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Evaluation ATAD Directive – contribution Aedes

Through this position paper, Aedes would like to give her feedback on the European Commission's call for evidence on the Anti Tax Avoidance Directive (ATAD). Aedes is an association that represents the interests of social housing providers from the Netherlands. Together, Aedes members own and manage 2.3 million dwellings, constituting 32% of the total housing stock in the Netherlands.

This contribution consists of two parts. In the first part, general recommendations are given. Hereby we focus on the earnings stripping measure. In the second part, we focus on the impact the ATAD had on the social sector in the Netherlands.

Part 1: General recommendations

Our general remark is that we strongly support the objective of ATAD of combatting tax evasion and international tax planning. However the negative impact the directive has on strategic investments and the one-size-fits-all character of certain exemptions, may have led to a situation where the disadvantages of the directive outweigh the advantages. Especially since the introduction of directive 2022/2523, also known as Pillar2.

In short: Aedes recommends to:

- **Assess the impact on strategic investments**
- **Map the added value in recent context**
- **Give guidance on the use of exemptions, such as the exemption for long-term public infrastructure projects**
- **Consider introducing more specific exemptions, such as an exemption for the construction and renovation of social housing.**

- **Strategic investments:** The Letta-report, the Draghi-report and the Political Guidelines of the European Commission 2024-2029 place a strong emphasis on the competitiveness of the European Union. This requires strategic investments. Not all investments can be financed through own equity and the earnings stripping measure of the ATAD places strong constraints on the ability to invest through loans. Especially in capital intensive sectors (which include construction, real estate and housing). We recommend the European Commission to assess whether this measure had an undesired impact on those strategic investments that are needed the most.

- **Added value in recent context:** Recently directive 2022/2523, also known as Pillar2 has been adopted. This directive sets a minimum tax rate of 15% on corporate income tax. With this in place, the earnings stripping measure from ATAD, which indeed also aims to prevent aggressive international tax planning, may be an additional yet less effective tool to deliver on the same outcome. Given the impact this measure has, we recommend the European Commission to map the added value of the earnings stripping measure in a post-Pillar2 world.

- **Guidance on the use of exemptions:** Under the directive it is possible to apply an exemption for long-term public infrastructure projects, which is defined as:

  "A project intended to provide, improve, operate and/or maintain a large-scale asset that is considered by a Member State to be of general interest."

  It is expected that this could include the execution of Services of General Economic Interest (SGEI), such as social housing. Nevertheless, the Dutch government states that the exemption for long-term infrastructure projects is not eligible: *In order to be able to use the exception in the ATAD1 directive for long-term public infrastructure projects, four conditions must be with: it must be 1) a project that 2) concerns infrastructure, 3) has a public character and 4) is realized for the long term. It seems difficult to argue that social housing meets these conditions. In the case of long-term public infrastructure projects, roads, bridges and tunnels in particular should be considered*[1].

  We recommend the European Commission to give further guidance to member states on the use of the long-term public infrastructure exemption.

- **Specific exemptions:** The exemption for stand-alone entities introduced in the directive is too generic which may discourage member states from using them. It does not specify what types of stand-alone entities or sectors should or should not be exempted from the earnings stripping measure.

  To illustrate: In The Netherlands there is a general political will to exclude social housing providers from the earnings stripping measure under this exemption. The one-size-fits-all nature of the exemption caused the Dutch government to argue that this option is not desirable: *The question is to what extent a generic exemption is effective and efficient with regard to housing associations. An exemption for stand-alone entities or a generic (group) exception also detracts in a broad sense from the objective of achieving a more equal tax treatment of equity and debt, since all taxpayers and not only housing corporations will benefit from this measure.*[2]

  In her *Political Guidelines,* President Von Der Leyen expressed that the EU *urgently needs to address the housing crisis*. This requires the construction of homes at a large scale and speed. The negative impact this directive has on strategic investments, including in the field of housing, may prove to be an obstacle for this. Therefore we recommend the European Commission to introduce more specific exemptions for the earnings stripping measure, such as an exemption for the construction and renovation of social housing.

