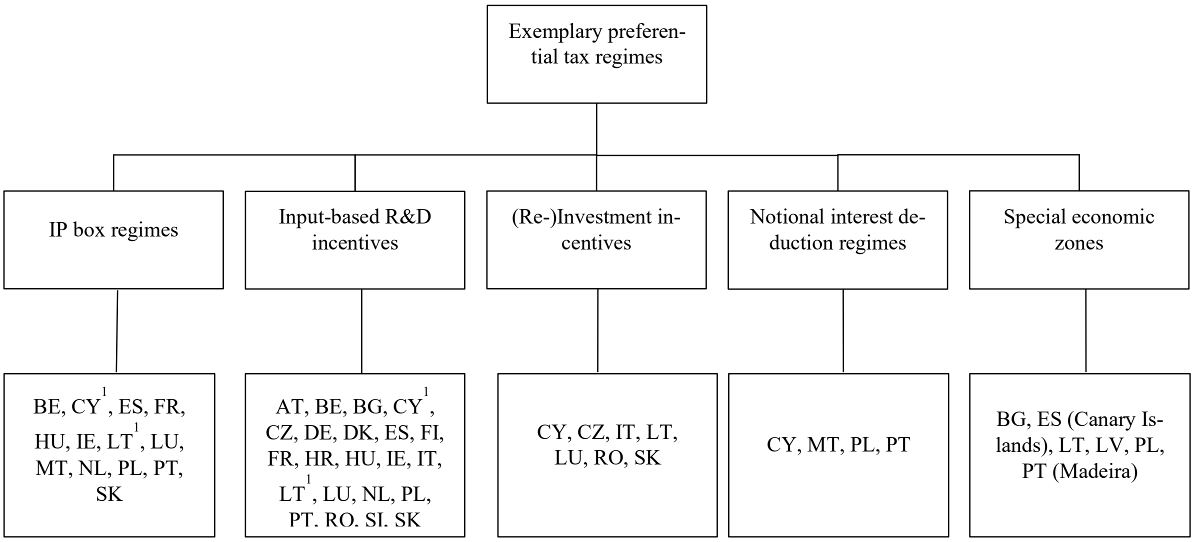
[68] In contrast to the other Member States, Bulgaria does not consider payroll expenses in their substance-based income exclusion amount calculations. This may be an indicator of why the estimate of additional revenue in Bulgaria is significantly higher than in all other countries.

[69] When comparing the estimated tax revenues to total corporate income tax revenues based on the year 2020, the estimates are slightly higher (mean: 2.09%, median: 1.22%), as the corporate income tax revenues in 2020 were on average lower than in 2021.

[70] We do not seek for completeness in the preferential regimes and tax incentives listed in *Figure 27* and provide only exemplary evidence on applied preferential tax regimes and incentives.

tax rate of an MNE in a country below 15% become less attractive due to the applicable top-up tax. As the intended effect vanishes, countries may, therefore, change existing tax incentives and preferential tax regimes or abolish them entirely. However, at the time of our survey, no EU Member State intended to change or abolish existing preferential tax treatments.

Figure 27: Exemplary preferential tax regimes



1: Choice between input-based incentive (3-folded deduction of R&D expenses from taxable profits) and output-based incentive (reduced tax rate).

Notes: This figure displays the exemplary preferential tax regimes in the EU.

Lastly, with the introduction of the global minimum tax, countries may change other anti-tax avoidance provisions to ensure coherence and reduce complexity. In particular, Member States that have implemented ATAD provisions beyond the minimum level mandated by the directive have room to loosen the regulations they have implemented. Based on our survey, we observe that only minor changes have been made to the CFC rules. For instance, Germany and Greece have aligned the low-tax threshold in their CFC legislation with the 15% global minimum tax rate. Additionally, some Member States, such as the Czech Republic and the Netherlands, adjusted their CFC rules to recognize foreign QDMTTs as income taxes, allowing them to be credited against domestic CFC taxes. At the time of our survey, aside from the minor adjustments to the CFC regulations described, no EU member state intends to amend the ATAD regulations or its unilateral anti-tax avoidance legislation in the context of the introduction of the global minimum tax.

4.2 Interaction with ATAD Measures

4.2.1 Controlled Foreign Company Rules

The global minimum tax and CFC rules are both designed as anti-tax avoidance measures to combat BEPS. CFC rules, which existed in some countries long before the introduction of the ATAD, have been widely studied. While earlier research suggests that these rules generally achieve their intended goals, a more recent study on the ATAD's CFC rules indicates only partial effectiveness. Early evidence shows that multinationals respond to CFC rules by adjusting their subsidiary structures, closing entities below the tax threshold while expanding those just above it (Clifford, 2019). Additionally, financial income and assets in low-tax jurisdictions decline as a result of the rules (Altshuler & Hubbard, 2003; Ruf & Weichenrieder, 2013). However, the first broad evaluation of the ATAD's CFC rules finds that while the share of CFC subsidiaries decreases, the financial income of remaining subsidiaries in low-tax countries remains largely unchanged (Gschossmann & Pfrang, 2024). Moreover, Gschossmann and Pfrang (2024) observe a rise in employee costs at CFC subsidiaries, suggesting that the economic activity exemption introduced by the ATAD induces MNEs to increase their economic activity in these locations. Given the ongoing debate about the effectiveness of CFC rules and the introduction of the global minimum tax the question arises how these two measures interact.

CFC rules and the global minimum tax differ in their objectives, scope, and mechanisms. While CFC rules aim to prevent income shifting by immediately taxing the profits of low-taxed controlled foreign subsidiaries in the country of the parent company, the global minimum tax seeks to curb tax competition by setting a global floor of minimum taxation. Thus, while CFC rules address the symptoms of profit shifting, the minimum tax tackles its root cause by reducing incentives for tax planning and income relocation by eliminating large tax rate differences across countries.

