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To: The European Commission submitted online

**EBIT's Comments on the Proposal for a Council Directive on Transfer Pricing –
Feedback period 19 September 2023 - 03 January 2024**

Brussels, 27 November 2023

Dear Commissioner Gentiloni,

EBIT's Members¹ thank the European Commission for the opportunity to provide feedback on the Proposal for a Council Directive on Transfer Pricing (hereafter: Proposal for TP Directive).

On 12 September 2023, the Proposal for TP Directive was adopted. The objective is to simplify and standardize tax and transfer pricing rules and increase tax certainty for businesses in the EU, thereby reducing the risk of litigation and double taxation and the corresponding compliance costs leading to improved competitiveness and efficiency of the Single Market.

EBIT's Members generally support and also value efforts by the European Commission towards streamlining transfer pricing procedures within the European Union, as there still exist interpretation discrepancies between countries leading to (lengthy and costly) controversy and uncertainty. In that view, EBIT's Members welcome this initiative as a constructive step in its efforts to achieve more consistency in the way the arm's length principle is applied across the European Union. Specifically, the introduction of a new fast-track dispute resolution mechanism for simple cases would be a step towards more efficient controversy resolution. At the same time, EBIT's Members believe it is possible and desirable to further enhance the proposal.

Firstly, EBIT's Members consider that some important issues remain unaddressed. For instance, whether competent authorities (under the mutual agreement procedure) should have some margin to deviate from the OECD Transfer Pricing Guidelines to reach an agreement on resolving double taxation when dealing with complex cases. The same question applies to arbitrators or arbitration panels who must operate within a defined framework.

Secondly, EBIT's Members note that the treatment of complex and contentious issues such as the valuation of intangibles, business restructuring and financial transactions is postponed to a later stage. This raises concerns about the comprehensiveness and likely effectiveness of the Proposal for TP Directive. We believe that these issues should be proactively addressed where possible now already to provide a more holistic solution. At the same time, we realise that this might prove challenging due to the complexity of the matter and differing opinions among the EU's 27 Member States.

Thirdly, EBIT's Members notice the lack of a more substantial harmonization of transfer pricing documentation. We look upon this Proposal for TP Directive as an opportunity for significant streamlining in that area, yet, instead, the Proposal only establishes minimum requirements (on top of existing domestic documentation requirements) allowing each country

¹ EBIT's Members include Airbus Group, BP, Carlyle, Carrier, Caterpillar, Diageo, GSK, Huawei, International Paper, Johnson and Johnson, JTI, PepsiCo, Pfizer, P&G, RELX, RTX, Schrodgers, SHV Group and Vattenfall. For more information on EBIT see: www.ebit-businessstax.com

to maintain their own specific documentation approach and restricting delegated Commission Acts to common templates and linguistic requirements. Ensuring consistency in documentation would lead to a reduction in administrative burden and costs associated with tax and transfer pricing management and facilitate smoother business operations across the EU. After all, the three-tiered approach on documentation in the OECD Transfer Pricing Guidelines (in particular the Master File and the Local File) is largely based on concepts that were already developed in 2008 by the EU Joint Transfer Pricing Forum.² EBIT's Members believe that the European Commission should prioritize addressing the administrative burden and costs associated with documentation to promote easier cross-border business activities within the EU.

Lastly, EBIT's Members want to refer to the initiative under Pillar One Amount B, that has the objective of inserting a simplified transfer pricing approach for baseline marketing and distribution activities based upon a result matrix. These in principle low risk activities still give rise to a substantial number of disputes, both at the local and the international level. Also, at the EU-level, such disputes still arise likely because of disagreement on or different interpretation of the selected comparables. We therefore suggest that it is worthwhile to explore a simplified and harmonized approach for low-risk activities (not necessarily limited to distribution and marketing activities) based on safe harbour rules (elective for the taxpayer) with dedicated methodologies and margins, the determination of which should be open, verifiable and transparent, and reviewed regularly.

To conclude, EBIT's Members consider that the Proposal for TP Directive represents a noteworthy step towards streamlining transfer pricing within the European Union. Despite the deferred treatment of complex topics and the absence of a real common approach to documentation, we recognize its potential to reduce the growing number of transfer pricing cases and improve consistency in interpretation. We wish to note that transfer pricing within the EU remains an important topic as also for Pillar Two the globe income should be computed in accordance with the arm's length principle and will not be calculated at EU level but per country.

EBIT's Members trust this contribution is helpful to you and are always keen to exchange views and engage in dialogue with the European Commission on this important subject.

Yours sincerely,

European Business Initiative on Taxation – November 2023

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² For example: Communication from the Commission to the Council, European Parliament and European Economic and Social Committee on the work of the EU Joint Transfer Pricing Forum on transfer pricing documentation for associated enterprises in the EU - Proposal for a Code of Conduct on transfer pricing documentation for associated enterprises in the EU of 7 November 2005, COM(2005) 543 final).