INVEST EUROPE

TAXATION WHITE PAPER

Taxation in Europe

Investors' perspective on getting it right

February 2026

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Contents

1. Introduction

1. Introduction

A. Considering a white paper to stimulate and encourage investment in Europe

Europe, the cradle of the Western civilisation and modern legal and political thought, is a benchmark for the construction of a Union capable of reconciling economic integration and respect for national diversity. Today, the EU is called upon to face challenges arising from a more complex economic and geopolitical context than in the past – from ecological transition to digital revolution, from global competition to regulatory fragmentation – which require a profound rethinking not only of its legal and institutional foundations, but also of its objectives, with an approach based not on defending the past but on imagining and designing its own future.

In this context, the consolidation of the European Single Market is a key condition for promoting competitive, sustainable and integrated growth. This is a strategic objective shared at the European level, as also indicated by the European Commission in its 2020 *Capital Markets Union Action Plan*, which recognises the importance of a more cohesive internal market to mobilise investment, stimulate innovation and strengthen the Union's economic autonomy.

For this strengthening to translate into tangible results and to unlock its full potential, one key structural barrier must be addressed: the fiscal/tax framework. Without a more harmonised, transparent and stable tax framework, the benefits of the Single Market risk remaining partial, especially regarding the efficient allocation of private capital at the continental level. On the other hand, a coherent and reliable tax system is impervious to forms of tax arbitrage between Member States. This is an essential prerequisite for attracting investment and supporting the development of a more resilient economy that has the capacity to effectively address the green, digital and industrial transitions, using schemes and instruments that are consistent with the new economic and social conditions.

But to achieve all this, we need to overcome the structural obstacles that still hinder and slow down the integration and efficiency of the internal market: despite the progress made: the European Single Market is still hampered by marked regulatory and fiscal asymmetries, which negatively affect the full freedom of establishment and the free movement of capital. In such an interconnected global economy, these disparities increase legal uncertainty, exacerbate administrative burdens and make it difficult for investors to manage efficient cross-border structures (European Parliament, *Report on Harmonisation of Tax Systems* in the EU, 2021).

As Prof. Mario Draghi pointed out, "*we have also left our Single Market fragmented for decades, which has a knock-on effect on our competitiveness. It pushes fast-growing companies abroad, which in turn reduces the pool of projects to be financed and hinders the development of European capital markets. And without high-growth projects to invest in and capital markets to finance them, Europeans miss out on the opportunity to become wealthier*" (M. Draghi, *The Future of European Competitiveness. Part A, A Competitiveness Strategy for Europe*, September 2024).[1]

Overcoming these challenges requires building a bridge between different national legal systems, promoting progressive harmonisation and strengthening the role of European institutions as drivers of innovation and cohesion. As also highlighted by the IMF in its 2022 report, *Fiscal Policies for Sustainable Growth*, it is not enough to align regulations: we need to spread a shared fiscal culture based on collaboration, transparency and the exchange of best practices in order to build a more equitable and sustainable future together[2].

The success of this process does not lie in introducing further regulations, but in a shared political will that, by taking note of the current situation and being aware of the available potential, overcomes defensive tax competition between Member States, recognising the common interest in a regulatory framework that is certain, transparent and conducive to long-term investment. In this context, the investment fund sector plays a strategic role, as it represents a critical driver of sustainable and innovative European growth.

B. Barriers to the Single Market: fragmentation and tax uncertainty

The fragmentation of tax regimes and differences in administrative practices adopted by various tax authorities generate uncertainty and complexity, penalising the cross-border strategies of investors, who understandably allocate their medium- or long-term investments to jurisdictions offering greater legal certainty rather than lower costs.[3] On the other hand, the lack of a *common* fiscal *playing field* discourages the efficient allocation of capital, diverting investment choices elsewhere and reducing investment opportunities on a continental scale.

The Invest Europe report (*Investing in Europe: Private Equity Activity 2024*) indicates that many investors are reluctant to structure pan-European vehicles in the absence of a consistent, simple and predictable tax framework. This position is also shared by the European Commission, which, in its 2020 *Communication on the Capital Markets Union*, stresses that greater tax harmonisation is essential to attract long-term capital. In line with this view, the OECD and the IMF indicate that regulatory inconsistency, lack of transparency and interpretative uncertainty hinder allocation decisions, reducing market efficiency and limiting diversification opportunities (OECD, *Investment Report*, 2023).

This evidence highlights the recurring obstacles for investors operating in the European Single Market:

1. fiscal fragmentation, with differences between national regimes and high compliance costs;
2. regulatory uncertainty, resulting from the absence of binding and uniform guidelines at European level;
3. variability in administrative and judicial interpretations, with different approaches among national authorities, particularly regarding the tax treatment of investment funds, their structures and investors and related parties (including *management* and *advisory companies*), as well as the application of anti-abuse rules;
4. the lack of a coordinated regime for investment funds operating in several Member States, which generates administrative duplication, risks of double taxation and structural inefficiencies, compromising the achievement of economies of scale and the competitiveness of pan-European structures compared to those of other jurisdictions.

These distortions undermine the EU's ability to attract stable and strategic investment, which is essential to support long-term growth, especially at a time when the twin green and digital transitions require significant private capital, as highlighted in the European Investment Bank's *Market Update* 2021 report. In this context, the absence of a certain, neutral and harmonised tax framework risks widening the EU's competitive gap with other major global markets.

C. Towards an EU based on harmonisation, neutrality and certainty

In a context of increasing global competition, the challenge for the EU is to balance the fiscal and regulatory prerogatives of Member States with the need for an integrated and stable framework, which is essential for an efficient and competitive Single Market. The immediate goal is not to adopt a single tax system, but to define a common regulatory architecture based on harmonised minimum standards, ensuring certainty and equal treatment while preventing undesirable tax arbitrage – all this without compromising the legislative sovereignty of individual Member States.

This need is even more urgent for institutional investors, such as investment funds, which operate globally and require a regulatory framework that is stable over time and uniform across different jurisdictions when allocating their capital, to reduce distortions resulting from uncertainties in application. The absence of such a framework generates financial burdens and legal risks that limit investment and slow down the development of European industrial supply chains. Confirming this, recent studies – such as Invest Europe's *Private Capital in Europe 2024* report and the OECD's 2023 *Tax Challenges Arising from Digitalisation* analysis – highlight how the lack of a coordinated framework is one of the main obstacles to cross-border investment.

A harmonised regulatory framework, based on tax neutrality and legal certainty, is a prerequisite for the efficient allocation of investments through transnational structures, offering investors a more stable and predictable, transparent environment.

These principles are not merely theoretical concepts, but fundamental and basic operating conditions that accompany the entire investment cycle – from the fund structuring and capital raising phase to the acquisition, management and disposal of investee companies, stimulating investment and directing it towards the industrial and managerial strengthening of investee companies, rather than decisions driven by short-term tax advantages (OECD, *Investment Governance and the Role of Private Equity*, 2019).

D. A white paper to strengthen the Single Market through tax harmonisation

'*Sapere aude*' is the aim of this White Paper: to develop and offer concrete proposals to the European debate on tax harmonisation, with a forward-looking perspective that, starting from the current situation, has the courage to dare to imagine a new future, including through the aid offered by new technologies (the use of which is, moreover, a must in order to avoid inefficiencies), contributing to the creation of an internal market that is more attractive to long-term investment, with a focus on the private equity sector.

The White Paper is intended as a tool for dialogue and discussion between institutions, Member States, investors and managers, with the aim of promoting a transparent regulatory environment based on mutual trust and geared towards a common long-term political objective. The aim of the White Paper, therefore, is to suggest a European model of tax harmonisation which, while respecting the specific characteristics of individual European States, embraces the principles of legal certainty and neutrality (both in investment choices and in choices regarding investment vehicles), through a holistic and innovative vision of the entire investment fund industry, and demonstrates its ability to remove the obstacles that currently exist in the market, which interfere throughout the entire chain of decisions, investments and divestments, limiting the mobility of capital and, in the long term, the competitiveness of European companies.

The purpose of this White Paper is to bring innovation to the EU investment funds ecosystem, by proposing of new rules or intervening on existing ones with the aim of simplifying them, making the entire investment fund industry process more straightforward. This white paper also highlights the objective of proposing forms of incentive. In order to translate this ambition into concrete, feasible and at the same time innovative proposals — i.e. formulated without the constraints of existing regulations and practices — the document aims to simplify the current regulatory framework, thus responding to criticism of overly complex or *overruled* systems.

The analysis is structured along the following four main strategic guidelines, shared by both investors and national governments:

1. strengthening trust between institutions and investors by promoting transparency, collaboration, regulatory certainty and efficiency;
2. developing a framework of shared principles to guide sustainable tax policies that are compatible with EU treaties and responsive to the characteristics of the sector;
3. channelling regulatory proposals through European decision-making mechanisms, making use of existing instruments such as public consultations and co-decision procedures;
4. enhancing the legal bases of the Treaties, in particular Article 115 TFEU, in order to initiate a gradual process of tax harmonisation that respects the tax sovereignty of Member States, reconciling it with common interests.

In addition, the white paper takes into account ongoing European initiatives, such as the proposals for the BEFIT (*Business in Europe: Framework for Income Taxation*), DEBRA (*Debt Equity Bias Reduction Allowance*) and FASTER (*Faster and Safer Tax Excess Relief*) Directives, which are concrete examples of the new European approach to tax harmonisation[4] and its efficiency[5].

These proposals outline a move towards a more integrated European tax system that can stimulate investment and facilitate the efficient allocation of private capital, particularly that used by funds, thereby strengthening the Union's strategic autonomy and increasing its ability to respond in a coordinated and coherent manner to major global economic and industrial challenges.

This White Paper is therefore primarily focused on EU and national tax policymakers. This paper aims to foster a shared understanding of tax barriers holding back the deployment of European capital by European PE/VC into European companies. This White Paper will develop and offer concrete policy proposals, with a forward-looking perspective that, starting from the current situation, has the courage to dare to imagine a new future, including through the aid offered by new technologies. In addition to EU and national tax policy makers, this paper is equally relevant to any tax practitioner in the European private equity and venture capital sector since the White Paper aims at designing the future of taxation of this industry.

E. Investment funds and long-term investment: removing barriers to a competitive Europe

In today's increasingly competitive global economy, despite the current geopolitical turmoil, investment funds are emerging as one of the most important strategic levers for creating lasting value. This is not just about finance, but about a driver of long-term industrial transformation and territorial development, capable of channelling capital towards high-potential companies, supporting innovation, digitalisation, green transition and the adoption of effective governance models.

Recent data, such as that reported in Invest Europe's *European Private Equity* Activity report (2023), show that between 2017 and 2022, companies invested in PE funds recorded annual employment growth of over 7% and productivity growth of over 10%, well above the European average. In addition, over 70% of the capital invested was in SMEs, considered the beating heart of the European economy.

For funds to realise their full potential in the European context, the need for regulatory clarity and consistency must be translated into concrete operational tools. To this end, it is necessary to ensure a stable, consistent and predictable legal ecosystem throughout the investment lifecycle, from initial structuring to exit, as also highlighted in the OECD analysis *Private Equity and Venture Capital in Europe* (2022).

To build an environment conducive to meeting these needs, the main priorities include:

1. eliminating regulatory and tax barriers that hinder investment efficiency by combating fragmentation, bureaucracy and differences in interpretation;
2. promoting regulatory uniformity and administrative cooperation between Member States, based on regulatory consistency, legal certainty and collaboration, including through shared tools such as multilateral rulings and coordinated procedures, including the introduction of a European Tax Agency which, by dictating common interpretations of EU tax legislation, should facilitate cooperation between national tax administrations, including joint tax audits[6];
3. ensuring tax neutrality in choices of jurisdiction and structure, preventing tax treatment from becoming the main determining factor in the location of investments; this means preventing undue benefits and distortions of competition, so that economic decisions are guided by efficiency criteria and not by tax arbitrage;
4. ensuring freedom of investment without discrimination between domestic and foreign operators (including non-European operators) operating in line with the principles of the European Single Market;
5. supporting the development of pan-European financial instruments and investment vehicles capable of meeting the operational and regulatory needs of investors without creating competitive disparities;
6. promote transparency and simplification of compliance requirements, reducing compliance costs and improving the efficiency of administrative procedures.

The aim is to propose an innovative European regulatory framework that is consistent with the new economic context, efficient through the reduction of its complexity, integrated across the various States that make up Europe, capable of catalysing long-term private capital towards sustainable development, innovation and territorial cohesion, strengthening the EU's ability to attract investment and develop a competitive and resilient productive fabric.

F. Conclusions: the need for a new approach that qualifies investments as a public good

A change of perspective is therefore needed, requiring a different classification of long-term private investment in light of the beneficial effects it produces for the community and stakeholders.

It must necessarily be valued as a true European public good, in addition to those already highlighted by Enrico Letta in his report[7] (defence, energy, digital infrastructure and industrial policy), as it is functional to their financing, provided through private savings.

A policy aimed at enabling investment without hindering it is a policy capable of increasing employment, but also capable of strengthening the EU's economic sovereignty, reducing dependence on non-European economies and capital, and accelerating strategic transitions. Precisely because the public good must be the focus of public attention, it should not be seen only as a useful tool for achieving the expected returns of individual investors, but as a means of satisfying general needs, i.e. those of all *stakeholders involved in the investment*. Consistently and consequently, those who institutionally make investments must be the focus of attention, which must not be reduced to granting concessions, but must essentially be directed at not creating obstacles with detailed rules which, while responding to equally understandable individual reasons, on the whole constitute a brake with negative repercussions on the entire community.

The vision of the public good necessarily implies a holistic vision that involves and encompasses all its phases, from those that start with research to those of divestment. Each phase and intermediate entity are instrumental to the investor's objective. On the contrary, having an atomistic vision, i.e. a vision focused on a single step and/or a single subject involved in the investment chain, means concentrating on the distortions of the single operation in which the investment is divided (see *the Unshell Proposal* in this regard), losing sight of the effectiveness of the investment and the public goods needs that it satisfies.

An efficient and competitive European market for investments, and therefore necessarily also for the investment fund industry – which is the entities that institutionally operate in the sector – must be based on a strategic vision of long-term investments, their necessity and their social utility, shared among Member States that harmonises economic integration and legal and fiscal diversity among them. Through this balance between technical rigour and political coordination, it is possible to ensure a stable and favourable environment for private capital, even in a globally competitive context.

In this context, Enrico Letta's report, even in the face of a still incomplete single capital market, hypothesises the creation of a savings and investment union in which, from an instrumental point of view, investment funds naturally play a strategic role in mobilising and channelling private capital.

From this perspective, the European capital market can only realise its full potential if there is a qualitative leap in coordination between European institutions and Member States, as also emphasised by the European Commission in its communications *COM(2020) 312* and *COM(2021) 251*. For this reason, the European Union is called upon to play a more integrated regulatory role[8], capable of combining legal pluralism and systemic coherence, building a regulatory environment conducive to attracting strategic investment and strengthening Europe's economic autonomy.[9]

The creation of an integrated, resilient and sustainable Single Market for investments represents a strategic challenge for the European Union, requiring shared commitment and an innovative approach. Through institutional innovation, regulatory consistency and a common vision, it will be possible to attract private capital to projects involving industrial transformation, territorial regeneration and technological autonomy, thus promoting solid and globally competitive European growth.