In terms of scope, CFC rules apply to companies that hold more than 50% of the voting rights, capital, or profit entitlement in a low-taxed subsidiary. In contrast, the global minimum tax targets a more specific set of companies with annual revenues exceeding 750 Mio. EUR. Unlike CFC rules, which apply only to multinational groups, the global minimum tax can also apply to purely domestic companies, leading to differences in how it is implemented.

The definition of taxable income also differs. CFC rules primarily target passive income and income from non-genuine arrangements, calculated based on the parent companies' local tax accounting rules. The global minimum tax, on the other hand, determines net qualifying income using financial accounting rules, namely IFRS accounting standards or local GAAP.

The application mechanisms of the two regimes further distinguish them. CFC rules apply when the passive income of a controlled foreign subsidiary is effectively taxed below the tax threshold set by the parent company's jurisdiction. In such cases, the CFC's income is taxed at the domestic corporate income tax rate of the parent, minus any tax already paid by the subsidiary. The global minimum tax, however, applies when the taxation of the net qualifying income of all entities in a given jurisdiction falls below the 15% minimum rate (jurisdictional blending). In these cases, a top-up tax is imposed to bring the effective tax rate up to 15%. Both regulations allow for exemptions if a company, or in the case of the global minimum tax, the group, has substantive economic activities in a country.

The responsibility for paying this top-up tax depends on the specific rule applied. Under the QDMTT, the foreign low-taxed affiliates are liable. Under the IIR, the ultimate parent entity or intermediate parent entities are responsible, whereas under the UTPR, lower-tier entities are liable. In contrast, under CFC rules, the domestic parent entity holding more than 50% of the low-taxed CFC is responsible for paying the tax.

For the two rules to interact, a company must generate more than 750 Mio. EUR in annual revenue and hold at least 50% of a low-taxed entity in another country. In such cases, CFC rules take precedence over the IIR and UTPR[71]. This means that the parent company imposes CFC taxation, which may bring the ETR above 15%, thereby eliminating the need for a top-up tax under the IIR or UTPR.[72]

However, if the low-tax jurisdiction has implemented a QDMTT, it takes precedence over the CFC rule. In this scenario, the low-tax country applies the QDMTT before the domestic parent country tests its CFC taxation. As a result, the parent country loses the ability to levy the CFC tax, assuming the QDMTT raises the subsidiary's ETR above the CFC threshold.

A third scenario arises when the imposed CFC tax does not bring the ETR above 15%, as previously assumed. This can, e.g., occur if the CFC tax applies only to passive income, while low-taxed active income remains unaffected, potentially keeping the overall ETR for the jurisdiction below 15%. In such cases, if the low-tax jurisdiction has not implemented a QDMTT, the IIR applies. When calculating the group's effective tax rate, the CFC tax paid by the parent entity is attributed to the adjusted covered taxes of the low-taxed CFC. However, only the lower of the actual CFC taxes paid, or the product of the top-up tax percentage and passive income is

[71] OECD, 2022, Art. 4.3.2, No. 45.
[72] Even though the parent company pays the tax, it is attributed to the low-taxed CFC when calculating net qualifying income for the global minimum tax (Art. 24(3) EU Directive).

included. The rationale is that low-taxed non-passive income should not be shielded from the additional minimum tax. However, this approach prevents full credit for additional CFC taxation against the global minimum tax, effectively taxing passive income at more than 15% and leading to unintended double taxation.

Another potential source of double taxation arises when the parent company incurs a loss. Since CFC taxation is applied at the parent level, a loss at that level can usually offset the taxable income of the controlled foreign company under the CFC rule. In such cases, no CFC tax is paid, as the loss eliminates the tax liability.[73] Consequently, there is no corresponding credit of current taxes when calculating the adjusted covered taxes for the global minimum tax in the low-tax jurisdiction. As a result, if no deferred tax can be pushed down to the parent, the full global minimum tax would be imposed through the IIR if the jurisdictional ETR is below 15%. While this does not result in passive income being directly taxed at a rate above 15%, passive CFC income effectively reduces the parent's carry forward loss for future years. Since this reduction is not reflected in the global minimum tax calculation, it might result in indirect double taxation.

The simultaneous application of both regulations also results in significant administrative and compliance burdens. Companies must adhere to two overlapping but technically distinct tax regimes, thereby increasing compliance costs. Determining how the two rules interact increases tax complexity, as businesses must navigate different reporting requirements, tax bases, and income-determination methods. This includes reconciling calculations based on IFRS, local GAAP, and the distinct tax bases used for CFC taxation and the global minimum tax.

To address these challenges, policymakers should explore measures to eliminate double taxation and reduce compliance burdens arising from the parallel application of both rules.

4.2.2 Interest Barrier Rules

Both the global minimum tax and interest barrier rules were introduced as anti-tax avoidance measures to limit aggressive tax planning strategies by MNEs. Their common goal is to ensure that businesses contribute fairly to the tax system and prevent excessive profit shifting to low-tax jurisdictions. However, while the minimum tax ensures an effective tax rate of at least 15%, the interest deduction limitation restricts the ability of companies to reduce taxable income through excessive interest expenses.

[73] This case assumes a full offset of the CFC tax by the parent companies' losses. However, the same principle applies if the tax is only partially offset.

Empirical research has long examined the consequences of restricting interest deductibility. Evidence shows that limiting the tax benefits of debt financing can significantly alter corporate capital structures, particularly in high-tax countries (Buettner et al., 2012; Overesch & Wamser, 2010). The existence of binding interest-stripping or thin-capitalization rules has been found to reduce firms' reliance on internal debt as a profit-shifting mechanism (Buettner et al., 2016; De Mooij & Hebous, 2018). However, recent studies suggest that while these rules can effectively curb aggressive tax planning, they may also deter investment in jurisdictions where the rules are applied (De Mooij & Liu, 2021; Leszczyłowska & Meier, 2021).

