INVEST EUROPE

Brussels, 25 April 2025

Dear MEP Hadjipantela,

I would like to sincerely thank you for taking the time to meet with us on 23 April, especially in light of your demanding schedule and your active involvement in the FISC Subcommittee of the European Parliament. We truly appreciated the opportunity to speak with you ahead of that important exchange yesterday.

Our discussion was an excellent opportunity to exchange views on your draft report, The role of simple tax rules and tax fragmentation in European competitiveness, and to share perspectives on how the EU's tax framework can better support investment and economic growth. In particular, we appreciated the chance to speak with you about the implementation and impact of DAC6 and the Anti-Tax Avoidance Directive (ATAD), and how these frameworks can be refined to reduce unnecessary complexity and compliance burdens for responsible investors. We also welcomed the opportunity to discuss broader investment strategies to boost SME growth across Europe, and how more coherent and predictable tax rules can play a key role in facilitating long-term capital flows into Europe's most dynamic and innovative companies.

To briefly reiterate, Invest Europe is the association representing Europe's private equity, venture capital, and infrastructure sectors, along with their investors. We work to ensure that the voice of long-term investors is heard in EU policymaking. Our members actively support companies across all stages of development, with a strong emphasis on SMEs. In fact, the vast majority of the businesses we back are SMEs[1]—key drivers of innovation, competitiveness, and employment across Europe.

We are happy to share with you more detailed input on key taxation topics covered by your Report, which you can find below.

We also look forward to continuing the conversation during your exchange with our Tax Committee on 14 May, which we believe will offer valuable on-the-ground insight into national tax systems and their interaction with EU-level initiatives.

[1] In 2023, a total of €99.8 billion in equity was invested by our members in European companies, with 8,391 businesses receiving funding—85% of which were SMEs. The ICT sector alone attracted over €24 billion, and when combined with the consumer goods and services sector, accounted for more than 43% of total investment by amount.
Venture capital investment reached €12.9 billion in 2023, supporting 4,764 companies—99% of which were SMEs. These companies represented approximately 56% of all businesses backed that year. Within venture, the start-up stage received the highest share of investment, totalling €6.4 billion, or 49% of the annual venture capital amount. By sector, ICT dominated, attracting around 43% of total venture capital investment. [source: Investing in Europe: Private Equity Activity 2023. Statistics on Fundraising, Investment & Divestment, available here]

DAC 6:

1. **Reporting and notification: Mobilization of cost and resources**

DAC6 has created a set of reporting obligations for intermediaries as well as taxpayers in certain circumstances. In a nutshell, intermediaries have to report potentially harmful cross-border transactions unless they are exempt from the reporting based on legal professional privilege. Despite this exemption, such intermediaries must properly identify the transactions and notify them to other intermediaries (not covered by legal professional privilege) or to taxpayers. Although the primary reporting obligation does not fall upon them, taxpayers find themselves obliged to consider transactions and report them as the case may be.

Therefore, in practice, the mechanism shifts the reporting obligation from the intermediaries, covered by the legal professional privilege, to other intermediaries or the taxpayers. Each of them is thus bound to mobilise internal resources in order to (i) understand the complex DAC6 rules and (ii) assess and potentially notify or report relevant transactions, which de facto doubles the work. These stakeholders have sometimes implemented complex and burdensome internal procedures only for the needs of complying with their DAC6 obligations. These procedures usually foresee:

- Specific DAC6 questionnaire or screening to identify arrangements that my fall within the hallmarks;
- Templates for DAC6 notification or reporting;
- Control processes and internal audit;
- Documentation of DAC6 materials.
- IT system

DAC6 has also implied that some intermediaries or taxpayers had to organise the training of personnel, the building of teams of experts dedicated DAC6 and the use of information technologies.

