

Fortum Oyj (EU Transparency register ID 03501997362-71)

## FORTUM'S RESPONSE TO THE CALL FOR EVIDENCE OMNIBUS ON TAXATION (DG TAXUD)

Fortum appreciates the opportunity to contribute to the Commission's Omnibus initiative on corporate taxation. We support the objective to modernise, simplify and strengthen coherence across the EU direct tax framework promoting the Single Market. We also welcome the Commission's willingness to anchor simplification in business reality and to avoid duplication of regulations, especially in light of Pillar Two.

### About Fortum and our approach to tax

Fortum recognized the importance of taxes already in 2012 when we published our first Tax Footprint. As a next step Fortum committed to B Team tax principles in 2018 and has worked to embed responsible tax management across the business. We regard tax to be an integral part of both business and value creation and have aligned our tax function accordingly. Our Board-approved tax principles are publicly available, and Fortum has achieved Fair Tax accreditation, with top-tier recognition in 2025 for tax responsibility and transparency. These credentials reflect our commitment to responsible behaviour including transparency and compliance, and they frame our perspective that the challenges outlined below are encountered.

## 1 WHY SIMPLIFICATION MATTERS NOW

The EU direct tax framework has in the last 10 years become increasingly complex and fragmented for businesses active within the EU. Fortum fully supports effective action against tax avoidance. However, the combination of measures not aligned with legitimate business needs, divergent national options, overlapping anti-avoidance measures, limited efforts to improve legal certainty within the Single Market and frequent rule changes has decreased growth opportunities and increased administrative cost, reduced predictability and, in specific areas, produced unintended double taxation. The cumulative effect is particularly acute for capital-intensive, long-cycle investment in the energy sector sensitive for macroeconomic conditions.

As the Draghi report indicates, a sustainable future can only be achieved through an investment and growth agenda. Taxation should therefore support such an agenda as much as possible. The simplification offers a good opportunity to growth minded tax policies meanwhile prohibiting effectively abusive structures and tax avoidance behaviour.

## 2 FOCUS AREAS AND RECOMMENDATIONS

### 2.1 Need for a more targeted and risk-based application of ATAD

Fortum's experience under ATAD demonstrates that effectiveness in combating aggressive tax planning depends less on the breadth of rules and more on their ability to distinguish abusive arrangements from genuine business activity. A risk-based approach, aligned with Pillar Two, would preserve deterrence of profit shifting while avoiding unnecessary complexity, duplicate taxation and compliance costs for compliant taxpayers.

Fortum Oyj (EU Transparency register ID 03501997362-71)

## **2.2 Prevention of double taxation aligned with anti-avoidance**

Aligning corporate taxation with business reality means that costs that are made for commercial/business purposes should be deductible, as otherwise effective taxation of the actual profits will be higher than intended by the nominal tax rate. Exceptions should only be made when such non-deductibility meets societal aims, such as for example is the case for penalties and fines or aggressive behaviour abusing the purpose of regulative framework.

Both prevention of double taxation and anti-avoidance measures are key issues for the Single Market. Taxing profits once ensures the EU business competitiveness and proportional anti-abuse rules will ensure level playing field. In addition, lowering of withholding taxes based on the Interest and Royalty Directive and the prevention of double taxation under the Parent Subsidiary Directive should be effective and efficient.

## **2.3 ATAD and Controlled Foreign Company (CFC) rules**

CFC rules were designed for a pre-Pillar Two world. While we acknowledge the relevance the rules to deter profit shifting and ensure global minimum taxation respectively, we support a targeted revision of the CFC rules to eliminate overlaps with Pillar Two, reduce Member State optionality and focus CFC outcomes on genuinely abusive arrangements rather than normal business structures. Greater coherence would limit duplicate taxation and reporting, while preserving effective deterrence of profit shifting.

Fortum recommends that any revision should ensure coherence with Pillar Two to avoid duplicate taxation and reporting obligations for the same purpose. Reinforcing the case for coordination and simplification rather than cumulative application would simplify rules reaching for the objectives at the same time.

## **2.4 ATAD Interest Limitation Rule (ILR)**

The Interest Limitation Rule plays an important role in countering base-erosion strategies. We are convinced that the Interest Limitation Rule eliminates effectively profit shifting. In practice, however, the rule goes beyond its objective. EBITDA-based design is poorly matched to capital-intensive, long-dated infrastructure where legitimate leverage is necessary and where earnings are sensitive to exogenous variables such as commodity prices, inflation and interest rates. For such assets, a mechanical EBITDA cap can produce permanently non-deductible interest and a higher cost of capital, outcomes that go beyond the rule's anti-avoidance purpose and that can delay or deter investment.