Despite these common objectives, the global minimum tax and interest barrier rules differ in scope, thresholds, application level, mechanism, and specific exemptions. The global minimum tax primarily targets large multinational groups with consolidated annual revenues of at least 750 Mio. EUR, and applies on a jurisdictional basis using consolidated financial statements. In contrast, interest barrier rules apply at the individual entity level, affecting any entity whose net interest expenses exceed 3 Mio. EUR, regardless of group affiliation. While the global minimum tax allows for substance-based carve-outs, interest barrier regulations often include exceptions to standalone entities or high-equity firms, though the details vary by jurisdiction.

Besides, the mechanisms differ. While the global minimum tax intends to level the playing field by imposing a top-up tax when the effective tax rate in a jurisdiction falls below 15%, the interest limitation rule operates by restricting net interest deductions to 30% of EBITDA, effectively raising taxable income while accounting income remains unchanged. When both rules apply simultaneously, this can lead to overlapping tax burdens and unintended cumulative effects. As a result, potential double taxation issues arise.

Thus, a significant issue arising from the interaction of the two rules is the risk of excessive taxation. Since the global minimum tax sets a 15% baseline, further restrictions on interest deductions may result in tax burdens that significantly exceed the intended minimum, especially in high-tax jurisdictions such as Germany. For example, if a company operating in Germany already faces an effective tax rate above 15%, the minimum tax may not apply. However, the interest barrier rule still limits deductibility, thereby increasing the effective tax burden. Similarly, if a multinational firm finances its operations through intercompany loans, the interest barrier rule may disallow a portion of the deduction, even though the company already meets the 15% effective tax threshold. In cases where both rules apply, the total effective tax burden may exceed the nominal tax rate, contradicting the principle that the minimum tax serves as a floor rather than an additional burden. This may lead to taxation beyond policy intent and could raise questions of fairness and proportionality.

The simultaneous application of these regimes also creates significant administrative and compliance burdens. Companies must navigate two overlapping but technically distinct frameworks, each with different reporting standards, definitions, and documentation requirements. The interest barrier rule is typically based on national tax accounting rules, whereas the global minimum tax relies on financial accounting standards such as IFRS or local GAAP. Reconciling these two tax bases, especially when determining EBITDA versus qualifying income, poses a significant challenge for both taxpayers and tax authorities.

4.2.3 Exit Taxation

Exit taxation is designed to prevent BEPS by taxing unrealized built-in gains when a company relocates its assets, tax residency, or business activities to another jurisdiction. Under the ATAD, EU Member States have implemented exit taxation rules to ensure that built-in gains accrued within their jurisdiction are taxed before relocation. This rule reflects a long-standing fiscal interest in preserving the integrity of the domestic tax base. However, the introduction of the global minimum tax, which ensures that MNEs are subject to a minimum effective tax rate of 15%, potentially reduces incentives for tax-driven relocations and introduces redundancies. The global minimum tax also requires transfer pricing adjustments to be reflected in the determination of the ETR.

Both instruments partly pursue similar policy goals: securing tax revenues and preventing profit shifting between jurisdictions. Exit taxation targets unrealized built-in gains upon relocation. The global minimum tax aims to ensure effective taxation at a minimum rate, both for the relocation itself and after the relocation has occurred. Exit taxation generally applies at the relevant local tax rate of the jurisdiction, while the global minimum tax rate is 15%. The question is whether exit taxation may become redundant in cases where the global minimum tax is applicable.

Thereby, a key concern lies in the potential for double taxation. Exit taxation generally imposes an immediate tax charge on unrealized built-in gains at the time of relocation. Meanwhile, the global minimum tax is levied on an annual basis and can apply to both the relocation itself in the transferor jurisdiction and to ongoing income in the transferee jurisdiction. If an MNE is subject to exit taxation upon relocation and is also subject to the global minimum tax, the same profits may be taxed twice if the exit taxation is not fully recognized when determining the

ETR. This may distort relocation decisions. Redundancies may be partly remedied because the global minimum tax also requires transfer pricing adjustments to be reflected in the determination of the ETR. Certain exit-tax scenarios could already be covered by these rules, with the result that the ETR calculation recognizes the exit taxation. Complexities can especially arise during the transition period of the global minimum tax. According to Art. 9.1.3 of the global minimum tax model rules, asset transfers between November 30, 2021, and the start of the company's transition year (usually the first fiscal year in which the global minimum tax Model Rules apply to the MNE) generally have to be recognized at the disposing entity's carrying value, i.e., during that time, exit taxation would not be recognized in determining the ETR for global minimum tax purposes.

Furthermore, timing mismatches between exit tax deferral provisions and the annual application of the global minimum tax can create liquidity challenges for MNEs. Under ATAD, Member States must allow a deferral of exit tax payments over five years when relocations occur within the EU or the EEA (Art. 5 (2) ATAD). However, the global minimum tax does not explicitly incorporate equivalent deferral mechanisms other than the recognition of deferred taxes in determining the ETR. This may result in situations in which an entity benefits from an exit tax deferral but remains subject to top-up taxation under global minimum tax rules. Such mismatches could be problematic for capital-intensive firms or businesses undergoing substantial intra-group reorganizations.

Lastly, the exit tax may counteract the intended neutrality of the global minimum tax. The global minimum tax aims to reduce the attractiveness of tax-driven relocations to low-tax jurisdictions by establishing a globally coordinated minimum level of taxation. Yet, exit taxation may still disincentivize relocations by imposing an upfront tax burden even when the relocation would not lead to harmful tax competition under the global minimum tax. This raises concerns about policy coherence. If the global minimum tax already secures minimum taxation in the destination country, the rationale for imposing exit taxation at the point of departure may become less compelling.