Maintaining legal certainty (in accordance with the principle of *the rule of law*), efficiency through deregulation aimed at simplification, and neutrality aimed at not changing the nature of operations, achieved within the various European States through a harmonious approach, the White Paper unfolds by photographing the investment process at every stage (i.e., structuring, management and exit), with each frame identifying the parties involved and their specific characteristics[10].

And so:

- the investment vehicle (investment fund);
- the management company;
- the advisory companies;
- the managers of the management and advisory companies and the *remuneration* systems;
- the target companies and Special Purpose Vehicles ("SPVs") involved in each case;
- the nature of the capital invested (debt or equity capital), their structure, the rights attributed;
- the benefits deriving from the investment;
- cooperation (DAC6);
- the need for a uniform regulatory framework (BEFIT) accompanied by a common framework for withholding taxes on income from foreign investments (FASTER).

Each section follows a consistent approach. Firstly, the key tax obstacles and inefficiencies are described and analysed. Thereafter, actionable policy recommendations are offered, including, where possible, suggestions for leveraging technology to improve compliance and efficiency.

The White Paper concludes with a summary of proposed solutions and a clear roadmap for reforming the taxation of PE and VC funds in Europe, aimed at unlocking private capital and accelerating Europe's innovation-driven growth.

Moreover, in this context, a proposal – in line with the recommendations of this paper – has already been put forward in the Letta 2024 Report *Much more than a market*, which suggests the creation of a 28th voluntary jurisdiction for EU companies and investors[11]. This new *parallel jurisdiction* would allow private actors to opt for a harmonised legal framework in corporate, financial and tax matters, without interfering with the national sovereignty of Member States. The Letta Report argues that such a jurisdiction would complement, rather than replace, existing national regimes. It draws inspiration from instruments such as the European Company (SE) Statute and the Unified Patent Court, which provide opt-in solutions to overcome fragmentation.

The 28th jurisdiction could also serve as a *sandbox* for the development of investment funds in the field of Decentralised Finance (De-Fi), such as digital fund passports, the circulation of funds on blockchain and their management through Decentralised Autonomous Organisations (DAOs). All this without distorting the legal nature of the funds' financial instruments, in accordance with the principle of technological neutrality[12], and without changing market access.

Similarly, the effects of the *digital revolution* and the resulting continuous disintermediation of management activities must also be assessed with reference to the paradigm shift in the criteria for determining the principle of territorial connection of these entities with the relevant tax jurisdiction (*tax nexus*). In particular, the disintermediation resulting from new technologies will make it increasingly difficult (to the point of becoming useless) to identify territorial connection criteria based on the current principle of the prevalence of substance over form, almost through a process of *ilemorphism*, where form represents its essence, actuality and function, while substance/matter is the potential component that form actualises, making it unique and defined[13].

2. Context

2. Context

A private equity business model's core components typically include:

1. The Investors

The investors – typically pension funds, endowments, insurances, high-net worth individuals from various countries around the world - contribute capital to funds based on agreements negotiated with the investment manager, such as a limited partnership agreement (LPA) or equivalent documents with the objective to obtain professional wealth investment management services. These agreements define the legal framework, investment policies (e.g., countries and industries targeted), and terms involving capital commitments, fund duration, management fees, and profit-sharing arrangements.

2. The Fund

Funds are collective investment entities where investors commit long-term capital. They can be structured under various legal forms, such as partnerships, companies, or contractual arrangements.

3. The Investment Manager (or Management Company)

Investment managers provide independent investment management services to investors while adhering to the fund's investment policies. The Fund Manager evaluates investment opportunities, decides whether or not to make the investment, agrees to terms and conditions, and executes transactions.

4. The Advisory Compan(ies)

As investment opportunities may be located in different countries and may include different business sectors (e.g., consumer goods, professional services, technology, health,...), investment managers often need local expertise. This local expertise is hired through branches or local advisory companies staffed by skilled professionals in the regions where investment opportunities are located. The local advisory companies analyse markets, identify opportunities, and prepare investment proposals for the investment manager's consideration and approval.

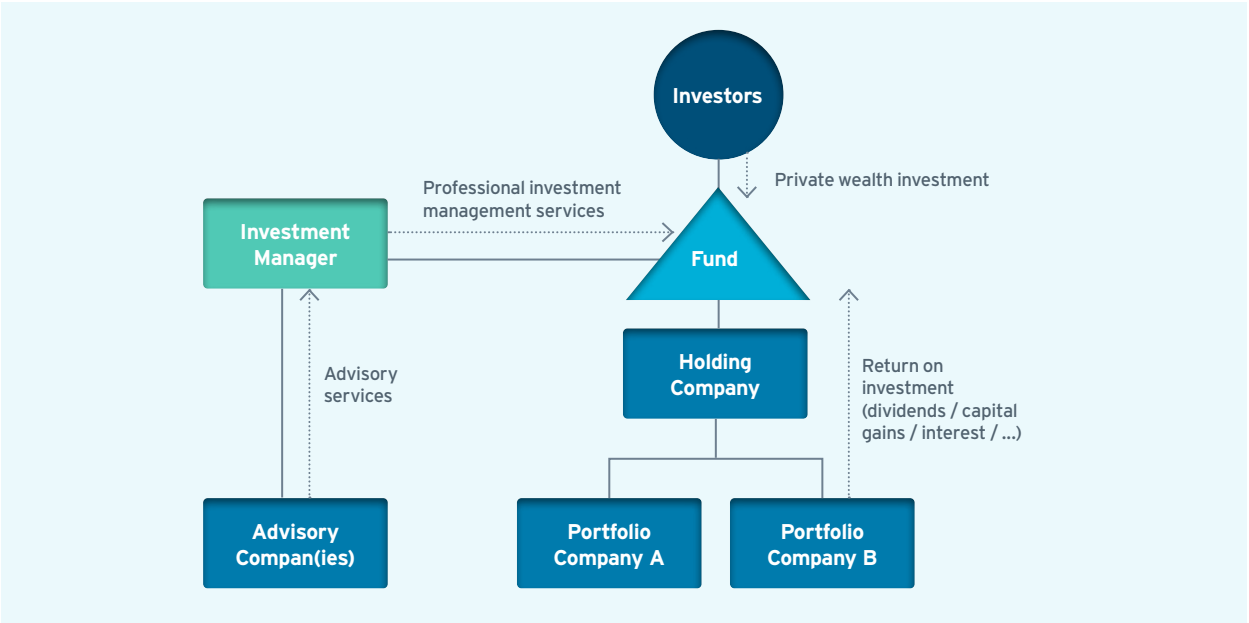
5. The Portfolio Compan(ies)

The Fund utilizes collected capital to acquire stakes in high-potential companies. Following the transaction, the investment manager's team often takes positions on the portfolio company's board of directors to oversee and manage the investment effectively. The Portfolio Compan(ies) may be held by controlled holding companies for reasons such as liability protection or facilitating debt financing.

The capital invested is sourced from different types of investors resident in various countries around the world. Investors will entrust their money to a given investment manager in a given country based on its track record and expertise in a given business sector. In turn the investment manager will call on the expertise of advisors in the region where investment opportunities are located. Finally risk diversification will cause the fund manager to invest in companies across sectors and geographies.

This geographic footprint combined with active management makes private equity a highly mobile and cross-border business model. It is no surprise that operating such a business model comes with several tax issues related to heterogeneous tax rules that exist in the Member States and the interaction of such rules between the taxing jurisdictions of the States involved.

The legal uncertainty attached to operating a business model in a complex tax environment puts EU investment managers at a competitive disadvantage when deploying their management services and distributing their private equity funds.



3. The structuring of investments

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A. The investment vehicle

1. Introduction

For investors, the choice of investment vehicle is a step aimed at identifying the most suitable legal form (also in relation to local regulations) for conducting the business initiative (i.e. the investment and management aimed at its enhancement) aimed at achieving profit objectives.

In principle, the choice of an investment structure from among the various available options, whether an open-ended, closed-ended or transparent fund, should not give rise to regulatory or tax distortions. However, in practice, the tax profile of the vehicle (with reference to its corporate form, its registered office and its classification as opaque or transparent) plays a decisive role in the establishment and configuration of the investment transaction, to the extent that it constitutes a real barrier capable of generating discriminatory or restrictive and protectionist effects on the free movement of capital, protected by the European Union law, rather than supervisory instruments.

At present, different European jurisdictions have their own views on which entities are transparent, and which are opaque for tax purposes, and whether these entities are considered investors or traders. This situation results in unusual tax treatment, with the result that investors in different jurisdictions are subjects to inconsistent taxation, which risks giving rise to many of the problems of hybridisation.

Similarly, the requirement of physical presence in the jurisdiction of an EU Member State as a connecting factor for determining the tax residence of an entity appears inconsistent with technological progress, as well as constituting a form of discrimination incompatible with Article 65 TFEU.

Furthermore, it should be added that investment funds benefit from a tax exemption regime aimed at avoiding double taxation of income generated by collective investments, both for the fund and for the investor, thus ensuring equal treatment between direct and indirect investments. From this perspective, any deviation from this objective bears the risk of substantial discrimination, even when formally justified by the need to protect investors. This principle has been crystallised in EU law by the European Court of Justice's case law[14], which identified unequal treatment in tax measures that place foreign investment funds at a disadvantage compared to domestic funds, thus discouraging cross-border investment[15]. To this end, the Court recognised that the purpose of tax exemptions for investment funds is to prevent double taxation of income so that collective investments are treated in the same way as direct investments[16].

2. Tax issues

i) Tax residence: in Europe, the tax residence of investment funds, which are set up as limited companies or limited partnerships, is governed by different criteria[17], often based alternatively on the registered office or the effective management of the company[18]. This approach is no longer consistent with the technological reality of dematerialisation and digitalisation, as mentioned above. Just think of funds established in one country but managed from other countries, where, according to a similar approach, they could be considered tax residents in those other countries[19] by exploiting the principle of registered office-effective management[20].

ii) the configuration of a permanent establishment: in many European jurisdictions, the activities carried out by the fund (trading or not) may result in the configuration of a permanent establishment for the investors[21] as well as the activities carried out by a management company (MC) or advisory company (AC) on behalf of the fund or investee companies may be classified as the exercise of a stable economic activity in another Member State, resulting in the configuration of a *material or personal* permanent establishment (PE) in accordance with the provisions of Article 5 of the OECD Model.

This risk is very material to the European private equity industry, which operates cross-border. And there are countless examples of tax authorities attempting to recognise a taxable presence of the Fund manager in the country of the advisory company. As a result, it is common for asset managers to monitor this risk by establishing strict operating guidelines that apply to employees of the advisory companies (including members or partners) during the different stages of an investment cycle.

There are various elements that contribute to this risk. Firstly, the AC is usually closely related to the MC (very often it is either a branch or a subsidiary of the Fund manager or has a common parent undertaking). Secondly, the business of the AC is a necessary pre-requisite to the business of the MC[22].

This risk is more significant in the presence of the following evidence (even if only formal):

a. when the MC/AC has a fixed place of business or operational staff in a country other than its country of residence;

b. when the personnel of the MC/AC carry out negotiating or decision-making activities in the target's country of residence, in the latter's interest. The situation is particularly complex also due to the rather frequent practice of assigning multiple roles to the same individuals.[23]

Indeed, in the unfortunate situation where a tax authority successfully claims the existence of a PE in its country (whether it is a PE of the Fund/Investors or the Fund manager), then comes the question of the profits attributable to that PE. This alone is a source of disputes as it implies a deep understanding of the investment management value chain, of the operations of the asset manager subject to the dispute and a precise analysis of the assets, risks, functions undertaken by each entity and individuals[24].

iii) the status of beneficial owner: denying funds the status of beneficial owner[25] in relation to income received from (or in relation to) their targets, with the result of excluding them from the benefits provided for in double taxation agreements[26].

The application of a conventional withholding tax in the context of an investment process can therefore result in double taxation, which the case law of the Court of Justice of the European Union cited in paragraph 1 aims to avoid. For this reason, the protection of private investment as a public good should extend to the automatic recognition of the status of beneficial owner for any regulated, authorised and prudentially supervised fund, provided that it is established in an EU Member State or in a white-listed jurisdiction considered equivalent according to OECD standards.

With regard to investment funds, it should be noted that the European Commission initiatives such as the Capital Markets Union (CMU) and the Retail Investment Strategy (RIS) implicitly recognise the role of private funds, including non-CIVs, in promoting cross-border capital flows[27]. These policies, although predominantly regulatory, highlight a tension: on the one hand, the EU promotes the integration of financial markets, while on the other, the uncertainty arising from Action 6, ATAD 1 and the case law of the EUCJ on abuse of rights could introduce double taxation and discourage the use of EU jurisdictions as investment platforms. The protection of private investment as a public good and the EUCJ case law cited in paragraph 1 should therefore aim to reduce this uncertainty by introducing a specific *safe- harbour* for the investment process, postponing anti-avoidance controls until the distribution of income to *unit holders*, thereby strengthening legal certainty.

In addition, at the domestic level, compliance with beneficial ownership rules is critical to avoid challenges from foreign tax authorities[28]. Local laws often impose substance requirements, anti-abuse provisions, and CFC rules that mirror international standards. Failure to meet these requirements can lead to denial of treaty benefits, increased withholding taxes, and reputational risks[29].

The main source of this uncertainty and increased volume of tax controversy is the lack of clarity around the definition and application of the beneficial ownership concept in European jurisdictions. This creates challenges for groups that operate across the region[30].

A further recurring challenge that taxpayers face relates to the availability of advance certainty regarding beneficial ownership status, since not all Member States allow taxpayers to obtain advance tax rulings to confirm their beneficial ownership position. This implies a significant degree of uncertainty for businesses operating in Europe, with respect to how tax authorities may interpret their structures and transactions. The lack of consistent access to advance certainty highlights the need for companies to develop a good understanding of the specific tax rules and administrative practices in each jurisdiction in which they operate[31].

iv) The cross-border regime for investment funds in the legal framework of the European Union and within the OECD: the growing spread of cross-border investment structures has made the issue of the correct legal and tax classification of investment funds increasingly relevant for the purposes of applying European Union tax directives and double taxation agreements.

Firstly, with reference to Directive 2011/96/EU (the *Parent-Subsidiary Directive* – PSD), it must be determined whether investment funds can acquire the status of parent companies. The CJEU, in its judgment *in Les Vergers du Vieux Tauves* (C-48/07), clarified that shareholdings consisting of usufruct rights do not constitute *shareholdings in capital* for the purposes of the PSD, as they do not establish the necessary legal relationship between parent and subsidiary. It follows that, where a fund acquires legal ownership of dividends before their redistribution, the distribution may qualify for the exemption, provided that the additional conditions are met.

For the PSD to apply, an entity must meet three cumulative requirements:

i. it must adopt one of the corporate forms listed in the annex to the directive, as confirmed by the CJEU in its judgment *in Gaz de France* (C-247/08), which classified that list as exhaustive;
ii. be classified as a taxable person for corporation tax purposes in its Member State of residence;
iii. be considered a tax resident in a Member State, without at the same time being resident in a third country under a double taxation convention.

The condition of being liable for corporation tax is particularly problematic for funds, which in many Member States benefit from exemptions or zero rates. In *Wereldhave* (C-448/15), the CJEU clarified that the requirement implies both positive liability to tax and the absence of exemption. This interpretation, equating exclusion with the exemption regime, makes it impossible for funds to benefit from the PSD regime.

Therefore, dividends received by investment funds are not, in general, eligible for the benefits provided for in the Directive.