While the OECD has recognised the need for tailored treatment in form of infrastructure exemption of public infrastructure investments, the same economic characteristics and financing realities impact legitimate private capital intensive infrastructure investments. A rigid application of the rule can therefore restrict interest deductibility in genuine business case beyond the intended anti-avoidance purpose. This kind of unintended double taxation affects negatively investment decisions.

Fortum Oyj (EU Transparency register ID 03501997362-71)

To illustrate our point, recent periods have combined lower Nordic power prices with higher market interest rates. This has simultaneously reduced taxable EBITDA and increased net financing costs, creating disallowances unrelated to any BEPS concern, despite stable leverage on arm's length terms. Carry-forward mechanisms do not adequately restore symmetry where assets have long lives and earnings volatility is exogenous.

Taxable EBITDA as a tax base measure is therefore problematic for three reasons:

- first, it mechanically reallocates interest capacity within the group rather than reflecting genuine financing structures. In practice, the taxable EBITDA limitation shifts interest cost from one country to another. As new equity is typically not available at the level of the ultimate parent company, the interest burden is shifted between countries, disconnecting taxable EBITDA and interest cost.
- second, taxable EBITDA is highly sensitive to external market conditions, making it an unreliable base for determining interest deductibility. Declining Nordic power prices have significantly reduced taxable EBITDA, at the same time the market interests have increased. The carry forward rules do not adequately address this mismatch for business as ours, where assets have long life time.
- third, the interest deduction corridor should be set to allow deduction of the interest costs that commercially reflect the funding costs of the company, to ensure taxable profits as much as possible equate to the commercial profits that are realized.

In Fortum's experience EBITDA-based limitation does not reflect business reality and can result in permanently non-deductible interest, increased investment risk and delayed project execution, effects that go beyond the intended anti-avoidance objective of the rule.

Internal financing should not be conflated with tax planning. It often results from centralised treasury operations that optimise external funding, avoid structural subordination and allocate capital efficiently across a group. As a starting point, internal funding on arm's length terms should be treated consistently with external funding. For capital-intensive groups, centralised treasury functions followed by internal financing are a necessary feature of prudent financial management and resilience. Treating arm's length internal funding as an assumption less favourably than third-party debt risks distorting financing decisions and increasing the cost of capital without addressing any underlying BEPS concern.

For example, Paragraph 3.1 of the new Commentary to article 9 of the OECD Model Tax Convention guidance as released in November 2025 creates uncertainty whether it would allow deduction limitations to be applied to controlled transactions only, while similar payments to a third party would be deductible. If such limitations to controlled transactions would be allowed, then this would mean that effectively the arm's length principle and prevention of double taxation is undermined by domestic non-deductibility provisions.

We believe different treatment of legitimate controlled and external transactions harm the internal market and create undesirable and unprincipled hurdles and double taxation. We therefore propose to explicitly state for example in the Dispute Resolution Directive that non-

Fortum Oyj (EU Transparency register ID 03501997362-71)

deductibility provisions discriminating between controlled and similar third-party transactions are not allowed under the Directive.

We therefore encourage the Commission, within the Omnibus remit, to refocus the ILR on its core policy objective by:

- addressing profit volatility and inflation effects through a higher de minimis threshold;
- ensuring arm's length principles are respected in group contexts while identifying genuinely abusive structures;
- stating in Dispute Resolution Directive that non-deductibility provisions discriminating between genuine controlled and similar third-party transactions are not allowed under the Directive.
- introducing a clear, EU-wide approach to the infrastructure exemption that works consistently in practice for private infrastructure operations; and
- assessing whether Pillar Two already mitigates the underlying base-erosion risks such that overlapping ILR constraints can be simplified.

Member-state implementation of the public infrastructure exemption option has become fragmented and selective, which risks undermining neutrality in financing decisions within the Single Market. An EU-level minimum standard would bring much-needed consistency. To that end, Fortum offers the following drafting concept for consideration under Article 4(4)(b), to be refined through legislative technique and impact assessment:

*“Member States shall exclude from the scope of paragraph 1 exceeding borrowing costs incurred on loans used to fund a long-term infrastructure project where the project operator, borrowing costs, assets and income are all in the Union. For these purposes, a long-term infrastructure project means a project in relation to a large-scale asset that is considered in the general public interest by a Member State, covering at the minimum projects aimed at ensuring the reliable and continuous availability of essential services and resources to the public during construction, operation, maintenance and decommissioning. These include substantial investments in critical infrastructure, such as non-emitting energy production, water supply, transportation and communication systems. Where this point applies, the exemption shall apply to external and internal funding where there is minimal BEPS risk as evidenced by arm's length pricing and a genuine business purpose. Where this point applies, any income arising from a long-term infrastructure project shall be excluded from the taxpayer's EBITDA, and any excluded exceeding borrowing cost shall not be included in the group's exceeding borrowing costs vis-à-vis third parties for the purposes of paragraph 5(b).”*