4.2.4 Hybrid Mismatch Provisions

Hybrid mismatch provisions and the global minimum tax both aim to prevent aggressive tax planning strategies. However, they approach this objective from different angles. Hybrid mismatch provisions broaden the tax base by neutralizing hybrid mismatches by denying deductions for expenses or including income to ensure that profits are taxed at least once. In contrast, the global minimum tax imposes a top-up tax on profits subject to an effective tax rate lower than 15%.

The potential interactions between the ATAD's hybrid mismatch provisions and the global minimum tax are shaped by differences in their scope, application levels, mechanisms, and specific exemptions. While the hybrid mismatch rules apply to all companies with hybrid mismatches, the global minimum tax applies only to groups with annual revenues exceeding 750 Mio. EUR. Moreover, hybrid mismatch provisions apply at the payment level, i.e., to payments between two or more associated enterprises or branches in different jurisdictions that give rise to a hybrid mismatch. In contrast, the global minimum tax is assessed at the group level on a jurisdictional basis. Both provisions provide for exemptions. In certain cases, specific hybrid instruments may be excluded from the scope of the hybrid mismatch provisions following Art. 9 (4) lit. a) ATAD. In comparison, the global minimum tax does provide substance-based carve-outs but no specific exemptions for hybrid mismatches.

When both policies interact, it is essential to assess where their rules overlap and whether this overlap results in double taxation or double non-taxation. Hybrid mismatch provisions broaden the tax base and increase an entity's tax liability by denying deductions or requiring the inclusion of income (Becker & Englisch, 2021). As a result, the covered taxes under the global minimum tax may increase. Due to the jurisdictional blending approach of the global minimum tax, the interaction between the two policies depends on which of the countries involved applies the hybrid mismatch provision (Linn & Maywald, 2024). Moreover, the effect on the top-up tax varies depending on the jurisdictional ETR prior to the application of the hybrid mismatch provision. For example, if the ETR was below 15%, applying the hybrid mismatch rule could reduce the top-up tax liability. In contrast, if the ETR already exceeded 15%, the inclusion of income or denial of deduction does not affect the top-up tax, as no top-up tax is due anyway. A further overlap between the global minimum tax and hybrid mismatch rules can occur under the UTPR when both provisions deny the deduction of connected expenses (Becker & Englisch, 2021).

In addition, the Minimum Tax Directive provides for additional hybrid mismatch rules. First, it stipulates that expenses related to intra-group financing arrangements are not deductible from qualifying income in a low-tax country if there is no corresponding increase in the counterparty's taxable income in a high-tax country (Art. 16 (8) Minimum Tax Directive). In contrast to the ATAD provisions, this rule addresses mismatches between accounting practices in the low-tax country and tax law in the high-tax country. Thus, the scope of both rules differs (Linn

& Maywald, 2024). Second, under the global minimum tax, there are specific rules on hybrid arbitrage arrangements under the transitional CbCR safe harbour (OECD, 2023).

The overlap between the two policies may not only result in double taxation but also further increase the complexity of the tax system and the resulting administrative burden. Although the hybrid mismatch provisions do not prescribe explicit documentation requirements, they nonetheless give rise to compliance obligations, as taxpayers are required to disclose the application of anti-hybrid rules in their tax return. In addition, the global minimum tax framework imposes separate compliance requirements. The absence of defined documentation requirements under the hybrid mismatch rules may further amplify this, as taxpayers face uncertainty regarding the documentation required to demonstrate the non-application of the hybrid mismatch provisions..

In conclusion, hybrid mismatch provisions seek to prevent double non-taxation. However, their effectiveness remains unproven due to a lack of empirical research on hybrid mismatch provisions and hybrid mismatches in general. Although theoretical research confirms that hybrid mismatches provide significant tax benefits (Johannesen, 2014), empirical research remains scarce due to limited data availability (Beer et al., 2020; Riedel, 2018). To the best of our knowledge, the only empirical study on profit shifting through hybrid mismatches is by Hardeck and Wittenstein (2018). Analyzing data from the LuxLeaks database for the period between 2002 and 2011, they find that, unlike other tax arrangements, hybrid arrangements are associated with substantial and persistent reductions in effective tax rates. Based on their findings, they recommend, among other measures, neutralizing hybrid mismatches in line with the recommendations of BEPS Action 2, which served as the foundation for the ATAD hybrid mismatch provision.

Given the significance of hybrid mismatch provisions in ensuring the principle of single taxation, it is highly unlikely that they will become obsolete under the global minimum tax. When both rules apply simultaneously, both imply the same mechanism to neutralize the hybrid mismatch, but the interaction may result in double taxation. However, in many cases, the global minimum tax does not apply, making hybrid mismatch provisions indispensable. This is particularly important because, unlike other profit-shifting strategies, hybrid mismatches can also be exploited between high-tax jurisdictions.

4.2.5 General Anti-Avoidance Rules

In general, the GAAR is issued at the national level, and its application varies across Member States. However, what all GAARs have in common is that they are intended to prevent abusive artificial arrangements and can be applied in cross-border constellations.[74]

Systematically, the global minimum tax is applied to all income that is taxed at an effective rate of less than 15%. In contrast, the GAAR is applied on a case-by-case basis and is not connected to a specific tax rate. It is applied if, otherwise, a tax due would be avoided through artificial arrangements that are devoid of any economic reality.[75]

There is no direct interaction between the GAAR and the global minimum tax. Generally, the GAAR is applied as a provision of last resort and in the absence of specific law regulating given tax planning structures. Because of this, a reasonable expectation at first glance is that with the advent of yet another specific piece of anti-tax avoidance legislation (the global minimum tax), fewer cases will rely on settlement due to GAAR. However, both regimes may be triggered in parallel whenever a classification issue arises between the determination of taxable profits and accounting income. To analyze potential consequences of this specific form of interaction in more detail, we differentiate in the following between scenarios in which the effective tax rate is above or below 15% before the GAAR and the global minimum tax are considered.

