# INREV response to the European Commission Call for Evidence

*30 March 2026*

## Simplifying EU rules on direct taxation – omnibus

The European Association for Investors in Non-Listed Real Estate Vehicles[1] (INREV) appreciates the ongoing efforts of the European Commission to review and modernise the EU taxation framework and welcomes the continued commitment to reducing administrative burdens and increasing legal certainty for taxpayers.

INREV also welcomes the work undertaken by DG TAXUD to assess and streamline existing EU tax legislation. As part of this process, INREV would like to highlight practical challenges faced by the private real estate investment industry when complying with the current EU tax framework. The review of the relevant directives represents a timely opportunity to advance meaningful simplification, ensuring that the rules remain effective while becoming more coherent, predictable and easier to apply for investments and capital allocators operating across the European Union.

In this context, INREV aims to provide an overview of key practical obstacles encountered by the industry and to identify areas where simplification, harmonisation and administrative improvements could strengthen the functioning of the internal market. These observations reflect the experience of real estate investment managers and investors that deploy long-term institutional capital into the European real estate sector.

INREV also notes that discussions on administrative complexity in the EU tax framework extend beyond the directives covered by this initiative. In parallel, INREV contributed to the European Commission's consultation on the Directive on Administrative Cooperation (DAC), where similar concerns were raised regarding reporting complexity and overlapping requirements. Taken together, these processes offer an important opportunity to ensure that EU tax rules remain effective while avoiding unnecessary duplication and administrative burdens for cross-border investment structures.

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[1] INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance, research and information related to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe.

INREV currently has over 500 members. Our member base includes institutional investors from around the globe including pension funds, insurance companies and sovereign wealth funds that provide critical income security for more than 172 million people, as well as investment banks, investment managers, fund-of-funds managers and advisors representing all facets of investing in non-listed real estate vehicles in Europe. Our investment manager members manage more than 500 non-listed real estate investment funds, as well as joint ventures, club deals and separate accounts for institutional investors.

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## General comments on investment funds

### Legal and economic framework for cross-border investments

INREV's membership is composed primarily of institutional real estate investors and investment managers. For the purposes of this response, the focus is on cross-border investments, which typically involve domestic institutional investors and pension funds, as well as international investors such as insurance companies and foreign pension funds.

For many years, a standard market structure for real estate fund investments consisted of a regulated investment vehicle, most commonly an Alternative Investment Fund (AIF), domiciled in a jurisdiction offering a robust regulatory framework and a high degree of investor familiarity. These vehicles generally hold real estate assets through intermediary entities, often Special Purpose Vehicles established in the state where the property is located, primarily for operational and legal reasons. The investor base is institutional, including pension funds and insurance companies. Financial flows within these structures comprise capital contributions and distributions of income or gains and, while often complex, are not designed for aggressive tax planning purposes.

It is important to recall that anti-abuse provisions are fundamentally not intended to target the fund industry represented by INREV. The financial flows involved are significant and operate within highly regulated structures, without any objective of circumventing the tax rules of source states. In practice, transactions structured as share deals are generally subject to appropriate taxation in the source jurisdiction.

Nevertheless, certain aspects of these arrangements may be affected by compliance rules and anti-abuse measures. Areas of potential concern include the assessment of economic substance in intermediary entities, the availability of treaty benefits which may be perceived as treaty shopping, and the transparency of cross-border arrangements under frameworks such as ATAD and DAC 6.

Where investments are made directly, exemptions frequently apply. Importantly, the portfolio diversification and risk management through the use of a capital pooling structure should not result in a less favourable tax treatment. Against this background, it is essential to avoid creating excessive complexity in reporting obligations that would be disproportionate to the objectives pursued. Current compliance costs and administrative burdens are already significant. The imposition of additional layers of complexity would undermine the principles of proportionality and legal certainty.

INREV therefore considers that there should be a clear legislative objective to simplify these frameworks while preserving transparency and regulatory integrity. In this respect, it should be emphasised that, in most cases, the vehicles used fall within the scope of the AIFMD or even more prescriptive regulatory regimes and are already subject to strict regulatory supervision.

### Characteristics and tax neutrality of the investment fund industry

INREV would like to reiterate several essential characteristics of the private real estate investment and asset management industry.

