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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct Taxation, Tax coordination, Economic Analysis and Evaluation
Company Taxation initiatives

Brussels
TAXUD.D.1.002/AM

Maciej Witucki
President of the Polish
Confederation Lewiatan

Konfederacja Lewiatan
www.lewiatan.org

Dear Mr Witucki,

We wish to thank you for your comments on the DEBRA directive proposal. We welcome the points you raise and duly take note of them, in light of the ongoing negotiations at Council level for the adoption of the directive.

As regards your main concern, i.e. the introduction of an interest limitation rule, in addition to the one applicable as per the Anti-Tax Avoidance Directive, we must stress that such rule aims at ensuring the budgetary neutrality and sustainability of the proposed directive. A limitation to the deductibility of exceeding borrowing costs has been considered necessary, so that Member States be able to finance the equity allowance in the long term. In this sense, this new interest limitation rule is a core part of the DEBRA proposal. It could not be substituted by the existing ATAD rule, which has very different objectives, i.e. to limit the risk of tax avoidance. We should stress that the legal text regulates the interaction of the two interest limitation rules in a way that it leaves no doubt on which applies each time.

On your specific concerns, we note, first, that you raise the issue of the notional interest deduction (NID) rate as compared to ECB rates. While for the issuance of the proposal it was necessary to draw limits, we do understand and share your concern and we are already working on how to best tackle the current challenges.

When it comes to the deductibility of third-party debt, we wish to stress that the limitation to the deductibility of interest has to strictly concern the same taxpayer that is entitled to benefit from the allowance.

Finally, we have taken note of your recommendations regarding expenses to be treated as interest and situations where there is a low risk of tax rate arbitrage as well as for the calculation of the EBITDA.

Overall, we would like to highlight that the proposed directive is under ongoing negotiations in Council, which may result in the Presidency making changes to the legal text, in order to strike a compromise among Member States. The proposal is by no means binding law at this stage. It is materially in the hands of the Member States how to finalise the text for adoption.

We hope that this is useful and clear.

Yours sincerely,

Electronically signed

Bernardus ZUIJDENDORP
Head of Unit