In cases where the effective tax rate was below 15% prior to the application of the GAAR and the global minimum tax, the application of the global minimum tax should reduce the likelihood of triggering the GAAR (and vice versa) when no tax advantage arises after application of the global minimum tax. In contrast, if the effective tax rate for global minimum tax purposes already exceeded 15% before the GAAR was applied, there should generally be no interaction. The GAAR may still apply, as it is not linked to any specific tax rate, whereas the global minimum tax is not applicable. This could, for example, be the case if the GAAR of a jurisdiction would also apply to non-genuine transactions that are intended to increase the effective tax rate for global minimum tax purposes without increasing the actual effective tax rate.

However, distortions are conceivable if the application of the GAAR leads to a classification issue between the determination of the taxable profits and accounting income, which is relevant for the global minimum tax. This can result, for example, from a transaction between two companies within the same group in which a business expense is disallowed for tax purposes under

[74] As an example for the application of the Spanish GAAR, see Sánchez de Castro Martín-Luengo, (2022).
[75] See Horn (2021) on §42 AO; Sánchez de Castro Martín-Luengo (2022); and ECJ 09/12/2006 Cadbury Schweppes.

the GAAR in a high-tax country, while this does not affect its effectiveness under civil/commercial law and, thus, for accounting purposes. Unless the GAAR adjustment reflects a transfer pricing adjustment, the global minimum tax Model Rules do not adjust the global minimum tax assessment base after the GAAR has been applied (i.e., Article 3.2.3 of the OECD Model Rules does not apply). Whether this leads to a (full) taxation with 15% depends on what other income and taxes are recognized in the state of consideration and used to determine the blended ETR.[76]

Table 7: Example of parallel application of the GAAR and global minimum tax

	Before Application of GAAR			**After Application of GAAR**	
	Entity A	Entity B		Entity A	Entity B
Earnings before taxes (EBT) before Intercompany (IC)-Transaction	100	100		100	100
Additional IC-transaction	- 50	+ 50		- 50	+ 50
Accounting EBT after IC-Transaction	**50**	**150**		**50**	**150**
Application of GAAR	-	-		+ 50	
Taxable income	**50**	**150**		**100**	**150[1]**
Income taxes (30 % / 0% tax rates)	15	0		30	0
Global Minimum Tax:					
Accounting Income	50	150		50	150
Top-up Tax	0	22,5		0	22,5
Total Income and Top-up Taxes	**15**	**22,5**		**30**	**22,5**

Note: This table depicts an exemplary parallel interaction of the GAAR and the global minimum tax. [1]Assuming that the taxable income of entity B is not reduced accordingly (e.g., through application of the mutual agreement procedure).

Table *7* gives an example of potentially parallel interactions of the GAAR and the global minimum tax. Entities A and B are both members of a multinational group of companies. Entity A is resident in a high tax country with a 30% tax rate, while entity B is resident in a low tax country without any income tax. If both entities generate earnings before taxes (EBT) of 100, the entities enter an additional intercompany transaction that results in expenses of 50 for entity

A and income of the same amount for entity B. Without applying the global minimum tax or GAAR, the EBT amounts to 50 (A) and 150 (B), and the income tax amounts to 15 (30 % x 50 for entity A) and 0 (entity B), respectively. Since the EBT in entity B is taxed at an effective tax rate of 0%, a top-up tax under the global minimum tax is triggered at an amount of 22.5 (15% x 150) (see column "Before Application of GAAR" of Table *7*).

Assuming a subsequent tax audit in year two at the entity A level disallows the intercompany transaction under the GAAR, this would result in entity A's taxable income increasing to 100 (see the right column of Table 7). If no mutual agreement procedure (e.g. under Article 25 of the OECD Model Rules) or another relief mechanism is in place[77], the taxable income of entity B remains at 150. The income tax payment of entity A increases to 30 (30% x 100), the income tax of entity B remains at 0.

Since the global minimum tax is based on accounting income rather than taxable profits, a classification conflict arises. While the tax base is retroactively changed from 50 to 100 at the level of entity A, for accounting purposes, profits remain unchanged (50 for entity A and 150 for entity B). If the application of the GAAR does not reflect a transfer pricing adjustment, the assessment basis of the global minimum tax is not adjusted, and a top-up tax of 22.5 (15% x 150) is triggered for entity B.

Conversely, the additional income taxes incurred at the level of entity A due to the application of the GAAR usually do not lead to a reduction in a top-up tax under the global minimum tax for either entity A or entity B. This is because the effective tax rate of entity A was already above 15% prior to the application of the GAAR, and no additional tax was levied, while in country B, the additional tax is not taken into account. Specifically, the OECD Model Rules of the global minimum tax do not allocate such taxes from entity A to entity B for purposes of calculating the effective tax rate under the global minimum tax. Consequently, the transaction is recognized for tax purposes in both countries. In country A, a general income tax of 30% applies after denial of the business expense deduction, and in country B, the global minimum tax of 15% applies to the accounting income. The GAAR is regularly applied at the national level by neglecting taxation rights, e.g., under a double taxation agreement. In contrast, the global minimum tax is highly dependent on the international alignment of the rulings. This

[77] Please note that in many cases which concern transfer pricing adjustments, Article 3.2.3 of the OECD-Model Rules will apply so that the issue of double taxation shall be resolved (at least for material differences). Therefore, we focus on a case with no transfer pricing adjustment.

makes the worldwide application of standardized global minimum tax regulations more difficult, as it involves consideration of individual national GAARs and each interaction with the global minimum tax regulations.