A different perspective emerges with regard to the application of the fundamental freedoms enshrined in the TFEU. In *Aberdeen Property Fin*, the CJEU declared that Finnish legislation denying a Luxembourg SICAV exemption from withholding tax on dividends, which was granted to domestic funds, was incompatible with the free movement of capital. In *Santander Asset Management* (joined cases C-338/11 – C-347/11), the Court similarly censured Spanish legislation that reserved less favourable treatment for foreign funds than for domestic ones. These precedents show that funds cannot be excluded from access to tax benefits solely on the basis of their exempt status, provided that the criteria for legal residence are met.

The above considerations must be coordinated with anti-abuse rules. Article 6 of ATAD introduced a general anti-avoidance rule (GAAR), requiring Member States to disregard transactions that lack valid economic and commercial reasons and are carried out primarily for the purpose of obtaining undue tax advantages. The provision incorporates the case law of the CJEU on the prohibition of abuse of rights, starting with the *Halifax and Cadbury Schweppes* judgments (C-196/04).

The assessment of genuineness requires the examination of objective elements (contrasting the advantage with the *ratio legis*) and subjective elements (prevailing intention to obtain the advantage). This analysis is particularly complex for funds, which perform legitimate economic functions, but can also lend themselves to forms of aggressive tax planning[32].

In *T Danmark and Y Denmark* (joined cases C-116/16 and C-117/16), the CJEU identified a number of indicators of genuineness: operational substance (qualified staff, actual headquarters, decision-making autonomy), control over income flows, assumption of real economic risks and the existence of a commercial rationale distinct from tax motivations[33]. In the absence of these requirements, the structures are deemed to lack substance and must be disapplied[34].

Although they are regulated entities, UCITS and AIFs do not enjoy automatic immunity: if established primarily for avoidance purposes or lacking economic substance, they too may fall within the scope of the GAAR.

Within the OECD, the report *The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles* (2010), which deals with the benefits of treaties for collective investment vehicles, recognised that regulated open-ended funds facilitate cross-border investment and should benefit from treaties.

This approach covered EU UCITS funds but excluded alternative funds (hedge funds, private equity, REITs), creating a gap in treaty practice with the growing importance of alternative funds in global markets. Finally, it is worth noting that many investment funds are fiscally transparent (partnerships or contractual arrangements) and may not qualify as residents.

However, the 2017 Commentary on the OECD Model Convention recognised the peculiarities of collective investment vehicles, recommending access to treaty benefits for widely held and regulated funds, regardless of their exempt or transparent status.

With Action 6 of the BEPS project, the OECD introduced additional anti-abuse tools: the Principal Purpose Test (PPT) and Limitation on Benefits (LOB) clauses. The PPT, in line with the GAAR approach, allows treaty benefits to be denied to transactions that lack a genuine economic purpose and are aimed at obtaining undue tax advantages[35]. LOB clauses, on the other hand, operate through formal and substantive criteria, reserving benefits for predetermined categories (residents, listed companies, government entities, pension funds, non-profit organisations) or entities that carry out actual economic activity in the State of residence.

While the European GAAR favours the analysis of economic reality and substance, LOB clauses risk excluding genuine funds that do not meet stringent formal requirements, such as stock market listing.

A comparative analysis reveals a fragmented picture: funds are excluded from the scope of the PSD, but can invoke fundamental freedoms to combat discrimination. At the same time, they are subject to both European and international anti-abuse clauses, with criteria that alternate between form and substance. Coordination between EU law and OECD convention rules is essential in order to prevent genuine, regulated funds from being unfairly deprived of fair tax treatment, while ensuring the effectiveness of anti-avoidance measures.

v) The nature of limited partnerships: in most Member States, these companies are considered transparent for tax purposes, but in a limited number of cases they are considered opaque, leading to double taxation and exclusion from the CIV exemption under ATAD 2.

3. The technological impact on tax issues

In a digital ecosystem, the traditional categories of tax residence, location of economic activities and legal ownership of income can no longer be based on physical and centralised assumptions.

Hence the importance of proposing structural and *future-proof* solutions capable of ensuring legal certainty and tax consistency not only in today's context, but also in view of technological evolution and decentralised and dematerialised finance.

The resolution of the above critical issues is necessary regardless of the operating model and legal form adopted, as they reflect structural limitations of the tax system, not mere technological issues. Where investment activities are developed/implemented in fully digitalised models, where fund units consist of digital tokens circulating on blockchain, or where management activities are carried out in digital environments, as such lacking 'physical substance', the above issues must be addressed and resolved bearing in mind the principle of technological neutrality[36].

In this perspective, it could be useful to identify a 28th jurisdiction of reference (understood as a harmonised set of criteria shared at the European level) capable of offering operational solutions to the critical issues highlighted above. Such a model, while fully respecting national (tax) competences, would provide investors and managers with a predictable and consistent regulatory framework, reducing the scope for challenges by the tax authorities of Member States.

4. Possible solutions

i) Tax residence: one possible regulatory response could be to stipulate that regulated investment funds or investment funds managed by a regulated manager are considered resident in the country in which they were established. This approach, based on an objective criterion (i.e., the place of establishment), reduces legal uncertainty and the risk of litigation, providing a useful model for harmonised developments at the European level[37]. This connecting factor would increase the flexibility of fund managers and would also be effective with the evolution of investment vehicles created in decentralised ecosystems (DeFi), an area in which the connecting factor of a substantive nature is not practically applicable.

ii) The configuration of a permanent establishment: investment funds may constitute depending on activities carried a permanent establishment for the investors and may also constitute a permanent establishment in a jurisdiction other than that in which they are established, with the consequent risk of taxation not justified by an adequate economic or territorial connection. In order to neutralise this risk[38], the Investment Management Exemption (IME) mechanism, already introduced in Europe (Italy following the example of the British model, in force since 2001[39]), comes to the rescue[40]. Under this regime, the activities carried out by a resident manager or advisor do not, in themselves, constitute a permanent establishment of the foreign fund, provided that specific requirements[41] of independence, location and operation under market conditions are met[42].

iii) Beneficial owner status: the concept of beneficial ownership is central to the European Union's efforts to combat money laundering, tax evasion, and financial crime while fostering a transparent and competitive business environment. Despite recent legislative progress (such as the Anti-Money Laundering Regulation (EU) 2024/1624 and the Sixth Anti-Money Laundering Directive) fragmentation persists across Member States. Divergent definitions, inconsistent thresholds, and varying access and verification standards create legal uncertainty, increase compliance costs, and undermine the EU's attractiveness for cross-border investment.

The solution that appears to be consistent with EU law principles and the need for certainty in application could be to attribute beneficial owner status ex lege to all regulated funds established in EU Member States or in jurisdictions considered equivalent under OECD standards.

For these reasons it is important to pursue a harmonized approach to beneficial ownership regulation to strengthen transparency, reduce administrative burdens, and enhance the EU's global competitiveness. The proposed measures could include:

1. establish a single, clear definition aligned with FATF and OECD standards, covering ownership thresholds, control criteria, and complex structures;
2. align the beneficial ownership concept with other tax and anti-abuse rules to provide legal certainty and prevent treaty shopping;
3. promote digitalization and cost efficiency by supporting automated reporting and digital onboarding tools.

This approach would not necessarily require the amendment of existing treaties, but would guide their interpretation in a uniform manner, strengthening funds' access to conventional benefits in cross-border contexts. In practical terms, this would mean that every fund that is authorised and subject to prudential supervision (either directly or through its manager) would automatically be recognised as a beneficial owner, as long as it's set up in an EU Member State or a white-listed jurisdiction that's considered equivalent under OECD standards.

These measures shall create a predictable regulatory environment, improve investor confidence, and position the EU as a leader in transparency and compliance. By reducing fragmentation and enhancing efficiency, the European Union can strengthen its internal market and global competitiveness.

iv) The cross-border regime for investment funds in the legal framework of the European Union and within the OECD: as previously explained, the benefits of the directives aimed at eliminating the application of withholding tax on income flows distributed between companies belonging to the same group in different Member States do not currently apply to investment funds. Extending the tax benefits provided for in the Parent-Subsidiary and Interest and Royalties Directives to investment funds authorised in an EU Member State would promote greater tax transparency by eliminating the distortions caused by the application of withholding taxes on distributed income. The reasons for this proposal lie in the fact that these directives were drawn up in an economic context that was different from the current one, as it was not common to find investment funds in the structure of companies, whereas today this situation is the norm. In this context, the anti-abuse clauses provided for in the Directives should apply exclusively to income flows out of investments and distributed by funds to their respective *unit holders*.

Furthermore, in order to ensure the fiscal transparency of the entire long-term private investment operation, it would be appropriate to adopt a specific *safe harbour* both at the level of the PSD/I-R Directives and at the OECD level (most likely in the multilateral convention (MLI) implementing BEPS), aimed at eliminating the fragmentation highlighted above, ensuring that private investment benefits from fiscal transparency (and therefore access to the benefits of the directives, but also of double taxation agreements), as it is classified as an European public good, regardless of the vehicle used (both in terms of its nature and structure), thus strengthening legal certainty.

v) The nature of limited partnerships: one possible solution could be either to introduce harmonised criteria at the European level for the tax classification of limited partnerships and/or to build a whitelist of European partnerships that are considered as tax transparent *per se*, so as to avoid them being considered transparent in some jurisdictions and opaque in others. The adoption of common rules would reduce the risk of double taxation resulting from the different tax treatment of limited partnerships in different Member States and ensure a more uniform application of the ATAD 2 provisions aimed at preventing tax mismatches.

Alternatively, Member States could adopt a principle of mutual recognition of the tax regime attributed in the State of incorporation of the limited partnership, thereby reducing conflicts of classification. This approach would ensure legal certainty, regulatory consistency and tax neutrality, avoiding penalties for economic operators and ensuring equal conditions of access to the tax benefits provided for cross-border investments.

In addition, Member States could allow PE funds and their holding structures (SPVs) to apply a look-through approach, so that as each investor is ultimately taxed as if it would have invested directly in the underlying portfolio companies[43].

B. Management companies and advisory companies

1. Introduction

The activities that collectively lead to investment, starting with scouting, marketing and market sounding, through to the decision to invest and then continuing with the management of the investment until exit, can be carried out by two types of companies: the *management company* (MC) and the *advisory company* (AC), which, although operating in close collaboration, differ in terms of their typical activities, organisational structure, activities and responsibilities, which also have important tax implications.

The MC is the company responsible for the overall management of the fund, normally qualified as an AIFM under Directive 2011/61/EU, which makes key decisions such as investment, management and divestment. Originally, it operated mainly in the fund's country of residence, whereas today its activities span several jurisdictions other than that of the managed investment fund, with significant regulatory and tax implications.

The AC has no relationship (either economic or legal) with the investment fund, while it provides the management company, on an exclusive or substantially exclusive basis, with services such as *deal sourcing,* analysis of investment opportunities, coordination and support in activities leading up to the investment. The MC often holds a (significant) stake in the AC and is represented on its Board of Directors.

The operational structure outlined above, together with the nature of the services provided by both the MC and the AC, may present a number of tax issues, in particular:

i. the possible configuration of a permanent establishment;

ii. the application of transfer pricing rules;

iii. the VAT regime applicable to the services provided.

2. Tax issues

i) The risk of permanent establishment classification: the activities carried out by a MC or an AC on behalf of the fund may be classified as the exercise of a stable economic activity in another Member State, resulting in the classification of a material or personal permanent establishment in accordance with the provisions of Article 5 of the OECD Model. This critical issue becomes more relevant in the presence of the following evidence (even if only formal):

i. when the MC/AC has a fixed place of business or operational staff in a State other than its State of residence;
ii. when the personnel of the MC/AC carry out negotiating or decision-making activities in the State of residence of the company in which the investment fund invests (the target company).

ii) Transfer pricing: intra-group transactions between the MC, the AC and the investment fund must be based on the *arm's length* principle, in accordance with the OECD guidelines and the internal regulations of the various Member States. However, determining an *arm's length* value for services rendered in the context of fund management presents numerous complexities, both for the MC and the AC. In particular:

i. the valuation of high-quality and intangible assets, such as investment selection, portfolio monitoring or strategic support, is affected by the scarcity of reliable comparable, as these activities are very specific and, consequently, lend themselves to subjective interpretations, thus increasing the degree of uncertainty;
ii. the precise division of *key* functions, as well as the allocation of risks and assets between MC and AC, is also complex and subject to subjective elements. In this regard, too, the fact that the same individuals often hold multiple roles, and just as frequently in different jurisdictions, makes the allocation of profits between different countries very difficult and subject to potential criticism from the tax authorities involved;

iii) The VAT regime for fund management services: the VAT regime applicable to services provided by AC to MC and by MC to the investment fund raises numerous uncertainties, especially in a cross-border context. Directive 2006/112/EC provides for an exemption for 'management services for unit trusts' (Article 135(1)(g)), but its scope, despite the guidance provided by the CJEU (see judgment of 4 May 2006, Case C-169/04, *Abbey National*; judgment of 19 July 2012, case C-44/11, *Deutsche Bank*; judgment of 13 March 2014, case C-464/12, *ATP Pension Service A/S*), is interpreted restrictively and differently between European jurisdictions. This creates uncertainty both as to the classification of exempt activities, where certain activities (consultancy) carried out by MC and AC would not be included among those classified as *exempt*, and as to the correct identification of the place of taxation.

Furthermore, MC and AC operate under a VAT exemption regime for the services they provide, which means that they cannot deduct the full amount of tax paid on purchases. The application of the pro-rata mechanism therefore results in additional costs, which have a direct impact on the overall profitability of operations and the efficiency of structures.

3. The technological impact on tax issues

The organisational and operational models of both MCs and CAs are increasingly oriented towards dematerialised digital systems and less and less towards traditional systems based on physical presence and activities physically carried out by people. The new operating context based on innovative new systems must be taken into account in the process of determining the place where economic activities are carried out and the related territorial link between income and a tax jurisdiction.

The concepts of *fixed place of business* and *place of business*, which are fundamental for identifying a permanent establishment, are losing their effectiveness in an increasingly dematerialised environment. Furthermore, the spread of relevant functions in increasingly automated decision-making processes, where human activity is increasingly reduced, must be taken into account in determining comparable market conditions for *transfer pricing* purposes, avoiding misalignments between jurisdictions and potential tax disputes.

Finally, the digitisation of fund management activities as well as free movement of persons within the European Union accentuates uncertainties not only in terms of location but also in the very classification of management services for VAT purposes. This ambiguity complicates the application of *the reverse charge* mechanism and VAT deduction, with potentially significant impacts for MCs and ACs operating internationally.

4. Possible solutions

i) Permanent establishment: a useful regulatory mechanism for managing the presence or absence of a permanent establishment for the activities carried out by MCs and ACs is the proposal already outlined in the first chapter on investment vehicles (IMEs). This regulation provides that the activity carried out by a resident entity does not, in itself, constitute a permanent establishment of the foreign MC or AC, provided that specific requirements in terms of independence, location and operation under market conditions are met.

ii) Transfer pricing: one possible solution, although its difficulty of application cannot be ignored, is the adoption of the proposed Transfer Pricing Directive of 12 September 2023 (currently suspended in its approval process), which aims to introduce common and binding rules for the application of the arm's length principle within the Union. The harmonisation of criteria relating to functional analysis, the classification of transactions and the choice of transfer pricing methods could represent a decisive step towards reducing differences in interpretation between Member States.