The investment fund market is broad and diverse. It includes funds distributed to professional and institutional investors, which may pursue a wide range of strategies, including investments in listed transferable securities, real estate and private equity. It also includes vehicles specifically designed to serve pension funds and insurance companies by matching income streams to liabilities and thereby provide retirement and similar long-term benefits.

The fund industry operates under stringent regulatory frameworks. At EU level, the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and the Alternative Investment Fund Managers Directive (AIFMD) establish mandatory rules governing the cross-border activities of investment funds and their management companies. In parallel, Markets in Financial Instruments Directive (MiFID II) imposes strict investor protection obligations on firms distributing financial products, including UCITS and AIFs. In practice, these regulatory requirements are reflected in detailed contractual arrangements among the entities and intermediaries involved in cross-border fund distribution.

Investment funds are designed to ensure tax neutrality compared to direct investments, a principle recognised both by the OECD and by the European Commission. Tax neutrality is a fundamental feature of collective investment and underpins the ability of funds to pool capital efficiently without distorting investment decisions.

Most jurisdictions achieve tax neutrality by treating collective investment vehicles as fiscally transparent and taxing income at the investor level, or by treating them as opaque but exempting them from taxation or applying reduced or zero tax rates. Even where neutrality applies at fund level, taxation of financial flows occurs at several points in time. This includes withholding taxes at source on certain types of income, investor-level taxation of income or gains under domestic rules supported by exchange-of-information mechanisms such as the Common Reporting Standard, taxation of distributor profits arising from the marketing of fund units or shares, and taxation of management companies operating cross-border under national laws and applicable double tax treaties.

In this context, EU tax directives should not, in practice, call into question the principle of tax neutrality for investment funds. On the contrary, they should support the effective functioning of the internal market. Operations and investments should not be hindered by restrictions, disadvantages or distortions arising from tax provisions or divergent administrative interpretations by Member States. Such outcomes inevitably restrict freedom of establishment and the free movement of capital within the EU.

Any practical application of EU tax directives that undermines tax neutrality and thereby restricts freedom of establishment or capital movement constitutes a barrier to investment and to the inflow of foreign capital into the EU.

## Anti-Tax Avoidance Directive (ATAD)

INREV welcomes the fact that ATAD 2 explicitly recognises that EU investment funds are designed to be fiscally neutral. In particular, the Directive provides a carve-out for regulated collective investment vehicles from the reverse hybrid mismatch rule, ensuring that these legitimate fund structures largely remain unaffected by anti-hybrid measures and preserving the intended neutrality of investment fund structures.

At the same time, divergent national implementations, complex operational requirements and overlapping frameworks lead to practical challenges in the application of the Anti-Tax Avoidance Directives (ATAD and ATAD 2).

### Divergent interpretation and implementation across Member States

The transposition of ATAD 1 and ATAD 2 has resulted in substantial differences across Member States, particularly with respect to the Interest Limitation Rule (ILR), Controlled Foreign Company (CFC) rules, the General Anti-Abuse Rule (GAAR) and hybrid mismatch provisions.

Key concepts, such as charges connected to the raising of finance, are interpreted differently across jurisdictions, while national approaches to exemptions and carve-outs also vary. In addition, enforcement practices differ across Member States, making compliance less predictable for businesses operating across borders.

These differences lead to legal uncertainty, distort tax outcomes and increase compliance costs for cross-border investment structures.

### Heavy operational burden and complexity

ATAD rules are highly technical and create significant compliance burdens for businesses.

The ILR requires extensive data collection and adjustments, which may vary across Member States. Identifying hybrid mismatches is also complex and often depends on information from foreign jurisdictions that businesses may not always be able to access. Furthermore, the interaction between the EU GAAR and domestic anti-abuse rules can create duplication, requiring parallel assessments under different legal standards.

This complexity reduces transparency for taxpayers, hampers investment planning and makes compliance more difficult and less predictable.

### Restrictive effects on financing and cross-border business operations

Certain ATAD provisions may unintentionally hinder legitimate business models, particularly in relation to financing and group structuring.

For example, the ILR may limit interest deductibility even in situations where no tax avoidance motive exists, which can affect long-term financing arrangements and group treasury operations. In some cases, this may also lead to situations of economic double taxation, where interest deductibility is denied under the ILR while the same interest remains taxable in the hands of the recipient.

These effects reduce financing flexibility, increase the cost of capital and may discourage cross-border investment.

