European Commission
Taxation And Customs Union Directorate General
SPA3 08/015,
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Response to the European Commission Public Consultation on the Proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance (DEBRA) and on limiting the deductibility of interest for corporate income tax purposes

EPRA welcomes the opportunity to provide feedback to the European Commission proposal on a Debt-equity bias reduction allowance (DEBRA).

We encourage EU-policymakers to consider the different characteristics of public equity and debt markets when undertaking capital markets regulatory initiatives. A review of fiscal arrangements should not result in the creation of new fiscal barriers for debt financing, but should rather be aimed at removing the burdens on equity financing to create a level playing field.

EPRA's position:

1. We welcome the consideration to provide a tax deduction on equity as well as debt, however the proposed calculation of equity relief is too complex and uncertain. The complexity further adds to the significant compliance burden that business is already facing from recent law changes (e.g. ATAD3 and OECD measures).

The uncertainty created, including that the measure includes reserves, which change from period to period, would result in the impossibility to factor the relief into investment decisions (i.e. IRR calculations forecasting the return from a project). On the other side, interest on debt is more certain and can be used in IRR calculations. This undermines one of the purposes of the proposal, which is to reduce bias towards debt.

A less complex mechanism to calculate the equity relief could be, as implemented and applied in certain EU Member States already, a relief deduction calculated every year on the basis of the difference between the equity at the end of the period and the equity at the date of the law becoming effective (i.e. the net increase of equity in respect to the starting point). The difference, if positive, is then multiplied with a figurative rate and the result deducted only in the relevant year (if negative, no deduction).

2. The timing and purpose of the DEBRA proposal is questionable. Given the rules are designed to be tax revenue neutral, they would add significant uncertainty and compliance costs for businesses at a time when investment should be encouraged.

3. Further tax and regulatory disincentives that suppress investor demand should be avoided. An equity relief could be used to encourage investment but not in the currently proposed form and not with the added layer of a further interest restriction. Another measure to restrict interest deductions is most counterproductive, particularly for the real estate industry, which tends to rely on leverage more than other industries and make investment decisions over a long time horizon of 5-10 years and more, resulting in having made already investments that would be negatively impacted by the proposal. Several interest limitation rules have been introduced recently, achieving the aim of tackling any tax abuse. The impact of these rules needs to be first fully understood before further measures impacting interest deductions should be proposed.

4. As an alternative, the European Commission should envisage the introduction of a grand-fathering clause according to which interest on a debt drawn-down on a certain date (e.g., the date on which the DEBRA proposal has become effective) shall not be affected by this new limitation, unless the terms and conditions of the underlying loan are subject to important modifications after this date.

In this way, the DEBRA proposal (to the extent it relates to deductibility of interest on debt) would mirror the regulation under ATAD 1. The absence of such a grand-fathering clause might also jeopardise the financial situation of borrowers and investors. Indeed, it will not always be possible or recommendable to restructure a company's indebtedness to increase the equity investment and reduced the debt (e.g., a partial reimbursement of a bank loan might not be allowed or might trigger an early reimbursement for the full amount).

Having such a grand-fathering clause should, in our view, also not jeopardise the objectives of DEBRA since, considering the date of the proposal, the expected entry-into-force and the maturity of (real estate) loans usually seen on the market, it will mainly correspond to a transitory regime of a few years to allow all parties' concerned to restructure their indebtedness.

We welcome the opportunity to discuss and explain our views in more detail.

About EPRA:

The European Public Real Estate Association (EPRA) is the voice of Europe's listed real estate companies that derive income from the ownership, trading and development of income producing real estate assets. Listed real estate allows anyone, from retail investors to large institutional investors, to invest in the underlying assets of publicly quoted companies, the same way as investing in other industries through purchasing shares. With more than 280 members (companies, investors and their suppliers), EPRA represents over 680 billion EUR of real estate assets (European companies only) and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index.

EPRA plays a leading role in increasing the transparency of the listed real estate environment by improving the quality and consistency of the financial reporting, performance reporting and corporate governance framework within Europe. EPRA produces its Best Practice Recommendations (BPR) which are a recognised benchmark for reporting listed real estate under international accounting standards.