The complexity of the DAC6 rules and the reporting/notification obligation have created disproportionate costs and administrative burden for both intermediaries and taxpayers. Questions could be raised regarding DAC6's efficiency in terms of cost-effectiveness and proportionality of actual costs to benefits. This should not only be taken into account when evaluating the current DAC6 rules but also when making any changes to DAC6. The burden on intermediaries and taxpayers should be reduced and not being changed, as a change will again come with costs related to trainings and intermediaries and taxpayers being required to change processes again which is a very time-consuming exercise.

2. **Notification and reporting: EU case-law**

The problematic character of the notification / reporting mechanism as foreseen in DAC6 was confirmed by the European Court of Justice in its decision C-694/20 of 8 December

2022. The highest EU court ruled that lawyer's obligation, when acting as an intermediary and invoking its legal professional privilege, to notify the reporting obligations to any other intermediary is not compatible with the Charter of fundamental rights of the EU. In this regard, the highest EU court recently ruled on 29 July 2024 that this only applies to lawyers and no other intermediaries with legal privilege (such as notaries).

3. Hallmarks: too broad definitions

Transactions are considered as potentially harmful if they fall within one of five categories of hallmarks. Recital 9 of DAC6 states that "it would be more effective to endeavour to capture potentially aggressive tax-planning arrangements through the compiling of a list of the features and elements of transactions that present a strong indication of tax avoidance or abuse rather than to define the concept of aggressive tax planning. Those indications are referred to as 'hallmarks'".

We understand that the legislators' intention was to draft hallmarks sufficiently wide to cover different and innovative tax planning techniques. However, the hallmarks are drafted in a too broad way, which does not always allow to capture what the directive targets, i.e. potentially harmful cross-border tax arrangements.

On the contrary, too large scope of hallmarks may often lead to situations, where some transactions that are clearly not harmful (which do not present any strong indication of any tax avoidance or abuse) automatically fall within the scope by mere application of a hallmark – this holds true namely for hallmarks that are not subject to the main benefit test. Indeed, some hallmarks target harmful transactions while other hallmarks are defined in such a way that their application is mechanical / mathematical, which may lead to capture transactions that are not harmful. For instance, the reference to EBIT in the definition of hallmark E3 may capture valid commercial reorganizations and trigger automatic notifications.

4. Hallmarks: coherence with existing EU or domestic legislations

It is required by law to match the hallmarks with the domestic provision allowing the arrangement. This means that an intermediary or taxpayer needs to match a transaction to a valid domestic tax law provision while the targeted arrangements are by definition cross-border. Where the EU regularly reviews the tax regimes of the Member States and identifies those harmful and not harmful, one could question whether DAC6 has not created a shift of responsibilities from the EU and domestic authorities towards intermediaries and taxpayers.

Moreover, some hallmarks cover arrangements that are already in essence covered by existing legislations. Indeed, hallmark B2 covers cross-border conversion of type of income, which had been interpreted differently by different EU jurisdictions. In our understanding, this hallmark targets also hybrid instruments, yet tax treatment of these is addressed by separate anti-hybrid EU legislation – ATAD 1 and ATAD 2. In this regard, it

is worth mentioning there has not been any reassessment of the hallmarks in the light ATAD transposition by the Member States.

Some intermediaries, for example, take the stance that a potential restructuring mentioned in a planning document should be reported under DAC 6, even if it has not been implemented, simply because the proposed restructuring could meet one of the hallmarks. This approach should be reconsidered, as only transactions that have actually been carried out should fall within the scope of DAC 6. As a result of this overly cautious interpretation, transactions that cannot be abusive or harmful due to application of other existing legislation must still be notified / reported for DAC 6 purposes as they automatically fall within the scope of certain hallmarks.

5. **Differences between the Member States: no alignment of interpretation of the rules**

Although wording of the hallmarks is the same throughout the Member States, their interpretation may diverge from one tax authority to another. Indeed, the potential differences in interpretation between Member States, those differences could give rise to cases where a hallmark is met in one jurisdiction and not in another. As a result, the reporting obligation arises in one jurisdiction but not in another one for the very same arrangement. Moreover, this further adds administrative burden to intermediaries and taxpayers as well as increases legal uncertainty and confusion.