In this regard, a very important alternative, already supported by Ecofin in its six-monthly report to the European Council on 10 December 2024, is the creation of a European transfer pricing platform. This would be a non-binding coordination tool, managed by the Commission in collaboration with Member States, aimed at promoting a more uniform approach without introducing new legislative rules. The platform would have practical functions: sharing experiences and good practices between tax administrations, providing common guidelines for the management of complex cases and promoting preventive discussion between authorities and taxpayers. In this way, it could simplify procedures, reduce compliance costs and lighten the administrative burden, strengthening legal certainty without going through a formal legislative process.

For MCs and CAs operating in cross-border contexts, both solutions would offer concrete benefits: from limiting the risks of double taxation to greater legal certainty in the allocation of profits, particularly in cases involving intangible assets, qualitative functions or decentralised operating models.

iii) The VAT regime for fund management services: possible regulatory intervention at European level could clarify and standardise the application of the VAT exemption, providing a clear and unambiguous definition of fund management services and related mandate, mediation and intermediation services, and explicitly extending the benefit to advisory and support activities carried out by CAs to CAs and by CAs to investment funds.

Such harmonisation would facilitate the correct classification and identification of the services provided, reducing differences in interpretation between jurisdictions and ensuring a clearer determination of the place of taxation, resulting in greater tax certainty. This would help to limit the risks of disputes and additional tax burdens for MCs and ACs involved in cross-border transactions.

As an alternative to the exemption regime, it would be desirable to introduce the possibility for ACs and MCs to opt for the application of VAT in relation to fund management services rendered. Such a choice would allow these entities to recover the full amount of tax paid on purchases, overcoming the limitations imposed by the pro-rata mechanism and thus significantly reducing non-deductible costs. The option would also ensure greater tax neutrality between operators and jurisdictions, promoting the overall efficiency of investment fund structures.

C. Manager remuneration – *carried interest*

1. Introduction

The tax classification of the financial remuneration paid to investment fund managers deserves attention, as it relates simultaneously to the investment activities carried out by the fund and those carried out directly by the manager, as well as to the institutional activities aimed at *scouting* opportunities, investing, managing portfolio investments and subsequent disposal. On the contrary, their 'demonisation' due to a failure to recognise their nature and composition encourages the establishment of investment funds in non-European jurisdictions with better rules, in the sense that they are more consistent and compliant with the industry in question, thereby undermining the European investment fund market (*EC: taxation of the financial sector – carried interest* in the EU member state. Brussels 219).

Managers' remuneration is generally structured as a fixed component, which ensures the manager's economic stability, variable components (bonuses) linked to the achievement of specific investment fund results, and *carried interest*, which remunerates the investment risk assumed in various forms by the manager. Performance bonuses reward management efficiency and the achievement of the investment fund's annual objectives, while *carried interest* represents the valuation of the investment risk taken by the manager.

The latter represents a partial allocation of any *capital gains* realised by the investment fund, recognised to managers, and is particularly important because it is the element that creates a direct and transparent alignment between the interests of managers and those of investors in value creation activities. Direct because investors require the managers who manage their funds to also assume the risk arising from the investment, albeit in different ways; transparent because the measure and *waterfalls* are expressed in the management mandate.

The alignment of interests consists of managers assuming the investment risk.

However, the tax treatment of managers' remuneration – including performance bonuses and, in particular, *carried interest* – is not uniform across jurisdictions.

The differences that currently exist between the regulations of the various countries may concern both the applicable tax rate and the classification of income (e.g., as capital income or employment income), but also the timing of taxation, with significant impacts on the recipient (the manager) of the *carried interest*, making the management of *carried interest* and the related results different between managers who manage the same fund but operate in different European jurisdictions.

The current uncertainty increases bureaucracy and therefore discourages the establishment and development of European investors operating on global markets, with obvious negative repercussions on investments.

It should be remembered that *carried interest* represents a deferred economic component for the manager, i.e. an investment that he makes directly through a capital contribution (or indirectly through lower remuneration) and therefore a lower immediate cost for the company, precisely in order to align interests with investors. The lower cost for the company leads to an increase in its taxable income with the payment of higher taxes. If no value were created, the manager would have permanently lost the investment made.

2. Tax issues

The economic nature of *carried interest* – contrary to what some would have us believe – is not complex; however, the related *tax regime* is a particularly complicated area because it is subject to significant differences between the various European jurisdictions. In some jurisdictions, *carried interest* is classified, under certain conditions, as capital income, with the possibility of benefiting from a different tax rate than that applied to employment income (e.g., Italy, France, Ireland, and Belgium). in other jurisdictions, however, it is treated as professional or salary compensation, with the consequent application of progressive tax rates and social security contributions (e.g., Denmark and Portugal); in others, finally, part of it is considered capital income and part of it is considered employment income (e.g., Spain and Germany).

The complexity increases further where the investment fund operates in various countries through different management companies and whose managers are tax residents in countries other than the one in which the fund is established or in which the MC/AC operates. In such cases, not only domestic regulations apply, but also the provisions of double taxation agreements, which, however, do not always provide clear guidance on the classification of *carried interest*. This leads to interpretative uncertainties that can result in disputes, especially when the tax authorities of different countries adopt divergent approaches.

Another critical area concerns the timing of taxation: in some jurisdictions, taxation occurs when the right accrues, even if the profits have not yet been materially distributed to those entitled to them; in others, however, taxation applies only to the actual receipt of the sums, generating, among other things, liquidity problems for managers, who are forced to pay taxes on amounts not yet collected.

The absence of an internationally harmonised framework makes the tax management of *carried interest* particularly burdensome, with continuous monitoring of regulatory developments in the countries involved penalising European investments with negative repercussions on the European economy.

3. The technological impact on tax issues

Technological developments are bringing with them a new way of managing investments. The availability of platforms and algorithms linked to artificial intelligence for carrying out management activities located in countries other than those where they operate and reside makes it less significant to link management results to a physical location, i.e. a fixed place of business.

In this sense, where analyses and assessments are the result of the application of artificial intelligence, while managerial activities are the consequent execution, it follows that the tax classification of *carried interest* will be even more uncertain than it is today, as it is based on schemes and principles that give substance precedence over form.

The technological impact highlights and accentuates the regulatory differences in the tax classification of *carried interest* between different countries, creating a complex and uncertain environment.

4. Possible solutions

A possible solution to the tax issues related to *carried interest* could be the adoption of a regime that:

i. recognises the nature of the manager's risk remuneration aimed at aligning their interests with those of investors;
ii. establishes objective rules that characterise the manager's intervention as an investment and their role aimed at creating value (and not for speculative purposes);
iii. is decoupled from references to the places where the activity is carried out;
iv. qualifies such income as a consequence of investment (capital income) and not of work;
v. establishes a specific tax rate that differs from that of employment income.

In this sense, the classification of capital income would be consistent in the presence of:

i. an investment by managers of a significant amount in relation to their income capacity;
ii. a specific period of ownership of the shareholding by the manager;
iii. a *waterfal*l relating to the distribution of profits that provides for subordination with respect to the recognition of the minimum remuneration due to other investors, highlighting the alignment of interests between investors and managers.

D. SPVs and Targets

1. Introduction

In making their investments, European investment funds resort to the establishment of intermediate vehicles set up in different jurisdictions, known as *Special Purpose* Vehicles (SPVs), for reasons purely instrumental to the transaction itself, such as

i. the need to subordinate the financing received in a structural and not just conventional manner[44],
ii. similarly, the related guarantees;
iii. the need to have regulatory systems that are more efficient in a given country in relation to the specific transaction or industry (such as those relating to the enforcement of guarantees);
iv. the *waterfall* of entities co-investing with the fund;
v. local regulatory and legislative requirements, etc[45].

SPVs are therefore a tool for carrying out the sole institutional activity of investment[46] and not an independent activity in their own right, nor can the establishment of SPVs be understood as an intermediary aimed at bringing (tax) advantages to their beneficial owner, which is the investment fund[47].

From this perspective, SPVs do not need their own organisational substance and, consequently, should not be included in the category of shell companies, but should remain excluded from the provisions of regulations relating to shell companies. To argue otherwise would mean, on the one hand, discouraging investment by requiring *unnecessary* bureaucracy and, on the other, requiring investors to provide SPVs with unnecessary and, as such, uneconomical substance for purely bureaucratic purposes.

SPVs are also the intermediate vehicles that the Fund establishes to carry out preparatory and preliminary activities prior to acquisition.

The limited organisational structure and limited operations of SPVs should not adversely affect their 'viability' by raising doubts about the deductibility of costs, the carry-forward and use of tax losses or access to preferential tax regimes. Furthermore, the same *light* configuration must not limit the qualification as a taxable person for VAT purposes, calling into question the possibility of recovering the tax paid on acquisition costs.

2. Tax issues

i) Shell companies: SPVs are frequently (erroneously!) considered by tax authorities to be 'shell companies', especially when their structure appears limited and they do not carry out any significant economic activity[48]. This classification may entail risks of non-application of EU directives or double taxation treaties, resulting in costs for investment funds;

ii) VAT treatment of transaction costs: the failure to recognise SPVs as VAT entities because their activities are considered irrelevant for VAT purposes results in costs that weigh on the investment and its cost-effectiveness.

3. The technological impact on tax issues

Technological developments are profoundly transforming the way SPVs operate, manage their activities and address related tax issues, introducing increasingly digital operating methods.

The adoption of platforms for investment management, communication and transaction monitoring has made these entities *even lighter* and more decentralised, with increasingly reduced operating structures. However, this 'dematerialisation' should not lead to them being classified as entities without real economic substance or *shell companies*, with potentially negative consequences in terms of direct taxes and VAT.

4. Possible solutions

i) Shell companies: one possible solution could come from the European Union's approval of the proposed directive COM(2021) 565 final on shell companies (whose approval process has been interrupted), aimed at combating the use of fictitious entities to obtain undue tax advantages[49].

However, with regard to funds, a specific safe harbour should be provided for SPVs held by investment funds, recognising that, as they are held directly or indirectly (either in terms of capital ownership or participation in economic results) by regulated entities operating within transparent and regulated investment structures, they have a *genuine* economic substance and do not pursue evasive purposes.

ii) The VAT regime for transaction costs: explicit recognition that the mere holding of shareholdings in target companies by SPVs, if intended to be incorporated through a merger with the target companies, constitutes an economic activity relevant for VAT purposes. Such recognition would allow SPVs to exercise their right to deduct VAT on costs related to the acquisition and management of shareholdings.

4. Investment management

4. Investment management

A. Debt and equity securities

1. Introduction

The financial instruments available to investors can take the form and nature of equity, debt capital or hybrid instruments that combine features of both, such as convertible loans, participatory instruments or subordinated bonds, etc. They can be issued in both paper and dematerialised form, in accordance with the regulations on the centralised management of financial instruments.

The choice between the different forms is not insignificant, as it influences not only the distribution of risks and benefits, but also the dynamics of the relationships between shareholders, creditors and management.

One of the tasks of managers is therefore to shape the financial structure in such a way as to ensure both a balanced structure capable of supporting the growth of the company without generating tensions between the various stakeholders, and efficient management of relations with shareholders, i.e. without legal or bureaucratic obstacles, all in accordance with the principle of neutrality, i.e. without considering factors such as tax leverage.

The presence of variables that alter neutrality interferes with the financial structure model. These may include differences between paper securities and dematerialised securities, as the methods of issue, circulation and administrative management may be relevant for tax purposes.

2. Tax issues

i) Disparities in the tax treatment of debt and equity: under the current regulatory framework, in many European countries, the financial charges relating to interest accrued on borrowed capital are deductible from income tax, unlike the cost of capital raised by the same company as equity. This asymmetry, known as *debt bias*, creates an incentive to finance investments by preferring debt capital over equity capital, with obvious repercussions on the stability of individual investments and, subsequently, the entire European economic and financial system.

Institutional investors, such as investment funds, which normally finance their investments using both their own and third-party funds, balancing them in order to achieve the best economic efficiency by taking advantage of the aforementioned asymmetry and seizing the opportunity of deductibility of interest accrued on capital provided by third parties, could be significantly influenced in their choices by tax leverage. Strengthening the European macroeconomic system means equipping it with companies that are more financially sound and therefore more competitive both on the domestic and international markets.

ii) Slow and complex shareholder repayment processes: the return of contributions by shareholders is often subject to rigid procedures and burdensome timelines, which slow down divestment processes. This is because repayment requires mandatory steps, such as shareholder approvals, accounting checks and legal compliance, as well as operational procedures that further lengthen the process. As a result, the capital contributed remains essentially 'locked up' until all these stages are completed, giving investors the perception that resources are immobilised. This situation reduces the attractiveness of the company and may limit the entry of new investors, making it necessary to strike a balance between asset protection and flexibility for shareholders.

3. The technological impact on tax issues

Technological developments and the spread of innovative financial instruments (such as blockchain-based digital bonds, tokens representing company shares or automated loans through smart contracts, securitisation, etc.) broaden the options available to investors, increasing the use of debt instruments over equity instruments in order to improve the efficiency of invested equity.

4. Possible solutions

i) Equality of equity contributions compared to third-party financing: one solution lies in the proposal for Directive No. COM (2022) 216 of 11 May 2022 (known as *the Debt Equity Bias Reduction Allowance* or DEBRA), whose approval process was interrupted in recent months, which introduces a tax incentive for equity contributions to companies in order to reduce the imbalance between the deductibility of interest expense and the cost of risk capital. This involves the recognition of a deduction from taxable income (allowance on equity), equal to a notional return to be calculated on increases in net equity occurring in a tax period.

ii) Rapid repayment of equity contributed by shareholders: the possibility of speeding up the process of redistributing contributions made by shareholders that have become *excess* would increase investor appetite.

B. DAC 6

1. Introduction

Administrative cooperation between the tax authorities of Member States through the automatic exchange of information (AEOI) is a pillar of efficient, balanced and transparent economic development. Within this system, Directive (EU) 2018/822 (DAC 6) is based on a system of (subsequent) reporting to the competent tax authorities, with a collaborative role for intermediaries involved in the structuring and implementation of cross-border investment transactions that present certain potentially aggressive schemes, known as *hallmarks*.

The reporting obligation requires coordination with other regulations that, on the one hand, require compliance with personal data protection (privacy and GDPR) and, on the other hand, require compliance with the professional secrecy of certain advisors (e.g. lawyers) involved in the execution of the transaction (ECJ, C-694/20 of 8 December 2022). At the same time, in order to achieve the objectives of the directive, greater precision is needed with regard to reporting obligations:

i. limiting (to the point of excluding) the scope for interpretation by individual Member States with regard, for example, to the frequency of communications and the system of penalties,
ii. avoiding duplicate communications by different intermediaries involved in the same transaction,
iii. limiting and clarifying the definition of *hallmarks*.

To ensure full compliance with the obligations under DAC 6, investment funds must establish rigorous internal procedures to identify and assess reportable transactions, clearly define the responsibilities of the professionals and intermediaries involved, and ensure through a monitoring and audit system that all relevant transactions are promptly reported to the competent tax authorities, even in the presence of conflicting regulations, incurring significant costs that go beyond the benefits of the directive itself and add to the compliance costs already incurred, as investment funds are subject to supervision.

The above should necessarily be coordinated with the 'public good' nature of investments which, as they are made by regulated entities, should lead to the exclusion from the application of DAC 6 of investment, management and (economic and financial) reorganisation transactions carried out by investment funds for their own investments, which should benefit from a specific *safe harbour* for the purposes of the Directive in question. The Directive should apply to transactions that have as their object the relationships between investment funds and their *unit holders*, as they are subject to taxation on the performance distributed by investment funds.