As described above, the parallel application of both regulations may result in double taxation. In this respect, it would be desirable to eliminate these double taxation situations. This would be conceivable through the following measures, for example:

- Adjustment of the global minimum tax assessment on the allocation of income in accordance with the relevant double tax agreements. This could, for example, be anchored in Article 3.2.3 of the OECD Model Rules, which already addresses transfer pricing adjustments.
- If a taxation level of 15% is recognized globally as sufficient, consideration could also be given to exempting the application of the GAAR in certain cases, namely, whenever the core issue is the allocation of taxing rights and taxation is ensured at a level of at least 15% even without the application of the GAAR.
- Irrespective of this, the GAAR remains as a gatekeeper clause to avoid the possibility of circumventing explicit regulations such as the global minimum tax.

4.3 Interactions with EU Blacklist Code of Conduct Business Taxation

The scope and mechanism of the EU Blacklist measures differ from the global minimum tax. While the EU Blacklist aims to pressure non-compliant countries into adopting international tax standards and implementing tax reforms through defensive measures, the global minimum tax serves as a minimum threshold for effective taxation. As described in chapter 3.3, the EU Blacklist comprises four defensive measures: non-deductibility of expenses, expansion of CFC legislation, extended application of withholding taxes, and limitation of the participation exemption. To examine the interactions between the global minimum tax and the EU Blacklist, the following subchapters analyze these measures separately.

A) Non-Deductibility of Expenses

The non-deductibility of business expenses is not restricted to transactions between affiliated entities, resulting in a broad denial of deductions. In many cases, double taxation arises when business expenses are denied due to the lack of, or inapplicability of, a double tax agreement with a blacklist country. An exception to this applies if expenses are fully exempted or tax-free in the blacklisted country. This effect occurs independently of the global minimum tax. However, the global minimum tax adds another layer to the situation. If profits are taxed at less than

15% in the blacklisted country, as is typically the case, the global minimum tax increases the effective tax rate to 15%. In addition, taxes on the non-deductible expenses at the level of the other entity are due at the regular tax rate. As illustrated in the example under the GAAR in chapter 4.2.5, the global minimum tax does not provide an allocation mechanism to account for these non-deductible expenses in the effective tax rate of the blacklisted country. The consequences are similar to what is described in chapter 4.2.5. In particular, the effective tax rate in the high-tax country is further increased by the non-deduction of business expenses, while these expenses are not taken into account in the blacklisted country. The fact that the effective tax rate in the high-tax country is likely to be above 15% even without the non-deduction of business expenses results in an effective double tax burden if the global minimum tax is applied to the low-taxed income.

To eliminate such double taxation, operating expenses could be allocated to the low-tax country if they are denied due to the application of blacklist measures in the high-tax country and explicitly relate to an affiliated company that is tax-resident in the blacklisted country.

B) Expansion of CFC Legislation

The interaction between the extended CFC legislation and the global minimum tax is comparable to that between the general CFC rules and the global minimum tax. The only difference is that, for global minimum tax purposes, the allocation of CFC tax under Article 4.3.2 c) Model Rules from the Constituent Entity-owners to the Controlled Foreign Company is not limited to the additional tax imposed on passive income, provided that the blacklisted entity has non-passive income. Due to the extension of the CFC taxation to non-passive income in some EU member states by applying the blacklist measures, the effect of applying the global minimum tax and the extended CFC taxation is similar.[78] Independent of the remaining differences in the scope of application as well as the determination of the tax base, the global minimum tax and the extended CFC legislation are comparable. From an administrative and compliance perspective, this functional overlap raises the question of whether the parallel application of both regimes is justified. Consequently, companies are required to adhere to two overlapping yet technically distinct tax regimes, leading to increased administrative costs and compliance burdens. They must manage differing reporting requirements under both frameworks, further exacerbating the complexity of tax compliance. Notably, both regimes employ distinct methodologies

[78] However, CFC taxation is often higher, resulting from the inclusion of the CFC income into the tax base. If the blacklisted country were to apply a QDMTT, the QDMTT would take precedence over CFC taxation, and no CFC tax might apply.

for determining taxable income: while the global minimum tax determines profit under financial accounting standards, the tax base under the extended CFC rules is generally established according to the national tax regulations applicable to the CFC owner. As for the regular CFC rules, the existing parallel application of both regulations should be eliminated.

C) Extended Application of Withholding Taxes

In economic terms, extended withholding tax measures on payments to persons or companies in blacklist countries are similar to the non-deductibility of business expenses, but the interaction with the global minimum tax is a crucial difference. While the payer or debtor, usually the entity resident in the high-tax country, is subject to the extended prohibition on deducting business expenses and is therefore subject to additional taxation, it is the payee or creditor (i.e., the entity located in the blacklisted country) who is subject to the withholding tax measure. Although the payment is made directly by deduction at source, the person or company based in a blacklisted country is nevertheless the tax subject. As such, the low-taxed entity should also record the withholding taxes as income taxes in its financial statements.

Although Article 4.3.2 (e) of the OECD Model Rules assigns withholding taxes on profit distributions to the distributing entity, intending to allocate the tax burden to the entity that generated the underlying income,[79] there is no such rule for withholding taxes on other income, even though the economic reason behind the ruling is similar.

Also, there is no apparent reason why such withholding taxes should not be classified as a covered tax under Pillar 2.[80] The consequence is that global minimum tax and withholding taxes will, in general, yield similar results, depending on the withholding tax rate applied and the income earned. While withholding taxes are levied only on specific types of income and the gross amount paid, the global minimum tax applies a blended tax rate to all income; however, it is levied only on net income. In countries like Germany, the withholding tax rate on blacklist measures is 15%, while in other countries, such as the Czech Republic, Denmark, or France (see chapter 3.3.4), the withholding tax rates are much higher. Therefore, withholding taxes may have a more significant effect than the global minimum tax in cases where the income is earned, even though no general assessment can be made.