## Recommendation

In the context of the Commission’s commitment to reducing administrative burdens and increasing legal certainty for taxpayers, INREV encourages the Commission to ensure that ATAD definitions are applied consistently across Member States and are not subject to diverging interpretations at national level.

In addition, the rules were designed in an economic environment characterised by historically low interest rates and therefore do not fully reflect the current context of higher interest rates and higher inflation. The Commission could therefore consider increasing the EUR 3 million de minimis threshold for interest deductibility. It could also review the treatment of certain financing arrangements, including loans from financing institutions and publicly issued debenture instruments, in order to ensure that the rules remain proportionate and do not unnecessarily restrict legitimate financing activities.

## Parent-Subsidiary Directive (PSD)

Different implementations of key definitions and concepts and inconsistent application of anti-abuse rules across Member States lead to several practical challenges for cross-border real estate investment fund structures in the application of the Parent-Subsidiary Directive (PSD) raises several.

### Divergent interpretation and implementation

Member States apply different eligibility criteria, including holding thresholds, minimum participation periods, and differing interpretations regarding whether certain entities qualify for PSD exemptions. Significant challenges also arise from diverging interpretations of key concepts, including subject-to-tax requirements.

In addition, diverging interpretations of anti-abuse rules by Member States and courts, particularly regarding the relationship between abuse of rights and beneficial ownership (BO), have created considerable legal uncertainty. The Court of Justice of the European Union rulings commonly referred to as the “Danish cases” (C-116/16 and C-117/16) further blurred the distinction between these concepts. While some Member States have adopted an expansive approach, for example by requiring a beneficial ownership condition that is not explicitly set out in the PSD, others have maintained a more formal interpretation. This has resulted in uneven application across the EU and has complicated cross-border investment structures.

These divergences lead to legal uncertainty, unpredictable dividend treatment, an increased risk of denied exemptions, and higher advisory and compliance costs for businesses operating across Member States.

### Administrative and procedural complexity

In practice, claiming PSD exemptions often requires the provision of certificates of tax residence. In some jurisdictions, however, such certificates may be considered insufficient, creating additional uncertainty and administrative burden.

Furthermore, in certain Member States, an overly cautious approach towards entities established in other jurisdictions can lead to the near-automatic denial of exemptions. This creates practical barriers to cross-border dividend flows and undermines the objective of the Directive to facilitate the functioning of the internal market.

As a result, businesses may face higher operational costs, delays in dividend distributions, and reduced predictability in cash flows.

### Recommendation

Consistent with the PSD’s objective of ensuring the fiscal neutrality of cross-border dividend and profit distributions and eliminating double taxation, and in line with the Commission’s commitment to reducing administrative burdens and increasing legal certainty for taxpayers, INREV encourages the Commission to ensure that the application of the PSD remains accessible and workable for investment fund structures and their related entities.

In particular, fully taxable holding companies should not be prevented from obtaining the benefits of the PSD exemption solely because they form part of an investment fund structure. One possible approach would be to introduce safe harbour examples or guidance, similar to the examples developed under the OECD Principal Purpose Test (PPT), in order to provide greater clarity and predictability for taxpayers and tax administrations.

## Merger Directive

Real estate investors face a number of practical challenges in the application of the tax Directive on mergers, demergers and transfers of assets (Merger Directive), particularly in the context of cross-border corporate restructuring.

### Practical obstacles to cross-border mergers

The interaction between the Merger Directive and the Mobility Directive creates operational complexity. Under the Mobility Directive, certain types of mergers can take place without the issuance of shares, whereas the Merger Directive still requires the issuance of shares in order to benefit from tax neutrality. This misalignment creates practical obstacles when applying the rules across multiple jurisdictions.

Additional challenges arise where a company no longer maintains a formal presence in a Member State. In such situations, the interpretation of whether a permanent establishment exists may differ across jurisdictions, creating further uncertainty for taxpayers.

Similarly, the treatment of tax losses following cross-border restructuring operations is not applied consistently across Member States. This lack of consistency creates uncertainty for investors and asset managers and may lead to economically undesirable outcomes.

These issues reduce flexibility in corporate restructuring and create barriers to the freedom of establishment within the EU, ultimately affecting the competitiveness and attractiveness of the internal market.

**Recommendation**

The Commission should prioritise the harmonisation and modernisation of the Merger Directive in order to address these practical challenges.