2. Tax issues

Costs and risks for investment funds arising from DAC 6: although DAC 6 is a tool for improving tax transparency and reducing avoidance, its practical application poses several critical issues for investment funds, such as:

i. the lack of alignment between Member States on the concept of 'tax advantage', on the basis of which the notification obligation applies; this lack of uniformity may lead to the exchange of unsolicited information, with the foreseeable risks of assessment;
ii. the high training and operational costs (e.g. systems, human resources, services) required both to analyse transactions correctly and to comply with reporting obligations;
iii. the potential incompatibility of the rules with professional secrecy, as they may violate the right to respect for communications with clients guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union (see GGUE, judgment C-694/20 of 8 December 2022);
iv. the interpretative differences between the various European legislations;
v. the differences between the various European legislations in terms of the penalties applicable in the event of non-compliance with reporting obligations, which appear to be an additional bureaucratic obstacle.

3. The technological impact on tax issues

Technological developments provide investors with the tools to streamline their operations in terms of time and space. The lack of clarity of *the hallmarks* poses significant risks of having to report an excessive number of facts and transactions, with negative repercussions on the objectives of the directive.

4. Possible solutions

Amendments to DAC 6: certain amendments and simplifications to DAC 6 are desirable, which would naturally result in a significant reduction in the burden on investors without compromising European tax transparency objectives. Possible measures include:

i. the harmonisation of key concepts, such as the definition of 'tax advantage', in order to avoid the exchange of unsolicited information and reduce the risk of inconsistent assessments between Member States;
ii. simplification of reporting activities: introducing simplified procedures or exemptions for typical investment fund transactions, such as investments in target companies through already regulated vehicles;

iii. the protection of professional secrecy: providing for specific exemptions or protection mechanisms for communications covered by legal privilege between lawyers and clients, ensuring compliance with Article 7 of the Charter of Fundamental Rights of the EU, which establishes the right to respect for the private and family life, home and communications of every individual;

iv. optimisation of information management: defining more selective criteria for the information to be transmitted, avoiding the sending of excessive or misleading data and facilitating effective use by tax authorities;

v. uniformity of the penalty system: harmonising penalties between Member States, ensuring proportionality with regard to the extent and nature of the infringement, and reducing uncertainty and excessive risks for funds;

vi. the provision of an obligation for tax authorities to provide periodic evidence of communications received.

C. Uniform regulatory framework

1. Introduction

The above analysis shows that investment funds in the European Union operate in a fragmented regulatory and tax environment, as each Member State applies its own rules on determining the tax base, taxing dividends and capital gains, and withholding tax. Investment funds therefore have to deal with multiple compliance obligations and, often, with different procedures for obtaining refunds and complying with different regulations.

This bureaucratic complexity entails significant administrative costs, the need for detailed prior documentation (tax residence certificates, attestations and declarations, the need to give organisational substance to SPVs) and time to recover withholdings and tax credits, affecting the net return for investors.

To manage the fragmentation of tax rules, investment funds are obliged to adopt complex operating structures in order to ensure compliance with local regulations and European directives and to optimise tax planning.

At the same time, European initiatives aimed at harmonisation and administrative cooperation, together with the digitisation of tax processes, represent an opportunity to reduce burdens and management times. A proactive and holistic approach to tax management therefore remains essential.

2. Tax issues

i) Absence of a unified tax regime: the activity of funds in the European Union is complicated by the lack of a unified tax regime, as each Member State currently applies its own tax rules with regard to direct and indirect taxation. This fragmentation forces funds to deal with heterogeneous rules, making tax planning complex and increasing administrative costs.

The need to comply with different compliance requirements and constantly monitor local legislative changes represents a significant commitment for managers, who must adapt corporate structures and investment strategies to each national context.

ii) Absence of a uniform tax regime for the application and refund of withholding taxes: a further critical issue concerns the management of withholding taxes on cross-border investments, as there is still no uniform tax regime in force in the European Union, nor harmonised procedures for the application and refund of withholding taxes on dividends, interest and royalties, resulting in variability in timing and methods between different Member States.

All this leads to long delays in the recovery of tax credits, a heavy documentation burden and uncertainty about the final outcome, directly affecting the net return for investors.

3. Possible solutions

i) European tax regime: to address the critical issues related to tax fragmentation, one solution would be to approve the proposal for a directive COM(2023) 532 of 12 September 2023 (BEFIT), which aims to create a single tax regime for companies, introducing common rules for determining the tax base, the deductibility of costs and the taxation of corporate income. This initiative also provides for tax consolidation mechanisms for European companies, which would avoid double taxation and reduce the complexity of managing multinational groups.

For investment funds, this would mean greater predictability in tax planning and reduced compliance costs, facilitating more efficient cross-border transactions.

ii) Uniform tax regime on the application and refund of withholding taxes: EU Directive 2025/50 (FASTER), approved in January 2025, aims to standardise and simplify the procedures for applying and refunding withholding taxes on cross-border investments. This initiative provides for the adoption of standardised digitalised processes, fixed deadlines for refund requests and a reduction in the documentation required, thus reducing the time and uncertainty involved in tax refunds.

For funds, the implementation of FASTER should allow for faster recovery of tax credits, improving the net return on investments and increasing transparency in transactions between different Member States.

Indeed, Member States have until 31 December 2028 to transpose the FASTER Directive, which will be applicable from 1 January 2030, but it is important that implementation in each Member State is uniform and under the control of the European Commission in order to ensure regulatory certainty, reduce administrative complexity and maximise the efficiency of cross-border procedures.

5. Exiting the investment

5. Exiting the investment

A. The benefits of investment

1. Introduction

The classification of investment as a *common good* and, as such, a *socially relevant good*, given its decisive contribution to the economic development and social progress of the community, requires the legislator – in the exercise of its powers – to identify and regulate appropriate instruments to promote and disseminate it.

In this perspective, it appears essential that the legal system does not create obstacles, but rather ensures adequate recognition and support for those institutions responsible for making investments, with particular reference to investment funds.

Any approach to the contrary would clearly be contradictory and lacking in systematic rationality, as well as foresight.

Not hindering investments from a purely fiscal perspective, which is what we are concerned with here, implies, first of all, the need to prevent double taxation. Secondly, to ensure effective coordination between tax jurisdictions, avoiding inconsistent and fragmented information requests; thirdly, it means overcoming tax approaches based on traditional criteria of physical location, which are no longer appropriate in an economic context characterised by high dematerialisation and intangibility. Finally, it means recognising and adequately regulating the forms of investment implemented by management, in order to promote a proper alignment of interests between managers and investors.

Facilitating investment, on the other hand, means adopting a holistic view, based on a vertical approach, capable of analysing the investment as a whole without dwelling excessively on each of its individual components.

These guidelines lead to the tax neutrality of investments and the entities that institutionally carry them out, where tax neutrality for investment funds means that the only entities on which the taxation of the entire performance achieved by the investment fund will be levied will be the investors in the funds (whether companies or individuals) for the income received, while all vehicles involved in the investment activity must remain neutral, i.e. excluded. Tax neutrality does not constitute any form of tax benefit or advantage for investment funds, but has the sole purpose of ensuring that taxation is levied on the investor in the investment fund, as if the latter had made the investment in the target companies directly, without resorting to the investment fund scheme[50].

From this perspective, local taxation will not influence investment choices, and neutrality will not depend on the tax residence of the fund, the SPV or the target company: differences in treatment between jurisdictions would in fact risk generating choices guided by purely local tax criteria (increasing tax competition between States, to the detriment of industrial and market logic).

Tax neutrality consists of creating and ensuring a predictable and stable framework capable of attracting capital for investment.

A neutral approach makes it possible to preserve a *level playing* field, avoiding disparities that could hinder access to capital or discourage investment.

In this sense, it is important that there is a single definition of the concept of neutrality and transparency within States.

Consequently, anti-avoidance provisions, both at the EU and OECD level, should only be applied at the stage of distribution
of income generated by investment funds to their investors and unit holders.

2. Tax issues

i) Risk of double taxation: The absence of a shared vision of investment as a common good of social importance leads to the adoption of fragmented tax approaches by individual States. These approaches result in local legislative measures aimed at regulating the taxation of capital gains, dividends and interest through autonomous forms of taxation. The resulting heterogeneity of national regulations generates double taxation and market distortions, which are one of the main obstacles to investment in Europe.

At the same time, the strong attractiveness of the European corporate market, characterised by a wide range of opportunities, leads investors to resort to complex structures, which in turn increase the chances of litigation with the tax authorities.

The duplication of the tax burden reduces the economic efficiency of investments, distorts the strategic choices of funds and discourages the inflow of capital into the European market.

3. Possible solutions

i) Exemption on capital gains, dividends and interest: one possible solution to overcome the problem of double taxation is to establish a common tax regime in Europe, which recognises the exemption of investment funds from taxation on capital gains, dividends and interest deriving from shareholdings (including minority shareholdings) in target companies realised directly or through intermediary vehicles. Taxation will take place at the time of distribution of income by the investment fund to its investors[51].

ii) Neutrality also for non-European funds: exemption from taxation of dividends and capital gains also for EU/EEA investment funds with a non-European *supervised* manager and for *supervised* non-European funds established in countries or territories that allow for an adequate exchange of information, thus *complying* with Article 63 TFEU.

iii) Definition of shared guidelines on transparency: standardisation of guidelines on transparency and opacity in order to simplify the analysis of entities and eliminate room for interpretation and related potential disputes with local tax authorities.

iv) Application of the Parent-Subsidiary and Interest and Royalties Directives: with regard to dividends and interest, reference is also made to the possibility of extending the application of the Parent-Subsidiary Directive (Directive 2011/96/EU) and the Interest and Royalties Directive (Directive 2003/49/EC) to investment funds, as also indicated in the previous chapters. This extension would allow funds to benefit from exemption regimes, similar to those provided for companies, thus ensuring consistent and neutral treatment regardless of the structure adopted by the fund or the presence of intermediary SPVs[52].

6. Technological developments and investments

6. Technological developments and investments

Technology, together with the related infrastructure, has taken on an increasingly central role in the functioning of financial markets, having a decisive impact on both investment decision-making processes and capital allocation choices. It can therefore be said that markets are progressively shaped by technological developments, with significant implications not only for investors and financial instruments, but also for regulatory authorities, including tax authorities.

Although this is not the place for an exhaustive analysis of the benefits and critical issues associated with this phenomenon, what is relevant for the purposes of this discussion is the clear impact of technology on the investment ecosystem and the growing dependence of markets on digital solutions. In this context, there is a need to identify appropriate regulatory responses, through a review of existing regulatory frameworks, that can effectively respond to the new demands of the market.

The investment fund industry is also gradually adopting artificial intelligence tools, machine learning, predictive models and data and financial flow analysis systems capable of promptly highlighting risks and opportunities, significantly influencing internal organisational structures. Consulting activities, traditionally carried out by 'human-driven' structures, will increasingly be replaced – or at least supplemented – by systems based on artificial intelligence.

These models, characterised by a high degree of dematerialisation and ever-decreasing dependence on human intervention, enable faster and more accurate decisions, reducing the margin of error and improving the analytical processes underlying investment decisions. At the same time, they contribute to more efficient portfolio allocation and optimisation of operating costs, particularly in areas such as reporting, compliance, reconciliation and execution activities, thanks to increasing automation and a reduction in manual operations.

At the same time, it will be – and must be – necessary for supervisory and control activities to also equip themselves with similar technological tools, capable of ensuring effective monitoring of these innovations. In this scenario, tax authorities are also called upon to evolve: they will become more proactive, data-driven and more coordinated at an international level. Through the adoption of technologies such as Distributed Ledger Technology (DLT), they will be able to monitor transactions in real time, with a significant impact on the activity and structure of investment funds, which will tend to become increasingly digital.

The previous chapters analysed the main tax issues that, at present and according to the *traditional* approach, constitute an obstacle to investment. For each of these, solutions have been proposed, mostly based on principles and definitions borrowed from the past.

However, the technological evolution currently underway should prompt us to imagine a future based on new structures and schemes, which refer to institutions, principles and methods that do not derive from *tradition* (such as the obsessive search for substance while neglecting form) and whose main purpose is not to offer new definitions, but to provide concrete answers and solutions to a profoundly transformed market.

Initially, private equity and venture capital funds operate in contexts characterised by incomplete information, rapidly evolving markets, complex stakeholder networks and high-risk decision-making processes. Their decision-making process is largely based on intuition, industry expertise and manual analysis. Their organisational models are similar. The growing importance of data and the globalisation of markets require approaches and structures informed by emerging technologies – *Large Language Models* such as GPT-4o/5, Claude and Llama; agentic systems, such as chatbots; multi-agent coordination frameworks; graph-based reasoning; reinforcement learning; and neuro-symbolic intelligence.

The transformation affects all stages of the investment cycle[53]:

- **Deal Sourcing:** *Natural Language Processing models* and *Graph Neural Networks* will enable the analysis of millions of daily signals, identifying high-potential targets before they emerge in traditional networks.
- **Due Diligence:** AI agents will synthesise contracts, validate ESG statements and report regulatory exposure in hours rather than weeks, supporting review with neuro-symbolic engines.
- **Portfolio Management:** Predictive models and monitoring agents will provide timely signals on portfolio-level risks and opportunities, enabling targeted value creation interventions.
- **Valuation and Modelling:** Reinforcement Learning and Machine Learning algorithms will dynamically refine assumptions, linking financial, operational and market indicators to valuation results in near real time.
- **Investor Relations and Fundraising:** *Large Language Models* will improve interaction during all stages of fundraising.
- **Market and Sector Intelligence:** AI tools will synthesise vast volumes of data, identifying early signs of dynamism, geopolitical risks and undervalued sectors, promoting more efficient allocation.
- **Exit Strategy:** Predictive agents and scenario simulation systems will help optimise timing, identify buyers and generate higher multiples.

- **Compliance and ESG**: AI systems will flag inconsistencies, monitor jurisdictional obligations and ensure ESG data integrity, with real-time transparency and traceability.
- **Cross-Functional Orchestration:** AI systems will communicate with each other, autonomously sharing data, alerts and context across business functions, reducing fragmentation and accelerating decision-making.
- **Infrastructure Strategy:** Leading companies invest in AI infrastructure – computing power, orchestration stacks and data ecosystems – treating it as primary infrastructure.
- **Performance Attribution:** New attribution models quantify AI's contribution to time savings, risk identification and improved results, directly linking the technology to fund performance.
- **Organisational Enablement:** Companies are redesigning teams, roles and incentives to increase AI knowledge, operational trust and ethical oversight at all levels.
- **Future Outlook:** in the near future, the leading companies will not simply be those with the best data, but those that know how to integrate judgement, artificial intelligence, governance and learning into an intelligent operating model.

The impacts on the institutional investor sector are both structural and operational.

Policy makers are called upon to coordinate regulatory systems to the new technological context and the impacts it will have on operators in order to ensure its evolution but also to safeguard the stability of global markets.

7. Conclusions

7. Conclusions

The proposals contained in the White Paper are innovative

i. both in form, in that they do not aim to introduce new rules but to simplify the structure and interpretation of existing ones, and
ii. in content, moving towards a system of rules that are instrumental and functional to the achievement of the public good: investment.