6. **Differences between the Member States: divergences of sanctions**

DAC6 required EU Member States to adopt penalties that shall be effective, proportionate and dissuasive. We note that apart from divergences of interpretation, there is a quite important disparity of penalties. For example:

- Luxembourg imposes one of the highest penalties among the Member States – up to €250.000 per transaction;
- In France, failure to comply with the reporting obligation (or to notify by an intermediary subject to client privilege) is punishable by a fine of €10,000 (€5,000 if it is the first infringement of the current calendar year and of the three preceding years). This fine may not exceed €100,000 per calendar year for the same intermediary or taxpayer.
- In the Netherlands, non-compliance by the intermediary or the taxpayer to report, to report on time, in full or correctly, may result in a fine with a maximum of €1,030,000 (2024). Criminal prosecution is also possible in serious cases.
- in Italy, when the reporting obligation is omitted, penalties ranging from €3.000 to €31.500 are applicable, while when the reported information is incorrect or incomplete, penalties ranging from €1.000 to €10.500 are applicable.

This absence of harmonization may create a kind of discrimination among EU taxpayers or intermediaries.

7. **Assessment of the reporting: No substantive audit of transactions**

There is little evidence on the effective use of DAC6 data by EU Member States to achieve the objective set by the directive, namely, to improve the functioning of the internal

market by discouraging the use of aggressive cross-border tax-planning arrangement. DAC6 indeed serves to alert tax authorities to cross-border tax arrangements and allow them to react to certain tax practices by changing tax legislation and/or allow Member States to raise concerns with each other (including through the European Semester) and has arguably impacted taxpayer and certain tax intermediaries' behaviour. This impact should be effectively assessed through an appropriate analysis, fact finding and data gathering to ensure that DAC6 is proportionate to the objective pursued. However, experience learns that the Dutch tax authorities have raised questions based on DAC 6 filings and also review DAC 6 filings when assessing relevant tax returns. Some tax authorities have published guidelines and FAQs on DAC6, where interpretations of certain notions and hallmarks have been made, these clarifications appear insufficient to dissipate all questionings that intermediaries and taxpayers may have about the application of the rules. To the best of our knowledge, there has been little use of reported transactions by tax authorities as part of their duties. However, increased administrative and judicial practices could provide further clarification on the functioning and interpretation of the DAC6 rules, which would be beneficial to the protection of taxpayers' rights.

8. Assessment and outcome of reporting: No actions taken by the authorities

Through the application of DAC6, all Member States should be aware of any aggressive tax planning arrangements that may adversely affect their tax basis regardless of where the planning was designed or marketed. DAC6 should allow Member State's tax authorities to obtain a comprehensive information about potentially aggressive tax arrangements enabling them to react quickly and take appropriate measures to prevent harmful tax practices and close loopholes in tax legislations.

DAC 6 took inspiration from the OECD's BEPS project – Action 12 when it comes to substance as well as form. The final report of Action 12 among others makes a few recommendations about the use of the information collected through mandatory disclosure rules. In particular, the OECD suggest to react to findings from reported transactions "through legislative change; through risk assessment and audit; and through communication strategies" (Action 12, Final Report, para 212). In relation to the former, the OECD gives example of the UK, which changed its legislation as a result of introduction of its mandatory disclosures regime in 2024.

To the best of our knowledge, Luxembourg tax authorities have not prepared any legislative (or regulatory) change that would be a consequence of abuses or harmful transactions identified through DAC6 reporting. Nor has it conducted, as explained above in Point 7, any assessments or audit that would confirm whether reported transactions present features of tax abuse or avoidance and, hence, adopted any remedies needed to discourage the use of tax planning arrangements.