In particular, this could include aligning the requirements of the Merger Directive with those of the Mobility Directive, especially with respect to the issuance of shares as a condition for tax neutrality. The Commission could also establish clearer and more consistent criteria for the recognition of permanent establishments across Member States and promote a more harmonised treatment of tax losses in cross-border mergers, demergers and asset transfers.

Such measures would improve the efficiency of cross-border corporate restructuring, support the freedom of establishment and contribute to a more competitive and attractive investment environment within the European Union.

## EU Dispute Resolution Mechanism

In practice, the application of the EU Dispute Resolution Mechanism (DRM) and related Mutual Agreement Procedure (MAP) processes create challenges due to procedural complexity and lengthy resolution timelines.

### Administrative and procedural complexity

Cross-border dispute resolution requires coordination between multiple tax authorities, often without harmonised procedures, forms or administrative processes. This lack of coordination can significantly complicate the resolution of disputes.

In addition, it is not always clear whether taxpayers should rely on the DRM or on the MAP procedure under a double taxation treaty. This uncertainty creates additional complexity for businesses seeking relief from double taxation.

Furthermore, MAP procedures are frequently lengthy and unpredictable. In practice, dispute resolution may take several years, sometimes exceeding three years, with no certainty regarding the final outcome. This can discourage businesses from pursuing relief and lead to additional advisory and administrative costs.

As a result, businesses face increased operational workloads, delays in obtaining refunds or relief, higher advisory costs and reduced predictability of cash flows.

**Recommendation**

Shorter and more predictable timelines for dispute resolution would help improve the efficiency of the system and enhance legal certainty for taxpayers. Streamlining procedures and improving coordination between tax authorities could also contribute to a more competitive and attractive tax environment for cross-border investment within the EU.

### Ensuring Proportionate Anti-Abuse Standards for Fund Structures

It is important to recall that the concept of a wholly artificial arrangement, as defined in EU case law and clarified in the Cadbury Schweppes case (C-196/04), limits the scope of anti-abuse legislation. Member States should therefore not apply anti-abuse measures beyond situations involving genuinely artificial arrangements.

Anti-abuse rules cannot be applied on a one-size-fits-all basis. The level of substance required should remain proportionate to the nature of the activity carried out and should not exceed what is appropriate in light of the taxpayer's actual functions and operations.

In practice, however, the "main purpose or one of the main purposes" test is sometimes interpreted very broadly, which may risk undermining legitimate investment structures.

This raises the question of whether the analytical approach should place greater emphasis on recognising that an investment structure is legitimate where genuine commercial or business reasons exist. The OECD Commentary on the Model Tax Convention regarding the Principal Purpose Test (PPT), including examples K, L and M, confirms that structures established for such reasons fall within acceptable practice.

In the same spirit, the use of regulated investment funds should be regarded as a strong indicator of the legitimacy and substance of the structure. Greater clarity at EU level, potentially through

interpretative guidance or accompanying comments, could help ensure that anti-abuse rules are applied in a proportionate and predictable manner.

## Conclusion

Non-listed real estate institutional investors and investment managers continue to face a range of practical and operational challenges in the application of existing EU tax directives. While recent developments, such as the recognition of the fiscal neutrality of regulated investment funds in certain provisions of ATAD, represent an important step forward, there remains a significant opportunity to extend this approach more consistently across the broader EU tax framework, including older directives.

Ensuring a more consistent interpretation and application of EU tax rules across Member States would help preserve the intended neutrality of investment fund structures, reduce unnecessary administrative burdens and improve legal certainty for taxpayers operating cross-border. Greater harmonisation and simplification would also contribute to strengthening the efficiency and competitiveness of the EU Single Market.

Finally, the timing of tax relief remains a particularly important issue for investment structures. Real estate funds typically operate within defined investment horizons and rely on the timely availability of tax relief to ensure efficient capital allocation. Delays or procedural uncertainty may disrupt reinvestment cycles, as the business model of such structures generally involves reinvesting gains realised from past investments into new projects, thereby supporting continued investment, economic activity and long-term growth within the European Union.

INREV stands ready to continue engaging constructively with the Commission and other stakeholders throughout the impact assessment and subsequent legislative process, in support of an EU tax framework that is coherent, proportionate and conducive to cross-border investment and the efficient functioning of the Single Market.