## 2.5 Corporate tax directives (PSD, IRD, Merger Directive)

We support alignment across these directives to reduce frictions in cross-border reorganisations and financing. Differences in scope, procedure and interpretation have limited their practical usability, discouraged reliance in genuine business cases and increased dispute

Fortum Oyj (EU Transparency register ID 03501997362-71)

risk. Key areas for revision which would enhance legal certainty and reduce administrative burden are:

- Harmonised access procedures,
- Improved alignment with company-law rules for cross-border reorganisations, and clarification of key concepts such as beneficial ownership, including recognition of indirect ownership as well as alignment of eligibility criteria (including thresholds, holding periods and qualifying conditions)

## 2.6 Dispute prevention and resolution

We welcome the targeted amendments to the Tax Dispute Resolution Mechanisms Directive.

In our experience, interpretative ambiguities and procedural uncertainties discourage taxpayers from using the mechanism and prolong dispute resolution, thereby undermining legal certainty. Clarifying the admission phase and ensuring consistent application across Member States would increase trust in the system and contribute to a more investment-friendly tax environment.

Fortum's experience shows that effective dispute resolution cannot substitute for early certainty. In the absence of advance guidance and pre-filing discussions, even well-intentioned rules give rise to prolonged disputes, high administrative costs and delayed investments. Early certainty mechanisms should therefore be seen as a core element of responsible tax administration, supporting compliance by design rather than dispute after the fact.

In our opinion Dispute Resolution Mechanism Directive should be preceded with seeking early certainty through advance guidance and pre-filing discussions because:

- it promotes compliance by design, not dispute after the fact
- helps tax authorities understand business reality before investments are executed
- reduces litigation risk and supports long-term revenue stability
- ensure unified legal praxis within the EU by setting a level playing field to all taxpayers from all EU member states having same level of access to the EU court system.

Responsible tax administration, in the same spirit of transparency expected from taxpayers, would further strengthen trust and improve outcomes. This relates to how inquiries and audits are conducted, and tax rules to be interpreted and applied in line with both their legal wording and underlying policy objectives to ensure competitiveness of legitimate business activity. This would further improve the functioning of the dispute resolution framework and enhances trust between taxpayers and tax administrations.

Disputes will arise even after the simplification of the tax rules. Fair trial is a key component to create trust to the EU and Member States. In this respect the Dispute Resolution Directive needs to be applied in line with the spirit of this Directive. In some cases, Member States

Fortum Oyj (EU Transparency register ID 03501997362-71)

have very narrow interpretations of the rules, effectively limiting access to the Directive in situations that clearly need double taxation protection.

## **2.7 Administrative burden, compliance and competitiveness**

Across all instruments in scope, the cumulative compliance burden created by overlapping and non-harmonised rules is a key concern. Simplification, proportionality and legal certainty are essential to support long-term investments, particularly in sectors exposed to high capital expenditure and long planning horizons. Similarly, it is the cumulative interaction of ATAD, Pillar Two, directive-level procedures and national reporting requirements, rather than any single instrument that has driven the sharp increase in compliance costs.

Reducing unnecessary reporting, eliminating outdated provisions and improving coherence across EU tax legislation would strengthen the EU's competitiveness without undermining the fight against tax abuse.

In light of the above, we welcome the efforts carried out by the European Commission to streamline the existing EU tax acquis, while maintaining the high standards of EU law in this field and ensuring a coherent application of EU tax provisions across Member States. Not only would this better enable the functioning of the EU Single Market, but it would also strengthen the EU's energy sector and thereby the EU's energy security.

## **3 CONCLUDING REMARKS**

We support the Commission's objective to modernise the EU direct tax framework through a targeted and proportionate Omnibus initiative. Clear, coherent and fit-for-purpose rules that distinguish genuine tax abuse from normal business activity are key to safeguarding tax revenues while enabling sustainable growth and investment in the EU. This is particularly important for capital-intensive energy infrastructure that underpins the green transition and security of supply. We would welcome continued dialogue and are available to contribute data and business insights to support evidence-based simplification.

For more information please contact:

Reijo Salo, VP, Group Tax: [reijo.k.salo@fortum.com](mailto:reijo.k.salo@fortum.com)

Anna Wrzesinska, Director, Group Tax: [anna.wrzesinska@fortum.com](mailto:anna.wrzesinska@fortum.com)