In this sense, fragmented approaches and visions are abandoned because they relate to individual cases and individual geographical areas, in order to arrive at a holistic vision projected into a context that will be increasingly less *physical* and increasingly more digital.

Placing investment as a public good at the centre of attention, with the aim of protecting it and not hindering it, means at the same time protecting and not hindering those who are institutionally called upon to invest. This perspective aims to recognise investment funds as entities that play an institutional investment role and not as mere recipients of *facilities*.

The proposals made are particularly relevant when contextualised within the current global scenario, characterised by profound transformations (technological, industrial and energy-related) that require substantial and continuous investment. Private capital is becoming increasingly essential not only to support the growth of individual companies, but also to ensure the overall competitiveness of the European system. A system that is not informed about new technologies, which, as has been pointed out, are increasingly intangible and increasingly dematerialised and digital, and is not aware of the importance of investments in the economic system and therefore of the need to stimulate them through a vertical rather than atomistic vision, has consequences that go beyond the economic slowdown and lead to a real structural decline, with lasting consequences for the continent's industrial capacity.

In this sense, the words of the President of the German Confederation of Industry, who openly evoked the danger of irreversible deindustrialisation, are a warning sign that Europe cannot afford to ignore. They reflect a widespread concern in the European industrial world, which perceives a growing competitive gap with other areas of the world (see P. Leibinger, President of the BDI, interview with the Süddeutsche Zeitung on 17 December 2025).

It is clear that adapting the European tax system (but not only that) to a new and innovative vision of both investment and the institutions responsible for its implementation is not only a necessity but also a decisive strategic choice. This requires choices that involve abandoning analytical and fragmented approaches motivated by specific local tax policy reasons which, through atomistic approaches, favour the analysis of each individual phase of the investment, attributing to it its own autonomy and tax relevance. A system that seems to "look at the finger rather than the moon".

A forward-looking tax system is needed to address the challenges of an increasingly digital and dematerialised economy, using effective regulations to capture new ways of creating, exchanging, and locating wealth and taxable capacity.

The analysis presented here highlights how European tax regulations significantly interfere with and influence investment. This interference is due both to their inadequacy in understanding and correctly qualifying the underlying economic phenomena, but also to their excessive complexity and procedural complexity. These elements constitute real barriers to growth, contributing to making Europe an overall unattractive environment from an economic point of view, leading to a reallocation of capital and investment to other economic systems, generating negative effects on the economic well-being of European citizens and undermining social cohesion.

As Mario Draghi pointed out, the very credibility of the European project and citizens' confidence in the prospects offered by the Union also depend on Europe's ability to ensure concrete economic development. In a context in which Europe has recorded lower growth rates than other areas of the world in recent decades, the issue of investment cannot be relegated to a technical matter but takes on a political and strategic significance of primary importance.

The ability to generate sustainable growth is, in fact, an essential condition for social cohesion and for the legitimacy of European institutions (see M. Draghi, *Il futuro della competitività Europea. Parte A, Una strategia di competitività per l'Europa*, September 2024, and speech at the Communion and Liberation Meeting on 22 August 2025).

This awareness gives rise to the need to base future fiscal policies on a number of fundamental pillars:

i. the recognition that many of the current regulations arose in a past economic and financial context that is no longer relevant today, partly due to technological developments and their impact on organisational and business models: markets have evolved rapidly, as have financing methods and business organisational models; the growing importance of intangible assets, the digitalisation of production processes and the global dimension of value chains require new regulatory and fiscal instruments capable of addressing this complexity. Continuing to apply tax rules designed for economies based on models and technologies that are no longer relevant and are not aligned with future trends, or designed to meet national and sectoral needs, drives investors away from Europe. In this sense, promoting investment by classifying it as a social good and public good and consequently adapting the regulatory framework is not a form of concession to investors but a necessary condition for having the tools to attract the capital needed to implement economic and industrial policies in Europe.

ii. The explicit recognition of the strategic role of long-term investment as an essential lever of European competitiveness implies its qualification as a genuine European public good. As such, it is capable of structurally supporting economic growth, collective welfare, technological innovation and the resilience of the continent's production system, while strengthening Europe's ability to compete effectively on a global scale.

    Awareness of the need for adequate and stable flows of capital for long-term investment as a prerequisite for sustainable economic development goes hand in hand with the recognition that such investment is a real strategic driver for the European Union. This entails recognising its collective value and systemic function, as well as the need to promote a coherent, predictable and favourable regulatory and fiscal framework for long-term investment decisions.

iii. Enhancing the legal bases already present in the Treaties, in particular Article 115 TFEU, as a tool for initiating a gradual and realistic process of tax harmonisation between Member States. This path does not require forced uniformity of tax systems but aims to eliminate the most obvious distortions that hinder the functioning of the internal market, and Article 115 TFEU provides a legal basis for targeted intervention, respecting the fiscal sovereignty of Member States while pursuing common European interests.

The 28th jurisdiction proposal is designed precisely as a tool for both economic growth and European market cohesion, combining flexibility with the protection of the general interest without affecting national legal systems.

A gradual approach seems appropriate in a sensitive area such as taxation, where differences between legal systems reflect different legal traditions, political choices and economic structures; however, respect for national specificities cannot result in decision-making paralysis, especially when common strategic interests are at stake. The challenge for the European Union is to turn heterogeneity into a strength, preventing regulatory fragmentation from continuing to penalise cross-border investment and the functioning of the internal market.

In conclusion, the White Paper does not intend to limit itself to a diagnosis of existing critical issues, but consciously takes on a proactive role, offering concrete and coherent guidelines for imagining and building a tax system that is different from the existing one, which was created in a different economic context.

The analysis is based on the conviction that change is not only necessary for the reasons indicated, but also realistically and concretely achievable, provided that political action is guided by a long-term economic vision and supported by a clear assumption of responsibility capable of ensuring that the general (long-term) interest prevails over the particular interest, placing the common good as the guiding criterion for public choices.

The solutions put forward in the White Paper are the result of a multi-level approach, aware of the complexity of the European system, but at the same time aimed at transforming this complexity from a constraint into an opportunity.

Precisely because of this approach, the white paper has chosen not to make a rigid distinction between short-term interventions and medium- to long-term reforms, as such a separation would risk reproducing the fragmented vision that has contributed to the current critical issues. Instead, the proposals put forward should be seen as parts of a unified plan, in which improving the immediate functioning of the market and the sustainability of the system over time are not alternative objectives, but inseparable dimensions of the same strategy.

Only an integrated approach, capable of bringing together the various stages of investment and the multiple levels of regulation, can create a context that is truly conducive to the development of investment funds and, more generally, to the efficient use of private capital in Europe.

8. Appendix

Appendix

Executive summary table for Invest Europe's Tax Advocacy Working Group

Invest Europe's White Paper on tax harmonisation for EU investments and investors, such as those in the private equity and venture capital sector, represents the most comprehensive and ambitious effort to systematize EU PE/VC taxation since the launch of the Capital Markets Union initiative.

The proposal invites policymakers and stakeholders to have the courage to look beyond the finger and see the moon: to move past incremental fixes and embrace a coherent, future-oriented vision for EU-level taxation that supports the European Union's strategic priorities, including the financing of the green and digital transitions, the strengthening of industrial competitiveness, and the safeguarding of open strategic autonomy.

This appendix summarises the key elements of the white paper. It distils the substance of the proposal while highlighting how each recommendation contributes to that wider ambition.

Content – Investment as an EU public good

Investment should be recognised as an *EU public good* of systemic relevance, insofar as the mobilisation and efficient allocation of long-term capital constitute an essential enabling function for the Union's economy and for the delivery of its strategic objective: the welfare of the EU population.

Investment transcends market activity and private initiative, representing an intangible economic infrastructure underpinning sustainable growth, innovative capacity, the creation of quality employment, social and territorial cohesion, and financial stability. In this context, investment constitutes a key lever for the delivery of the European Union's strategic priorities, including the financing of the green and digital transitions, the strengthening of industrial competitiveness, and the safeguarding of open strategic autonomy.

From this perspective, investment should not be regarded solely as a private market activity, but rather as a systemic *EU public good* functioning in the public interest, the effectiveness of which directly affects the resilience of the EU economy and its ability to absorb shocks, manage structural transformations, and address long-term financing needs. In this respect, long-term oriented capital generates benefits that extend beyond individual firms, strengthening the European economic ecosystem as a whole, by supporting growth and innovation, fostering high-quality employment, and enhancing Europe's capacity to compete effectively on a global scale.

Shortcomings: Inefficient regulation hinders investment

The effectiveness of investment as a public interest function depends not only on market dynamics, but also on the quality, coherence, and proportionality of the regulatory and supervisory frameworks governing investment activity.

Regulatory frameworks governing investment activity not only mitigate risks but also play a central role in guiding and attracting capital flows. In this regard, it is clear that an inadequate or excessively fragmented regulatory approach undermines the investment ecosystem's ability to fully perform this public function, reducing allocative efficiency and limiting the development of the real economy, employment, and overall social well-being.

The quality of the regulatory and supervisory frameworks governing investment activities is therefore of decisive importance in ensuring that this public-interest function can be exercised in an effective, predictable, and policy-coherent manner.

Regulatory approaches that remain fragmented, overly procedural, and misaligned with technological realities risk compromising the investment ecosystem's ability to fulfil its public function. In this context, the paper notes that, in several EU jurisdictions, regulators and supervisors continue to approach investment activity through siloed and sector-specific approaches, based on the isolated assessment of individual risks and compliance obligations, thereby forsaking holistic analysis. This methodology - which focuses on distinct regulatory requirements rather than an integrated, vertical view of the investment value chain - has contributed to the progressive stratification of regulatory frameworks, resulting in administrative and procedural burdens that discourage investment.

A more integrated, forward-looking, and system-oriented regulatory perspective is therefore needed, with a holistic view of the entire investment process, which simultaneously safeguards financial stability and investor protection, while enabling investments to effectively support innovation, competitiveness, and the green and digital transitions.

These shortcomings are further exacerbated by rapid technological progress, financial innovation, and increasing market integration, which blur traditional sectoral boundaries and highlight the limitations of regulatory approaches that *lack holistic coherence and fail to recognise* holistic, coherent, and oriented towards the systemic public-good function of investment. Investment can no longer be assessed by different regulators in isolation from technological development, which is fundamentally reshaping investment structures, operational models, and the entire investment value chain. Digital infrastructures, data-driven processes, distributed ledger technologies, and artificial intelligence increasingly determine how capital is mobilised, allocated, and managed.

Proposed solution – Look beyond the finger and see the moon

We must now look beyond the finger and see the moon: this is the central call of the proposals in Invest Europe's White Paper on tax harmonisation for the EU investments and investors like private equity and venture capital sector. At a moment when EU competitiveness demands bold regulatory innovation, this paper offers a fundamental reconceptualization of investment taxation.

Invest Europe's White Paper proposes a comprehensive regulatory framework aimed at removing fiscal barriers that hinder cross-border investment within the EU. In this regard, the paper adopts a deliberately holistic approach, examining the investment lifecycle in its entirety rather than analysing isolated transactional components – a perspective necessary for understanding investment's systemic contribution to EU competitiveness.

The approach adopted by Invest Europe's white paper and the proposals put forward are not intended to seek preferential treatment, regulatory relief, or financial incentives for the private equity sector. Rather, the proposals are built on the concept of tax neutrality for investment as an EU public good.

Phase 1 – Structuring of investments

SECTION A – The Investment Vehicle

Tax issues	Possible solutions
• Fragmented criteria for tax residence of funds across Member States → risk of residence challenges. • Risk that fund or investors are considered to have a permanent establishment (PE) in another jurisdiction due to MC/AC activity. • Uncertainty/denial of beneficial ownership status for funds, affecting treaty access. • Divergent cross-border classifications under PSD / I&R Directives / OECD rules → inconsistent treatment. • Different tax classifications of limited partnerships, causing hybrid mismatches.	• Define tax residence based strictly on place of establishment for regulated funds. • Apply an EU-harmonised Investment Management Exemption (IME) to avoid PE creation from advisory/management activity. • Grant *ex lege* beneficial owner status to regulated EU funds and OECD-equivalent funds. • Extend PSD and Interest & Royalties Directive benefits to investment funds, with anti-abuse rules applying only at investor-level distributions. • Introduce harmonised EU criteria or a whitelist for tax-transparent limited partnerships; alternatively adopt mutual recognition of classification.

SECTION B – Management Companies (MCs) & Advisory Companies (ACs)

Tax issues	Possible solutions
• Risk that MC/AC activities generate PEs in countries where targets or advisory offices are located. • High complexity in transfer pricing (intangibles, overlapping roles, cross-border functions). • Divergent interpretations of VAT exemption for fund management; uncertainty on place of supply; pro-rata deduction issues.	• Apply the Investment Management Exemption (IME) to clarify absence of PE when independence and market-based terms exist. • Adopt the proposed EU Transfer Pricing Directive or, at minimum, implement an EU Transfer Pricing Platform for consistent application. • Harmonise the VAT definition of fund management services and explicitly include advisory services; allow an option to tax so MC/AC can recover input VAT fully.

SECTION C – Manager Remuneration (carried interest)

Tax issues	Possible solutions
• Inconsistent classification of carried interest across Member States (employment income vs. capital income). • Divergent timing of taxation (accrual vs. receipt). • Complexity when managers, MCs and funds are resident in multiple jurisdictions; unclear treaty treatment. • Increasing technological dematerialisation makes substance-based analysis more difficult.	• Apply rules decoupled from geographic substance tests, recognising digital business models.

SECTION D – SPVs and Targets

Tax issues	Possible solutions
• SPVs are frequently (incorrectly) classified as shell companies, triggering denials of directives/treaty benefits. • Risk of non-recognition as VAT-taxable persons, preventing deduction of VAT on acquisition/transaction costs. • "Light" operational structures seen as lack of substance despite being functionally justified in investment workflows.	• Introduce a safe harbour in the EU Shell Companies Directive expressly excluding SPVs owned by regulated investment funds. • Recognise that SPV shareholding activities tied to acquisitions constitute an economic activity for VAT purposes, enabling VAT recovery. • Ensure SPVs are not required to meet unnecessary substance thresholds inappropriate for their functional role.

Phase 2 - Investment Management

SECTION A – Debt & Equity Securities

Tax issues	Possible solutions
• Structural debt-equity bias: interest deductible, equity return not. • Financing decisions distorted by tax optimisation rather than economic logic. • Slow and rigid procedures for repayment of equity contributions. • Digital instruments (tokens, digital bonds) widen disparities in tax treatment.	• Introduce EU-wide equity allowance (DEBRA-style) to reduce debt bias. • Promote full financing neutrality across debt/equity instruments. • Simplify and accelerate capital repayment procedures. • Update tax rules to ensure neutrality for digital and dematerialised instruments.

SECTION B – DAC6 (Administrative Cooperation)

Tax issues	Possible solutions
• Fragmented definitions of "tax advantage" trigger inconsistent reporting. • Very high compliance burden for standard PE/VC fund transactions. • Conflict with professional secrecy obligations (lawyers, advisors). • Over-reporting risk due to vague hallmarks. • Divergent and unpredictable penalty frameworks across EU.	• Harmonise definitions, especially "tax advantage" and hallmarks. • Introduce exemptions or simplifications for standard fund operations. • Codify protection of legal professional privilege, in line with CJEU. • Reduce information overload; send only useful, proportionate data. • Harmonise penalties EU-wide and require authority reporting transparency.

