INREV response to the European Commission Call for Evidence

9 February 2026

EU rules on administrative cooperation in the field of taxation (DAC) – recast

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 continued commitment to reducing administrative burdens and increasing legal certainty for taxpayers. In this context, INREV recognises the importance of administrative cooperation as a tool to combat tax fraud, evasion and avoidance, while ensuring the effective functioning of the internal market.

As part of this process, INREV wishes to highlight a number of practical challenges faced by the private real estate investment industry in complying with existing EU tax legislation, in particular under the Directive on Administrative Cooperation (DAC). INREV believes that the review and recast of existing directives represent a timely opportunity to advance meaningful simplification, ensuring that rules remain effective while becoming more coherent, predictable and easier to apply for investments and capital allocators operating across the EU.

The objective of this submission is to provide an overview of the main obstacles encountered in practice, with a view to identifying possible areas for simplification, harmonisation and administrative improvement.

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

[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 around 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.

Gustav Mahlerplein 62, 1082 MA Amsterdam, The Netherlands
+31 (0)20 235 86 00 | info@inrev.org | www.inrev.org

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 UCITS Directive and the Alternative Investment Fund Managers Directive establish mandatory rules governing the cross-border activities of investment funds and their management companies. In parallel, 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.

Directive on Administrative Cooperation (DAC)

The Directive on Administrative Cooperation contains several elements that, in practice, are ineffective or generate unnecessary administrative costs. The most significant challenges faced by the non-listed real estate investment industry under the DAC, and in particular under DAC 6, relate to divergent interpretation and implementation, heavy administrative burdens, and operational inconsistencies across Member States.

Divergent interpretation, implementation and enforcement across Member States

The most prominent inconsistencies arise from the interpretation and implementation of DAC 6 definitions at national level. While DAC 6 was inspired by OECD BEPS Action 12, its transposition into domestic legislation has resulted in unclear guidance and divergent practices, particularly with respect to reporting deadlines, scope and the interpretation of hallmarks. Key concepts are understood differently across jurisdictions, and penalty regimes vary widely between Member States in terms of amount, structure and application.

This lack of harmonisation leads to legal uncertainty and significantly increases compliance costs. In practice, businesses often adopt an over-reporting approach in order to mitigate the risk of penalties, which in turn creates unnecessary administrative burdens without a corresponding increase in the effectiveness of anti-abuse measures.

Heavy compliance burden and overlapping regimes

DAC 6 imposes a substantial monitoring and reporting burden on businesses and other stakeholders. The hallmarks are broad in scope and frequently overlap with existing obligations, including transfer pricing documentation, anti-abuse rules and domestic reporting requirements. As a result, companies are often required to analyse the same transaction multiple times under different frameworks, leading to duplicative documentation and repeated internal and external reviews.

The perceived risk of misinterpreting certain hallmarks may also result in the prudent reporting of transactions that do not present any genuine risk of aggressive tax planning. This adds costs without delivering meaningful anti-abuse benefits and may have derivative effects, including making bank or external financing more difficult to obtain for projects where the DAC 6 qualification is unclear.

Double reporting and lack of a harmonised reporting process

Businesses frequently face multiple reporting obligations for the same arrangement in different Member States, each relying on separate portals, formats and technical requirements. These operational inconsistencies generate disproportionate administrative efforts and higher operational costs, particularly for cross-border investment structures involving multiple jurisdictions.

Recommendations

In light of the Commission's stated commitment to reducing administrative burdens and increasing legal certainty for taxpayers, INREV encourages the Commission to consider ways to carve out arrangements involving investment funds that are already subject to extensive regulatory oversight and whose economic purpose is underpinned by the principle of tax neutrality.

More broadly, INREV supports a comprehensive review of the effectiveness of DAC 6 in enabling tax authorities to counter genuinely abusive arrangements. This review could include the introduction of a *de minimis* threshold to reduce the reporting of immaterial arrangements, as well as provisions to adopt the "report once" approach and eliminate duplicative reporting where the same transaction is already subject to other EU reporting requirements, such as those under DAC 3 relating to cross-border tax rulings and advance pricing agreements.

Such targeted adjustments would contribute to achieving the DAC's policy objectives while improving proportionality, legal certainty and administrative efficiency for compliant market participants.

Conclusion

Real estate investors and fund managers continue to face practical and operational challenges in the application of EU tax transparency and administrative cooperation frameworks, particularly where these interact with regulated fund structures operating on a cross-border basis. Ensuring consistent treatment across Member States and reporting regimes is essential to preserve the intended tax neutrality of investment funds, avoid unnecessary administrative burdens and support the efficient functioning of the internal market.

This is particularly relevant for real estate investment structures, which typically have a finite investment horizon and operate business models based on the reinvestment of realised gains into new assets. In this context, legal uncertainty, duplicative reporting and delays in relief can have a

disproportionate impact on investment decisions and capital allocation, ultimately affecting the scale and efficiency of cross-border investment within the EU.

A more coherent and proportionate application of the DAC, focused on genuinely abusive arrangements and aligned with existing regulatory oversight of investment funds, would strengthen the effectiveness of administrative cooperation while supporting competitiveness and long-term investment.

INREV stands ready to continue engaging constructively with the Commission and other stakeholders throughout the impact assessment and subsequent legislative process, in support of EU rules on administrative cooperation in the field of taxation (DAC) that are effective, proportionate and reduce unnecessary administrative burdens while ensuring legal certainty.