A similar approach of Luxembourg is adopted in Italy, where no new anti-abuse measures related to DAC6 reporting has been introduces. The DAC6 rules apply independently and in addition to the pre-existing anti-abuse regulations. Furthermore, the filing of a DAC6 report does not constitute an admission by the intermediary or taxpayer of any illegal, criminal, or tortious practice and the missed reaction by the Italian Tax Authorities with respect to a DAC6 report by does not involve the acceptance of the validity of tax regime applied to across-border arrangement (cfr. Article 5, paragraph 3, of Legislative Decree no. 100/2020, as confirmed in the guidelines issued by the Italian Tax Authorities in circular letter no. 2/2021)

To our current understanding, France has not introduced any new anti-abuse measures related to DAC6 reporting. The DAC6 rules apply independently and in addition to the pre-existing anti-abuse regulations as outlined in the French administrative guidelines (BOI-CF-CPF-30-40-20 n°110). From a French perspective, falling within the scope of a DAC6 hallmark does not impact other anti-abuse measures. Furthermore, the filing of a DAC6 report does not constitute an admission by the intermediary or taxpayer of any illegal, criminal, or tortious practice. Consequently, the French tax authorities remain subject to the standard procedural rules applicable to tax audits, particularly those relating to the burden of proof, as detailed in the French administrative guidelines (BOI-CF-CPF-30-40-20 n°150).

Moreover, we understand that the Dutch tax authorities have a dedicated team whose responsibility includes collecting all DAC6 reports which are then shared with the EU database. Dutch reports and relevant reports from the EU database of other countries are analysed by this team and may be selected for further scrutiny. We are not aware of any initiatives for legislative amendments or additional measures as a result of DAC6 reports analysed by the Dutch DAC6 team.

ANTI- TAX AVOIDANCE:

Invest Europe agrees with the EU's commitment to ensuring tax fairness and transparency, which is crucial for maintaining a level playing field across the internal market. ATAD I and ATAD II introduced measures such as interest limitation rules, exit taxation, controlled foreign company rules, the general anti-abuse rule and hybrid mismatch rules, all of which are designed to curb aggressive tax planning. Together, these measures contribute to the broader goal of preventing base erosion and profit shifting within the EU, aligning with global efforts led by the OECD. By implementing ATAD I and ATAD II, the EU not only strengthens its internal market and upholds the integrity of the EU's tax systems but also fosters a more stable and predictable environment for investment.

1. **Interest Limitation Rule:**

ATAD I imposes limits on the deductibility of interest expenses to prevent base erosion through excessive interest deductions. However, in the PE/VC industry, leveraged financing is a standard practice, especially in buyouts, where debt is used to finance acquisitions. The fixed ratio rule of 30% EBITDA disproportionately affects PE/VC funds, particularly in cases where the business cycle involves periods of low profitability. This could constrain funds' ability to finance growth and make new investments, ultimately reducing returns for institutional investors such as pension funds.

Given this disproportionate impact, there is a need for a more tailored application of the interest limitation rule that reflects the investment models and cyclical profitability of PE/VC businesses. A potential solution could involve either introducing more flexible thresholds or providing carve-outs for bona fide investment activity, in order to preserve the sector's ability to finance innovation and economic growth within the EU.

2. **Hybrid Mismatch Rules:**

Hybrid mismatch rules, introduced under ATAD II, aim to address the tax discrepancies that arise when different jurisdictions treat the same financial instruments or entities differently. These mismatches can lead to situations where income is either not taxed at all or is double deducted. However, the broadened scope of 'associated enterprises' in ATAD II—especially the 'acting together' concept—has raised significant concerns in the PE/VC sector.

Private equity and venture capital funds typically aggregate unrelated investors who invest independently and do not act in concert. Yet, due to the current ambiguity in ATAD II, these investors risk being treated as associated, potentially triggering hybrid mismatch rules even in the absence of tax avoidance intent. This uncertainty has led to inconsistent interpretations across Member States.