SECTION C – Uniform Regulatory Framework

Tax issues	Possible solutions
• Lack of a unified EU tax regime for funds → divergent rules, high admin burden. • Fragmented rules for determining tax base, withholding tax, compliance obligations. • Very slow and inconsistent cross-border WHT refund procedures. • Ongoing need to monitor divergent national tax changes → structural complexity.	• Implement BEFIT to create a common EU corporate tax base. • Implement FASTER Directive for harmonised, digital, accelerated WHT relief. • Ensure uniform transposition across Member States under EC oversight. • Promote digitalisation, simplification, and interoperable tax-administration system

Phase 3 – Exiting the investments

SECTION A – The Benefits of Investment

Tax issues	Possible solutions
• Risk of double taxation due to fragmented national rules on capital gains, dividends and interest. • Lack of a shared EU vision of investment as a public good, leading to inconsistent local tax approaches and structural distortions. • Complex, multi-layer structures increase the risk of disputes with tax authorities. • Tax-driven distortions influencing investment flows and discouraging capital allocation into the EU.	• Strengthen tax neutrality for investors by introducing EU-wide exemption for capital gains, dividends and interest at investment-vehicle level (fund + SPVs), with taxation at investor level based on its characteristics. • Apply tax neutrality also to non-EU supervised funds and EU/EEA funds managed by non-EU supervised managers (consistent with Article 63 TFEU). • Create shared EU guidelines on transparency vs. opacity to avoid inconsistent classifications. • Extend Parent-Subsidiary Directive and Interest & Royalties Directive benefits to investment funds, with anti-abuse rules applied only at investor-distribution stage.

Implementation – The 28th jurisdiction

The implementation of recommendations set out in this paper, given their innovative content and forward-looking approach, could be facilitated within the framework of a voluntary 28th jurisdiction, which gives certainty to investors and to companies and also respects the sovereignty without altering national systems. The 28th jurisdiction proposed in the 2024 Letta Report, *Much more than a market*, which reflects a growing policy consensus on the strategic importance of investments as a public good, essential for economic growth, social stability, and the long-term competitiveness of the EU.

This consensus also recognises the need to mobilise investment rapidly, in response to market expectations and global competitive pressures. However, the persistence of 27 separate national jurisdictions continues to generate regulatory fragmentation, legal uncertainty, and delays that undermine the effectiveness of investment policies.

To address these challenges, the Letta Report proposes the creation of a voluntary 28th jurisdiction for EU companies and investors, structured as a harmonised set of rules shared at the EU level. This framework would provide a clear, predictable, and immediately operational regulatory environment, while fully respecting national competences and remaining consistent with Article 115 of the Treaty on the Functioning of the EU (TFEU).

The 28th jurisdiction is therefore conceived as a policy instrument aimed at accelerating investment flows, strengthening market integration, and enhancing investor certainty, without altering national legal systems or fiscal sovereignty.

In light of the preceding considerations, this white paper represents the most comprehensive and ambitious attempt to systematize EU private equity/VC taxation since the Capital Markets Union initiative. It requires sustained Commission leadership and Member State consensus-building, and it aligns with Draghi Report urgency on competitiveness, window of opportunity amid deindustrialisation concerns.

Footnotes

Footnotes

1. According to *The Future of European Competitiveness* (Mario Draghi, September 2024, *the Draghi Report*), the European growth has slowed for two decades, with productivity lagging the U.S. and China. While Europe invests heavily in mid-tech sectors such as automative, it underinvests significantly in high-tech industries and intangibles like software and R&D. The Draghi Report describes this as the *middle tech trap*. According to the Draghi Report, Europe needs investments of €750–800 billion annually to tackle these challenges.
   To illustrate this, the Draghi Report describes that only four of the world's top fifty tech companies are European. In the U.S., the industrial structure has evolved dramatically: in the early 2000s, autos and pharma were leading, but now the top three largest U.S. companies are all tech companies. All six U.S. companies with valuations above EUR 1 trillion have been set up from scratch in the last fifty years. By contrast, Europe's industrial structure remains static, dominated by the same companies and technologies as decades ago.
   A significant reason for these statistics is the European growth funding gap: a lack of growth capital forces European companies to sell to non-European investors or relocate abroad, weakening Europe's innovation ecosystem. In "The scale-up gap – Financial market constraints holding back innovative firms in the European Union" (2024), the European Investment Bank has estimated that the gap of cumulative capital raised by European companies after ten years relative to the San Francisco average is approximately 50%. Outside of Germany and France, the gap is significantly higher. Based on the Draghi Report, close to 30% of European unicorns (startups valued >$1B) moved abroad (mostly to the U.S.) between 2008–2021.
   The Draghi report emphasises that Europe's reliance on bank financing is ill-suited for high-growth, innovative firms. Private equity and venture capital are needed to fund riskier projects and help startups scale without relocating abroad. Europe's PE/VC market is small, compared to the U.S. and China. Europe attracts only 5% of global VC funds, compared to 52% in the U.S. and 40% in China. Moreover, the U.S. has 7x more large VC funds (>€600m) than Europe, and the average VC-backed company in the U.S. receives 5x more funding than its EU counterpart.
2. To this end, effective multilateral cooperation between Member States is essential to combat harmful tax competition, ensure consistent application of shared standards and protect the European tax base.
3. Europe faces a structural growth funding gap that undermines its ability to compete globally in high-tech and innovation-driven sectors. Europe attracts just 5% of global VC funding, while the U.S. and China capture 52% and 40%, respectively. European VC funds rely heavily on capital from government agencies while European PE funds raise large parts of their capital from non-European investors. Without reform, Europe risks perpetuating the "middle tech trap," losing talent and intellectual property to other regions, and failing to meet the €750–800 billion annual investment need identified in the Draghi Report.
   There are many reasons for the growth funding gap. The paper *The scale-up finance gap in the EU: Causes, consequences, and policy solutions* identifies multiple structural factors behind Europe's scale-up finance gap. First, supply-side deficiencies such as the scarcity of large venture capital funds and limited late-stage financing constrain growth capital availability. Second, demand-side weaknesses, including risk aversion among entrepreneurs and conservative scaling strategies, reduce the appetite for substantial funding rounds. Third, fragmented and underdeveloped capital markets create regulatory and operational barriers for cross-border investment. Finally, ecosystem limitations, such as the lack of experienced investors and networks but also fragmentation of regulation and policy, hinder firms' ability to attract and deploy growth financing effectively. Similar reasons for the growth funding gap are found in other papers and publications. The Draghi Report emphasises fragmented regulatory and tax frameworks as a cause, and this is underpinned by Atomico's State of European Tech reports.
4. In particular: (i) BEFIT and DEBRA are part of a broader framework outlined both in the OECD reports on tax neutrality and the reduction of barriers to cross-border investment (OECD, Investment Division Reports, 2022–2023) and in analyses such as Tax Challenges and Investment in the EU (European Parliament Research Service, 2023); while FASTER and HOT relate to procedural simplification both with regard to the process of applying/exempting withholding taxes on investors (the former) and with regard to the direct exchange of information, joint audits and the coordinated application of rules through the creation of an EU networked tax administration system (the latter).
5. Despite the division of competences between Member States and the European Union and the diversity of current legal systems, the proposals are based on the common belief that it is possible – and advantageous – to define concrete and fiscally neutral rules that are compatible with different national legal systems.
6. The provisions on joint audits in DAC7 (Council Directive (EU) 2021/514) are mainly set out in Article 12a of Directive 2011/16/EU. They aim to:
   - improve cross-border tax compliance and administrative efficiency within the internal market;
   - reduce tax avoidance and double non-taxation in situations involving multiple jurisdictions;
   - promote trust and cooperation between Member States' tax administrations;
   - ensure a uniform framework for *joint audits* across the EU.

   Joint audits are therefore an operational extension of the principles of mutual assistance and exchange.
7. Enrico Letta, *Much More Than a Market: Speed, Security, Solidarity* (Report to the European Council, April 2024).

8. Although the path is complicated by regulatory differences, national interests and geopolitical tensions, tax harmonisation remains an essential strategic lever for reviving productive investment and strengthening European competitiveness, as also highlighted in reports by the OECD (OECD, Tax Policy Reforms 2023) and the IMF (Fiscal Policy and Private Investment, 2022). Achieving these objectives would strengthen the EU internal market, making the Union's economy less exposed to the disruptions of the globalised economy resulting from the new US tariff policy, thus becoming even more attractive to foreign investors.
   In order to translate the proposals into concrete results, a coordinated effort is essential at several levels: from the European institutions, which must define a competitive tax architecture by reducing its complexity and *over-regulation,* to the Member States, which are called upon to cooperate on common principles, to economic operators, whose direct experience is essential for developing pragmatic and sustainable tax policies.
   As Mario Draghi recalled at the Communion and Liberation Meeting on 22 August 2025,
   "to face today's challenges, the European Union must transform itself from a spectator or, at best, a supporting actor into a leading actor. It must also change its political organisation, which is inseparable from its ability to achieve its economic and strategic objectives. And economic reforms remain a necessary condition on this path to awareness. Almost eighty years after the end of the Second World War, the collective defence of democracy is taken for granted by generations who have no memory of that time. Their strong commitment to European political integration also depends, to a large extent, on its ability to offer citizens prospects for the future and, therefore, on economic growth, which in Europe has been much lower than in the rest of the world over the last thirty years."
9. In this context, the European model of tax harmonisation should be based on four fundamental pillars:
   1. harmonisation, to ensure a common regulatory framework that reduces divergences and inefficiencies between different national tax systems;
   2. neutrality, to ensure that economic choices are determined by considerations of efficiency and merit, and not by tax arbitrage;
   3. legal certainty, to reduce risks and costs arising from divergent interpretations and regulatory uncertainties;
   4. cooperation between Member States, to promote uniform application, prevent conflicts and foster ongoing dialogue between tax authorities and investors.
10. The main body of the paper is organized into three core sections:
    1. Investment structuring – This section examines the legal and operational setup of PE/VC investments, including investment vehicles, management and advisory companies, manager remuneration, and the use of SPVs and target entities.
    2. Investment Management – Here, we address issues related to the management of investments, such as the treatment of debt and equity securities, compliance with
       DAC6 reporting obligations, and the need for a more uniform regulatory framework across the EU.
    3. Exiting Investments – This section focuses on the tax implications and challenges associated with divestment and exit strategies.
11. See the *Explanatory Statement of the motion for a European Parliament Resolution with recommendations to the Commission on the 28th Regime: a new legal framework for innovative companies* (2025/2079(INL)) (at https://www.europarl.europa.eu/doceo/document/JURI-PR-773199_EN.pdf) – access 23 January 2026
12. This principle was introduced into EU law by the GDPR and subsequently referred to in Regulation 2023/1114 on cryptocurrencies (known as *MiCAR).* It aims to ensure that the rules are applied consistently, regardless of the technology used. In the MICAR context, where a token corresponds to rights similar to those of a financial instrument, the provisions of MiFID will apply, regardless of the underlying technology.
13. From a formal point of view, a new approach will derive from the extraterritorial effect of the MiCAR Regulations and those set out in the Data Regulation, according to which non-EU service providers will have to create ad hoc entities in the jurisdiction of a Member State in order to place their digital services on the Single Market.
    In light of this framework, the formal/regulatory element becomes the prevailing connecting factor in the decentralised digital economy, also impacting the tax nexus of its operators.
14. EUCJ Judgments F-SA (Case C-18/23), UBS Real Estate (Joined Cases C-478/19 and C-479/19), A SCPI (Case C-342/20), Franklin Mutual (Case C-602/23) and Deka (Case C-156/17)
15. The Court of Justice of the European Union has clarified in several rulings that restrictions on the free movement of capital also include measures that discourage cross-border investment. In particular, a restriction already exists when the legal system of a Member State places foreign investment funds at a disadvantage compared to domestic ones. If, for example, a domestic fund automatically obtains tax exemption by virtue of its compliance with national legislation, while a foreign fund is required to demonstrate its equivalence according to different formal or management parameters, this results in unequal treatment.
    In such contexts, the Court seems to adopt a substantive approach based on the concept of 'collectivity' that must characterise the investment. According to this approach, foreign investment funds, which are subject to different regulatory requirements relating to legal form or management in their country of origin and in the country of the target company, are comparable to domestic investment funds when the above-mentioned element of collectivity is simply integrated.
16. From a systemic perspective, the tax exemption granted to investment funds is intended
    to avoid double taxation of investment income, ensuring neutral tax treatment between investments made through collective vehicles and those made directly by investors. From
    this perspective, it is clear that any deviation from these objective risks leading to de facto discrimination, even if the exemption was intended to protect investors. Such protection
    must be pursued through regulatory law instruments, while the use of tax leverage would introduce distortions in the free movement of capital.

17. A well-known residency exposure derives from the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
which allows managers authorized in an EU Member State to manage funds domiciled in other EU Member States through a marketing and management passport, enabling cross-border fund management and distribution within the EU/EEA Single Market. As Funds are established under a variety of legal forms (e.g. partnerships, companies or contractual arrangements) and tax regimes across the different countries (fully taxable, objective or subjective exemptions, special tax regimes such as subscription taxes or deductible distributions), this cross-border management raise questions as to whether a
Fund manager established in a Member State may attract the residency of a Fund resident
in another Member State and as a result change the tax regime the Fund is subject to in its country of residence.
To assess this issue, it is required to analyse the concept of residence and get a good understanding of the legal structure and governance of a Fund.
18. Tax residence for companies refers to the jurisdiction where a company is considered to be legally subject to taxation based on its connection to that location. Applied to a Fund the tax residence determines which country has the right to impose (or not to impose) taxes on income earned by the Fund.
Under domestic tax law each country has its own criteria for determining a company's tax residence. The most commonly retained approaches at least in EU Member States include:
    1. Incorporation-Based Approach: Companies are often deemed residents of the country in which they are incorporated or registered and
    2. Effective Management Approach: Residence is based on where the company's central decision-making and managerial processes take place, regardless of incorporation location.

    While the first approach is generally easy to test the second one is more complex and depends on the governance structure and depends on an analysis of the facts i.e. who are
    the persons with actual decision-making powers and where such decision-making authority
    is exercised.
19. Originally, paragraph 3 of Article 4 of the OECD Model Tax Convention solved for dual residency issues by allocating taxing rights only to the State where place of effective management was situated: "*where by reason of the provisions of paragraphs 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated*".
Indeed, Article 4 paragraph 3 was then amended to require a mutual agreement of Contracting States. The current version of paragraph 3 of Article 4 now read as follows: "*where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States*".
20. Taking the example of a Fund established as an Irish partnership managed by its Irish general partner itself established as a limited company governed by a board of managers composed of individuals resident in Ireland, in the U.S. and in the U.K who has delegated the fund management to a UK resident fund manager we can easily anticipate the issues associated with the determination of the tax residency of the Fund. Solving for this scenario would necessitate first to understand the legal form and governance of the Fund. The Fund is a partnership with no distinct legal personality from its partners; it is thus likely a flow through entity for tax purposes. The Fund thus needs a general partner to manage and control a partnership's day-to-day operations, making decisions, and representing the Fund. It is thus a natural second step to assess whether the general partner's residency to determine the Fund's residency. The Fund's general partner is an Irish limited company governed by a board of managers, which suggests that the general partner may be considered a resident of Ireland. But in our scenario, it can only be an assumption. As the board is composed of individuals from Ireland, the UK, and the US, understanding their decision-making process and where the effective management is exercised plays a vital role. Tax residency of an entity is frequently determined by where its central management and control occur. The delegation of fund management to the UK-based manager suggests that some level of control or decision-making is outside Ireland. This could dilute Ireland's claim to the Fund's residency. If the UK fund manager operates independently and holds substantial control over the Fund's operations, this may shift the central management and control to the UK. Conversely, if the Irish general partner retains actual control despite delegation, Ireland's tax residency claim strengthens. Once facts are established one should not omit to consider the perspectives of each tax authority. The Irish Revenue may seek to assert the Fund as tax-resident in Ireland, based on its Irish establishment, Irish general partner, and board management. HMRC may assess whether the Fund or its delegated operations create a taxable presence in the UK due to the fund manager's activities. Finally, the IRS may have also claim that US board members create a presence in the US that conflicts with Irish/UK residency claims.