[79] Ideally, covered taxes incurred by constituent entities with respect to distributions should be assigned to the tax jurisdiction of the constituent entity that originally earned the underlying income (OECD, 2024b).

[80] Withholding taxes under the EU blacklist are withholding taxes levied on income which falls under a non-resident tax liability.

Since withholding taxes are likely classified as covered taxes under the global minimum tax, the concurrent application of the global minimum tax and withholding taxes should generally not result in double taxation in such cases. The main downsides of applying both regimes simultaneously are compliance costs and other administrative burdens.

To overcome those challenges, the EU could consider aligning the application of extended withholding taxes across EU countries, ensuring that companies face equal treatment across different tax jurisdictions. In addition, compliance procedures could be streamlined in this context. In general, the implications are comparable to those explained under the interest barrier rule in chapter 4.2.2.

D) Limitations of the Participation Exemption

The interaction between the limitation of the participation exemption and the global minimum tax is of particular interest. Although the global minimum tax generally applies to all income, regardless of type or source, it provides limited exemptions, one of which applies to excluded dividends under Article 3.2.1 (b). If the dividend exemption is applied, the respective income, as well as the corresponding taxes (under Art. 4.1.3. a)), will be excluded from the Global Anti-Base Erosion income and covered taxes of the receiving entity. This applies regardless of whether the participation exemption is applied. However, top-up taxes will only be triggered at the level of the receiving entity if that entity is taxed below the 15% threshold. There is no direct interaction between the global minimum tax and the denial or limitation of the participation exemption on income earned at the level of the distributing entity. Therefore, the denial of the participation exemption and the global minimum tax would apply concurrently.

If the limitation of the participation exemption is viewed as a penalty tax on low-taxed income at the subsidiary level, both measures would share the same objective, making a potential simplification conceivable. Under the global minimum tax Model Rules taxes arising from the denial of the participation exemption are allocated to the distributing entity under the global minimum tax, similar to the withholding taxes levied on such distributions in the jurisdiction of the distributing entity. Alternatively, the application of the participation exemption denial could be limited to entities outside the scope of the global minimum tax. However, it should be ensured that a company cannot exploit the non-application of the blacklist measures to entities within the scope of the global minimum tax by slightly reducing its effective tax rate below 15%, as this would result in a lower overall tax burden compared to the more stringent consequences of the blacklist measures, in contrast to the top-up tax under the global minimum tax.

4.4 Interaction with Additional Unilateral Measures

It is difficult to make a general assessment of how each individual additional unilateral measure interacts with the global minimum tax. However, many of them function as a denial or limitation of business expenses (e.g., the royalty deduction limitation rules in Austria, France, Germany [81], and similarly the Polish taxation of shifted profits, as well as the Maltese special interest deduction restriction). As such, business expenses deduction limitations function similarly to chapter 4.3 A (non-deductibility of business expenses) of the EU Blacklist measures. Therefore, the implications of the interaction with the global minimum tax and political considerations can be retrieved from there. With regard to the interaction of the disallowance of the unilateral participation restriction in Austria and the global minimum tax, we refer to chapter 4.3 D of this paper.

5 Implications and Policy Recommendations

Our analysis shows that the EU's current anti-tax avoidance framework has become excessively complex and fragmented. The coexistence of the ATAD and the EU-wide implementation of the global minimum tax creates significant regulatory overlap. While both instruments aim to curb BEPS, their simultaneous application introduces redundant obligations, legal uncertainty, and high compliance costs.

Regulatory overlaps are particularly evident with CFC rules and interest barrier provisions, which already address many of the risks that the global minimum tax seeks to neutralize through a jurisdictional blending approach and a top-up tax mechanism. For MNEs, this parallel application means navigating different rules for tax base determination, divergent implementation across Member States, and heightened risks of double taxation. The result is a regulatory environment that undermines the EU's competitiveness - not only but with the most crucial effects - relative to the U.S. [82] In particular, EU firms face higher compliance costs than U.S.-based companies due to the complex determination of global minimum tax liabilities (Spengel et al., 2023a; Bray et al., 2025).

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[81] As part of a draft bill by the German federal government to amend the Minimum Tax Act, the so-called "Minimum Tax Adjustment Act" or "Mindeststeueranpassungsgesetz", the removal of the royalty deduction barrier is planned to take effect from the assessment period 2025 (as of 17 December 2025).

[82] Recent political developments contribute to disadvantages for the EU, having already implemented the Global Minimum Tax: On June 28, 2025, the G7 countries agreed on a side-by-side solution of the global minimum tax with similar U.S. regulations. Accordingly, U.S.-based corporations are largely exempt from the global minimum tax. In return, the U.S. refrains from introducing countermeasures for now (i.e., Section 899, "Enforcement of Remedies Against Unfair Foreign Taxes"), https://home.treasury.gov/news/press-releases/sb0181 (20.11.2025). This agreement was implemented by the OECD on January 5, 2026, through the Side-by-Side Package, which complements the Global Anti-Base Erosion Model Rules (OECD, 2026).

Crucially, these high compliance burdens are not offset by substantial increases in tax revenue. As shown by Spengel et al. (2023b), the additional tax revenues generated by the global minimum tax are expected to remain modest, particularly in economically strong countries such as Germany. This limited tax revenue potential does not compensate for the high compliance burdens and the negative impact on the EU's investment attractiveness. Rather than simplifying and harmonizing the European tax landscape, the minimum tax has added another layer of regulation, eroding policy coherence.