To address this, it is essential that the EU clarifies in the Directive that the 'acting together' provision is intended only to capture arrangements with a deliberate intent to exploit mismatches, as highlighted in the OECD BEPS Action 2 Report. Such clarification would prevent the unjustified aggregation of unrelated fund investors and ensure the rule functions as an anti-abuse provision rather than a blanket presumption. The Finnish Supreme Administrative Court's ruling (SAC 2023:31), which rightly rejected an automatic grouping of unrelated investors, offers a sound precedent for such a clarification.

- **Third-Country Mismatches** under ATAD II also raise challenges for PE/VC funds with global operations. The inclusion of transactions involving non-EU jurisdictions under the hybrid mismatch rules increases the compliance burden and tax risk. To mitigate this, it would be advisable to introduce a more

proportionate approach to third-country mismatches that considers the commercial context and investment purpose, especially for funds that operate across multiple legal systems with varying classifications.

- **Reverse Hybrid Rules**, effective from January 2022, add further complexity. While there is an exemption for certain collective investment vehicles, this carve-out does not adequately cover the variety of legitimate commercial arrangements used in the PE/VC space. In jurisdictions like Luxembourg, where many funds are structured as tax-transparent partnerships, this can lead to the unintended taxation of income at the fund level—even where no abuse exists. This situation risks significantly reducing investor returns and undermining the attractiveness of the EU as a hub for global capital.

Expanding the reverse hybrid exemption to cover a broader range of alternative investment structures would better align the rules with real-world fund operations. Additionally, clearer EU-level guidance is needed to ensure consistent application across Member States and reduce the risk of divergent interpretations leading to double taxation.

3. **Controlled Foreign Company Rule (CFC):**

The CFC rules, while aimed at preventing artificial profit shifting, can unintentionally penalize legitimate cross-border structures used by VC and PE firms. These firms often invest across multiple jurisdictions, and the lack of harmonization in CFC rule application across Member States leads to uncertainty, administrative burden, and the potential for double or punitive taxation.

To foster a more investment-friendly environment, especially for international investors, it would be beneficial for the EU to work towards greater alignment in the application of CFC rules. This could include clearer coordination mechanisms, safe harbours, or exceptions for genuine economic activities, thus ensuring that the rules target abusive practices without disrupting legitimate investments.

Head Office Tax system for micro, small, and medium-sized enterprises

1. **Definition of SME:**

In general, the HOT Directive's scope, limited to standalone SMEs exclusively operating through permanent establishments in one or more Member States, ensures that businesses genuinely engaging in cross-border activities benefit from this system, while avoiding it misuses.

We however question whether the use of the definitions set in Directive 2013/31/EC :

- **Such a definition is not always the one that is deemed relevant for tax purposes**

  We would argue that here the reference should directly be made to the size limits set in Recommendation 2003/361/EC of 6 May 2003 (the "SME Recommendation") as opposed to the Accounting Directive.

  Indeed, it is the Recommendation that is generally used by Member States for tax purposes. For example, in Italy the facilitating legislation for Innovative SMEs (Article 4 of Decree-Law No. 3/2015) is borrowing its thresholds for the EU SME Recommendation – and not to the Accounting Directive.

- **No EU SME definition currently correctly captures the concept of "venture capital" ownership**

  We would like to alert that even the use of the EU SME Recommendation mentioned above would create concerns, as many start-ups and scale-ups supported by venture capital may not obtain the SME status due to their perceived "link" to the venture capital manager and all companies the manager has invested in.

In order to solve this, it would be important to adapt the definition to reflect specific differences of venture capital ownership with those of private equity ownership. We have presented how these changes could be made in the paper here.

On the other note, we were happy to see, that the European Commission took the initiative and publish the delegated directive adjusting by 25% SME size criteria for inflation, as the size thresholds have remained unchanged for the last 10 years. Adjusting the size criteria for SMEs to account for inflation reflects a more realistic economic environment which business faces in today's context.