[1] Response to questions from the Standing Committee on Finance to the State Secretary for Finance – Taxation and Tax Authorities on the report Taxes in a social perspective, Parliamentary document 32 140, no. 180

[2] Response to questions from the Standing Committee on Finance to the State Secretary for Finance – Taxation and Tax Authorities on the report Taxes in a social perspective, Parliamentary document 32 140, no. 180

Part 2: the impact of ATAD on the Dutch social housing sector

Social housing providers are legally non-profit entities. At the same time, Dutch legislation requires social housing providers to operate only in The Netherlands. It is safe to say that they were not the type of organizations the European Commission had in mind when they tabled the ATAD. However, the sector pays an additional amount of up to 465 million per year in corporate taxes due to the ATAD[3], which corresponds to an estimated number of 70.000 newly constructed homes. Since social housing providers are legally required to reinvest all earnings back into social housing, there is an assurance that these resources could have brought a significant relief on the pressing housing shortage.

In short:

- **The earnings stripping measure of the ATAD, unintentionally leads to a higher tax burden for Dutch non-profit social housing providers of up to 465 million a year.**
- **Specifically, it poses a penalty on social investments in areas such as new construction and building renovation.**
- **This forms an obstacle for objectives of the European Commission such as the need to address the housing and climate crisis.**

The ATAD and housing associations

Under ATAD, companies are only allowed to deduct their interest up to 30 percent of their profit (EBITDA). The so called the interest deduction limitation rule or earnings stripping measure. They way member states have transposed this into national law differs, which may negatively impact the effectiveness of the directive.

An unintended outcome of the earning stripping measure, is that the tax burden of non-profit social housing has increased significantly. Dutch social housing providers are non-profit entities that are entrusted with a Service of General Economic Interest (SGEI). By law, all incomes have to be reinvested again in to social housing, there is no profit distribution. Yet they are eligible for corporate income tax.

Moreover, the Dutch social housing system is based on the ability of the sector to access capital at low interest rates through guaranteed loans. This system has been around in the Netherlands for decades and allows for the execution of a SGEI without government subsidies. It also means that housing associations are largely financed through loans. Housing associations are foundations or associations and cannot issue shares to attract equity.

[3]Aedes: Development Vpb/ATAD housing associations Follow-up research report October 2023: https://aedes.nl/media/document/vpb-onderzoek-2023pdf

The combination of being eligible for corporate income tax, being financed through loans and the earning stripping measure; is that the Dutch social Housing sector is disproportionately affected by the ATAD. This is remarkable as this is not what the directive intends to do. It intends to combat aggressive tax evasion practices by international operating companies. Housing associations are legally required to operate withing national borders. Clearly, social housing providers are captured in the unforeseen and unintended side-effects of this directive.

Additional tax burden of 465 million per year – a penalty on social investments

For our members, the ATAD gives an extra sharp edge to the already high corporate tax burden. Not only is a significant part of the capital of housing associations financed with debt capital (loans), they also make largely financially inviable investments: offering below market priced housing to the most vulnerable citizens. The fiscal EBITDA is automatically low and less interest charges can be deducted than for commercial investors.

The Dutch social housing sector agreed to an ambitious set of KPIs for investments in social housing with the Dutch government in 2022. In order to make these investments, the loan volume of our members will increase by €60 billion. The higher interest charges will further increase the impact of ATAD as every euro in additional interest is no longer deductible. The non-deductible interest for our sector will increase to €1.8 billion per year in 2027.

With the expected increase in the loan volume, the corporate income tax burden will be increased by €465 million per year by ATAD at an average interest rate. The unintentional outcome of this directive, is that it forms an penalty on the type of social investments that are needed the most.

If you have any questions about the above, please contact Robin van Leijen via r.vanleijen@aedes.nl or by telephone on 06 51 80 63 29.