Against this background, the EU should repeal the global minimum tax. A repeal of the global minimum tax would offer clear advantages: (1) legal certainty and avoiding cases of double taxation by eliminating conflicts between the ATAD, the EU Blacklist and the global minimum tax, (2) lower compliance costs by removing the need for complex group-level effective tax rate calculations, (3) improved competitiveness by reducing location-based disadvantages compared to non-EU countries, and (4) restored policy autonomy, allowing the EU to refine and strengthen other anti-tax avoidance measures.

Repealing the global minimum tax would not leave the EU without effective anti-tax avoidance legislation. Our study shows that the ATAD, including CFC legislation, interest barrier rules, exit taxation, and hybrid mismatch provisions, already provides a solid regulatory framework for addressing BEPS. Streamlining and, where necessary, improving these measures would ensure a coherent and effective regulatory environment without unnecessary regulatory overlap.

In conclusion, the EU should withdraw from the global minimum tax and consolidate its anti-tax avoidance framework around the ATAD and coordinated national measures. Such an approach would provide a simpler, legally robust, and more supportive tax framework for the EU's long-term competitiveness and economic resilience.

6 Conclusion

This study provides a comprehensive review of the EU's anti-tax avoidance framework, focusing on the implementation of ATAD measures, the EU Blacklist, unilateral national provisions, and their interplay with the global minimum tax. Drawing on survey responses collected from tax experts across the EU, we identify significant variation in the implementation and strictness of national anti-tax avoidance regimes.

While the ATAD has successfully introduced a degree of harmonization, Member States have retained substantial discretion, resulting in variations in rules. The global minimum tax introduces a parallel regulatory layer, further complicating the landscape. Although the global minimum tax primarily targets low-taxed profits through rate-based rules, it overlaps with existing ATAD measures in terms of policy goals and outcomes.

The current state of EU anti-tax avoidance legislation, therefore, presents a paradox. On the one hand, it reflects ambitious and proactive tax policy making. On the other hand, it is overly complex, redundant, and administratively burdensome. Without extensive efforts to coordinate and streamline these measures, the EU will face growing legal uncertainty, increased compliance costs, and potential erosion of the single market's coherence.

Moving forward, EU policymakers face a strategic choice: whether to continue layering new rules on top of the existing framework or to undertake a comprehensive reassessment aimed at consolidation and simplification. A thorough analysis of the necessity and only partial implementation of the global minimum tax, set against the backdrop of rapidly shifting geopolitical dynamics and an already existing anti-tax avoidance framework, represents a key opportunity to modernize the EU's approach to anti-tax avoidance by eliminating inefficiencies, ensuring regulatory coherence, and strengthening the credibility and fairness of the EU tax system.

Only through coordinated and forward-looking reforms can the EU maintain a robust, effective, and business-friendly tax environment in an increasingly globalized economy.

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Appendix - Definition of Scales for the Implementation of ATAD Measures across EU Member States

This appendix outlines the scale definitions used to evaluate the country-level implementation of ATAD measures, blacklist measures, and other unilateral measures across EU countries. Each measure's implementation is graded on a separate scale. The corresponding scores reflect the stringency with which the respective measures were implemented. Higher scores reflect a higher stringency.

1. Controlled Foreign Company Rules

The implementation of CFC rules is evaluated on a three-point scale:

- **1**: All main elements follow the ATAD provisions.
- **2**: At least one main element is stricter as defined in the ATAD.
- **3**: At least two main elements are stricter as defined in the ATAD.

Where "main elements" relates to one of the following: Control threshold, tax threshold, attributed income definition, or inclusion of exemptions.

2. Interest Barrier Rules

The implementation of interest barriers is evaluated on a three-point scale:

- **1**: All main elements are in line with the ATAD and incorporate possible reliefs.
- **2**: At least one main element is not in line with the ATAD or does not include reliefs provided for in the ATAD.
- **3**: At least two main elements are not in line with the ATAD or do not include reliefs provided for in the ATAD.

Where "main elements" relates to one of the following: EBITDA threshold, implementation of exemptions, allowance of carry-over of excess borrowing costs, allowance of carry-over of unused interest capacity (i.e., EBITDA).

3. Exit Taxation

The implementation of exit taxation rules is evaluated on a three-point scale:

- **1**: All main elements incorporate possible reliefs.
- **2**: At least one main element does not include reliefs provided for in the ATAD.

- **3**: No element includes reliefs provided for in the ATAD.

Where "main elements" relates to one of the following: Covered transfers and provision of temporary transfer exemption.

4. Hybrid Mismatch Provisions

Hybrid mismatch rules are evaluated on a three-point scale:

- **1**: Hybrid mismatches rule is least comprehensive.
- **2**: Hybrid mismatch rule is medium comprehensive (covers all arrangements, excludes max. one instrument or defines additional specific cases).
- **3**: Hybrid mismatch rule is most comprehensive (covers all arrangements, excludes max. one instrument, and defines additional specific cases).

5. General Anti-Abuse Rule (GAAR)

GAAR implementation is evaluated on a three-point scale that considers the frequency of use:

- **1**: GAAR is rarely used.
- **2**: GAAR is sometimes used.
- **3**: GAAR is often used.

6. Blacklist Measures

The implementation of EU blacklist measures (i.e., extended withholding taxation, expanded CFC legislation, limitation of participation exemption, and non-deductibility of expenses) is evaluated on a three-point scale that considers the number of measures and the extent of the blacklist implemented:

- **1**: Only 1 measure implemented.
- **2**: 2 or 3 measures implemented.
- **3**: 4 measures implemented *or* extended blacklist and at least 2 measures implemented.

7. Additional Unilateral Measures

Unilateral measures, such as those addressing BEPS beyond ATAD, are assessed on a two-point scale:

- **0**: No unilateral measure implemented.
- **1**: Unilateral measure implemented.

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