2. **Establishment of HOT:**

According to the proposal, an SME may choose to calculate the taxable results of its permanent establishment based solely on the taxation rules of the Member State where the Head Office for Tax is located. However, the taxable result would still be subject to the tax rate of the Member State where it is located. Consequently, the proposal does not affect the determination of the applicable tax rate or the applicability of a bilateral tax treaty.

While an SME needs to decide on the location of its HOT for a five-year period, it is unclear what changes the Member State can make to its taxation system within this timeframe. The data based on which the SME made its choice for its permanent establishment can vary from year one to year three. Therefore, it is crucial to include in the text the suggested

possibility to change the HOT based on the relocation of tax residence to another Member State. Although considering another criterion specifying that HOT can only be created in cases where tax residence has been maintained in the Member States for the preceding two fiscal years, this requirement can be more challenging to fulfil in case of a desire to relocate.

The second option could be more problematic, where the combined turnover of its permanent establishment surpasses an amount equivalent to double the turnover of the HOT. It is essential not to penalize SMEs as long as they continue to meet the eligibility requirements of the proposed definition within the last two fiscal years, especially since the regime must be applicable to all permanent establishments.

Directive on Business in Europe: Framework for Income Taxation

we note that BEFIT's scope does not entirely align with that of OECD Pillar Two and the EU Pillar Two Directive, which are offering a more seamless and comprehensive understanding of corporate taxation. It's important to highlight that the transposition of OECD Pillar II rules is still pending in some member states, necessitating adjustments to the application timeline for certain countries.

Notably, the conditions for forming the BEFIT group impose more stringent requirements than those specified in the 2013 Accounting Directive, which mandate a holding of more than 50% (not 75%) of ownership or profit rights. These criteria for group formation may lead to differences between financial reporting and BEFIT rules. Shifting from local accounting rules to a reallocation of consolidated profits and losses for the EU means BEFIT may influence Pillar Two profit determination and vice versa.

This means that companies and groups falling under these regulations will need to conduct additional calculations at both EU and local levels to accurately determine their tax obligations. This not only adds complexity but also increases the operational workload, posing potential challenges for businesses navigating the proposed framework in short and medium term, especially at a time when the transposition of the EU Pillar Two Directive is still pending in some member states, necessitating adjustments to the application timeline for certain countries and the OECD Pillar Two rules are still substantially evolving through the periodic issuance of agreed administrative guidance. Considering the integration of Pillar Two in conjunction with BEFIT, this combination is poised to create significant legal uncertainty for businesses. The result may be years spent understanding and implementing both mechanisms, adding a layer of complexity and potential disruption to the compliance landscape.

This substantial additional administrative burden on businesses will notably impact MNEs. They have recently undergone adjustments to their internal systems to adhere to

OECD-BEPS requirements, as well as anti-tax avoidance rules stipulated by the European Commission (while also gearing up for the impending unshell directive requirements). Currently, they are in the process of preparing for and implementing the changes mandated by OECD Pillar Two.

While there are also notable positive changes compared to CCTB and CCCTB, such as the calculation of the preliminary tax base, further adjustments need to be embraced to better align with market demands. Although recognizing the potential benefits of simplifying tax reporting and base calculations for EU cross-border groups, we see promise in enhancing the efficiency of the single market.

This could make it more accessible and cost-effective for cross-border companies to expand, fostering increased cross-border investment opportunities and reducing the risk of double taxation, provided that BEFIT is well-drafted and timely implemented.

We nevertheless strongly believe that delaying the consideration of the BEFIT Directive proposal until the modifications mandated by OECD Pillar Two and the EU Pillar Two Directive have been thoroughly integrated and adopted within countries, businesses, and tax administrations is necessary. The new proposal cannot proceed without first examining the data and insights gathered from OECD Pillar Two after the rules become applicable in all member states. The implementation of BEFIT rules alongside OECD Pillar Two rules not only adds further complexity but also raises uncertainty and the potential for double taxation for companies which makes it premature from a business perspective.

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