21. Indeed, a further investigation should be addressed with respect to the risk of triggering a permanent establishment (PE) of the Fund's investors in the state of the Fund and/or Fund Manager. The risk at stake here would be for the income attributable to each investor to be taxable in the country of the Fund where there would be an alleged PE.
    For a Fixed Place PE to exist an Investor would need to be actively involved in the management or operations of the fund and carries out business in the jurisdiction through physical presence or employees/agents. However, Investors (e.g. an Insurance) merely contribute capital to funds with the objective to obtain professional wealth investment management services. It is not the business of the Investor (e.g. the insurance business) who is carried on in the jurisdiction of the Fund, it is a mere holding of a passive investment.
    In addition, in many countries the passive contribution of capital is not defined as a "business" and thus a fixed place of business cannot exist. An illustration can be found in the Luxembourg tax system: a Luxembourg non-resident Investor may be taxable in Luxembourg on commercial profit realized through a fixed place of business (Article 14, 156 of the Luxembourg Income Tax Law LITL). A Circular LITL n° 14/4 dated 9 January 2015 indicates that Alternative Investment Funds (AIF) established in the form of (special) limited partnerships within the meaning of the law dated 12 July 2013 are deemed not having a commercial activity within the meaning of Article 14 LITL, but rather a mere wealth management activity. Absent such commercial activity the non-resident Investor cannot be considered as running a business in Luxembourg and thus no Fixed Place PE can arise from its investment in the AIF.
    While the risk of Fixed Place PE for an investor in a Fund is most of the time avoided it cannot be completely ruled out either as in some instances the role of the investor or the activity of the Fund (trading or non-trading) may have an influence on the outcome.
    With respect to the Agent PE, one should highlight in many instances a private equity Fund is established as a limited partnership with no legal personality distinct from its partners for tax purposes. In some countries it does not even have the legal capacity to conclude contracts. In such a situation it is very often not conceivable for a Fund to be considered an Agent PE. The question becomes more relevant with regard to the Fund manager vis a vis the Investor. In this case it is worth mentioning that the fund manager acts on behalf of plurality of unrelated investors based on a broad investment mandate. The fund has a fiduciary duty which requires to act in the best interests of the investors but bears the entrepreneurial risk deriving from its own business activity (underperformance would affect carried interest and would affect ability to raise new funds and collect management fee). On that basis the Fund/Fund Manager is generally not constitutive of an Agent PE of the Investors.
22. The Fund manager often needs local expertise to identity investment opportunities and the nature of the activities (i.e. analyse markets, identify opportunities, conduct preliminary non-binding discussions with external financers or potential co-investors, or providers regarding scope of due diligence procedures) very often may blur the lines between the business of the fund manager and the advisory company when consistent documentation is not maintained or when certain members of the advisory business have different roles in the organization.
    Therefore, it is critical to ensure from an operational standpoint that office of the advisory company should not be regarded as being at the disposal of the fund manager. Additionally, it requires a strong operating model where a list of permissible and non-permissible activities and signing authorities is clearly identified, communicated, documented, and respected by the employees, members and partners of both the Fund manager and the advisory companies.
    This is critical to ensuring that the advisory company is not seen as habitually concluding contracts or habitually playing the principal role leading to the conclusion of contracts that are routinely concluded by the Fund manager without material intervention and modification by the Fund Manager.
23. In addition, it is necessary to examine whether the Fund or the Investor has a PE in in the State of the portfolio company. In light of the requirements to recognize a Fixed Place PE it is generally observed that Fund or Investors do not have premises that they can effectively use in the State of the portfolio company. A tax authority may attempt to claim that the office of an advisory company located in the same country as the portfolio company is a fixed place of business it can usually be easily demonstrated that the Fund or the Investor has access to the office of the advisory company and that the business of the advisory company is different from the business of the Fund or the Investor.
    With respect to the Agent PE risk, it is unlikely that a portfolio company would have any authority to negotiate or conclude contracts on behalf of the Fund, the Investors or even the Fund manager. The same holds true with respect to contracts for the provision of services of the Fund, the Investors or the Fund manager. Despite being controlled by the Fund a portfolio company acts independently with the objective to grow its own business, and not the business of the Fund or the Investors or the Fund Manager. The Investors only provide passive capital and the Fund, or the Fund Manager decide autonomously when and how to invest the capital without the portfolio company interfering with the management of the Fund or the Fund manager.
    For that reason the existence of an Agent PE of the Fund in the State of the portfolio company is generally excluded but this exclusion does not exempt asset managers from a careful analysis of the rules that apply in each of the State of the portfolio company they invest in and a strong operating model to ensure compliance with such rules.

24. The process to allocate income to a PE may drag into weeks and months of discussions between the taxpayer and the tax authorities who claim the presence of a PE, with additional time required to address transfer pricing disputes between EU countries usually via a mutual agreement procedure (MAP).
    This process uses various methods, including the Comparable Uncontrolled Price (CUP) and Cost Plus methods, and involves a detailed analysis of the functions performed, assets used, and risks borne by each entity within the value chain, which is increasingly complex due to digitalization and changing investment models.
    Currently, there is a lack of consensus amongst OECD Member countries as to how profits should be attributed to a permanent establishment (PE) and there is no guidance on how to address the private equity sector. The approach retained by the OECD to remedy this situation is to require that a PE shall be treated as if it were an independent enterprise dealing at arm's length with the other entities of the multinational group. This exercise implies notably to identify the significant people functions for the attribution of economic ownership of assets and for the attribution of risks to the PE. In the private equity industry, it means among others:
    - assessing management team roles in client relationships and investment decisions;
    - confirming responsibilities and decision-making authority;
    - assessing impact of delegation;
25. Under the OECD Model Tax Convention, beneficial ownership determines entitlement to treaty benefits such as reduced withholding tax rates. Funds must demonstrate that they are the true owner of income and not merely a conduit. This ties closely to anti-abuse measures like the Principal Purpose Test (PPT) and Limitation on Benefits (LOB) clauses introduced through BEPS initiatives. These rules aim to prevent treaty shopping and require funds to maintain sufficient substance and control over income streams.
    The OECD Model Tax Treaty commentary clarifies that the term was introduced to address difficulties with the phrase "*paid to … a resident*" in Articles 10, 11, and 12. The intention is that beneficial ownership should be interpreted in light of the treaty's object and purpose – avoiding double taxation and preventing fiscal evasion – rather than relying on domestic technical definitions. Key principles include:
    - the beneficial owner must have the right to use and enjoy the income without a contractual or legal obligation to pass it on to another person. Agents, nominees, and conduit entities typically fail this test;
    - relief is not automatic even if beneficial ownership is established; other anti-abuse rules, such as the PPT, may still apply;
    - importantly, beneficial ownership relates to the income (e.g., dividends), not necessarily the ownership of the underlying shares.
26. Consider the payment of dividends by subsidiaries, the collection of interest on loans, and capital gains realised on the sale of shareholdings.
27. European Commission, A *Capital Markets Union for People and Businesses – New Action Plan* COM(2020) 590, 24 September 2020.
28. In recent years, tax authorities across several European jurisdictions have increasingly relied on the principles established in the *Danish Cases* to challenge treaty-based structures. As elaborated above, these cases, decided by the Court of Justice of the European Union, focused on denying benefits where an intermediary entity acted merely as a conduit without genuine economic substance. Building on this approach, authorities are now scrutinizing back-to-back arrangements, structures where payments flow through multiple entities with minimal risk or function, arguing that such setups often lack commercial rationale and are primarily designed to obtain treaty benefits.
29. Across Europe, courts and tax authorities are intensifying their scrutiny of holding and financing structures, applying anti-abuse principles to deny treaty benefits where substance is lacking.
    In the Netherlands, the Supreme Court reaffirmed that even commercially motivated structures can later be deemed artificial if circumstances change. In recent cases, a Belgian holding company was denied withholding tax exemption because it served no genuine economic purpose.
    Similarly, in Italy, authorities targeted back-to-back financing arrangements, focusing on whether the Italian sub-holding company had real substance and bore risk. Where functions were minimal, they argued the structure was designed primarily to access treaty benefits.
    In France, the Supreme Court denied withholding tax relief on dividends where funds were immediately upstream to a Guernsey parent. The absence of physical presence and beneficial entitlement of the Luxembourg intermediary were decisive factors.
    Finally, Germany has broadened its domestic anti-treaty shopping rules through a new circular, allowing a look-through approach to intermediate holding companies lacking sufficient substance or not being listed. This marks a shift from previously narrower conditions.
30. There are jurisdictions, such as Portugal, France, Italy, the Netherlands and Denmark, in which the beneficial ownership requirement is expressly codified in law or included in relevant administrative guidance with respect to the application of withholding tax exemptions (either purely domestic or based on EU Directive implementation). In these cases, WHT benefits can generally be denied solely on the basis of not meeting the beneficial ownership requirement.
    No beneficial ownership concept as such, but a similar concept in place applies in certain jurisdictions, such as Austria, Ireland, Norway and Sweden. These jurisdictions do not impose a beneficial ownership requirement, but domestic rules refer to a comparable concept for the application of the domestic WHT exemptions. Similarly to the above group of jurisdictions, WHT benefits can generally be denied solely on the basis of not satisfying this similar requirement.
    The next category of countries does not apply a beneficial ownership concept, but WHT benefits can be denied under specific anti-treaty / EU Directive shopping rules / local GAAR (i.e. Spain, Germany, Poland, Finland). In practice, in many of these jurisdictions tax authorities will consider beneficial ownership as one of several indicators of an abusive structure.
    Finally, there are countries which do not levy WHT on that specific income stream (i.e. dividends, interests or royalties). Nevertheless, most of these jurisdictions have implemented various defensive measures targeting payments to countries included on the EU list of non-cooperative jurisdictions or other low-tax jurisdictions.
31. It also highlights the importance of maintaining robust documentation to support the taxpayer's position. In practice, the burden of proof often rests with the taxpayer, meaning that insufficient records or unclear governance structures could expose businesses to denial of WHT benefits.

32. In the fund sector, these rules create significant operational and structuring challenges. Managers must ensure that fund vehicles have genuine economic substance, clear governance, and transparent ownership to mitigate tax risk and maintain investor confidence. In practice, determining beneficial ownership is fact-specific and substance-driven. For funds and cross-border structures, this means ensuring genuine control over income, avoiding artificial arrangements, and maintaining robust documentation to withstand scrutiny from both source and residence States.
33. The *Danish cases* addressed two main issues: guidance on the interpretation of the beneficial owner concept in the context of the Interest and Royalties Directive (IRD) in particular, and the concept of abuse of rights under EU legislation. The cases involved cross-border intra-group payments of interest or dividends between companies that were tax residents in the EU and that benefited from withholding tax exemptions under the IRD and the Parent-Subsidiary Directive (PSD), respectively.
    On the first point, in its decisions the CJEU confirmed that, for the purposes of the IRD, the beneficial owner is the entity that economically benefits and has the freedom to use and enjoy the interest. In this context, the CJEU emphasized the relevance of the OECD Model Tax Convention and the related Commentaries in interpreting the concept of beneficial owner under the IRD.
    On anti-abuse, the CJEU reaffirmed that EU law prohibits abusive practices as a general principle and concluded that under abusive circumstances, Member States are required to deny the benefit of an EU Directive, even in the absence of domestic or other anti-abuse provisions. The CJEU also provided guidance regarding the constitutive elements of abuse of rights under EU law.
    In the CJEU's view, the following elements could indicate, inter alia, the existence of abuse:
    - group structure: The structure was not set up for reasons that reflect economic reality, and its principal objective or one of its principal objectives was to gain a tax advantage that contradicts the intended goal or purpose of the relevant tax law;
    - pass-through: all or nearly all dividend or interest income obtained by the intermediate company is passed on, shortly after being received, to another entity that would not have been eligible for withholding tax relief under an EU Directive;
    - insignificant profits: the intermediate company's profits are insignificant due to the fact that the dividend or interest income received is redistributed;
    - absence of economic activity: this element needs to be analysed in the light of the specific features of the economic activity in question, and by looking at all relevant factors including the management of the company, its balance sheet, the structure of its costs and expenditure actually incurred, employees, premises and equipment;
    - right to use and enjoy dividends: contractual obligations (both legal and actual) which render the intermediate company unable to enjoy and use the dividends;
    - timing: there is a close connection between the establishment of complex financials.
34. As a side note, the CJEU also clarified in case C-504/16 that the mere fact that the economic activity of an entity consists in the management of assets for the group, or that the income of that company results only from such management cannot, per se, indicate the existence of a wholly artificial arrangement which does not reflect economic reality . Instead, the CJEU stated that the relevant tax authority has the task of establishing the existence of the elements constituting the abuse, based on specific facts and circumstances. The CJEU further noted, specifically, that if tax authorities deny a benefit under an EU Directive because the company receiving the income is not its beneficial owner, such authorities are not required to identify the beneficial owners of the income. It is sufficient for the tax authorities to establish that the alleged beneficial owner functions as a conduit company through which an abuse of rights has occurred.
35. The PPT is a key anti-abuse provision under the OECD's BEPS framework, allowing a contracting state to deny treaty benefits when it is reasonable to conclude that obtaining those benefits was one of the principal purposes of an arrangement or transaction. This determination is based on all relevant facts and circumstances, unless granting the benefit aligns with the object and purpose of the treaty provisions.
    The Commentary to the Model Treaty emphasizes that the PPT requires an objective analysis of the aims and intentions of the parties involved. If an arrangement can only reasonably be explained by the treaty benefit it provides, this strongly indicates that obtaining that benefit was a principal purpose of the arrangement.
    In this respect, the EU Commission Recommendation (EU) 2016/136 advises that the PPT should be consistent with the Court of Justice of the EU's case law on abuse of law. It also suggests that Member States consider exemptions where arrangements reflect genuine economic activity, although this recommendation has not been codified into law.
36. See note 12.
37. It is interesting to observe that Luxembourg legislator does not exclude the possibility that a Luxembourg resident investment manager may attract the residency of a Fund established outside Luxembourg (likely due to the variety of legal forms and governance that a Fund can have) but instead rules that if it happens the Fund would be exempt from taxation in Luxembourg. See, Article 214 of the Law dated 12 July 2013 related to Alternative Investment Fund Managers.

38. Outside the Europe, in the United States, Section 864 of the Internal Revenue Code and Regulations 1.864-2 defines several contingent terms regarding trade or business within the United States and exempt transactions. In particular, a foreign fund without a PE in the U.S.A. is not liable to US tax on profits or gains from listed shares, bonds and money market or other financial instruments and derivatives. Dealing in these instruments is not regarded as constituting an active business for US tax purposes and is treated as a *passive investment activity*.
    Furthermore, in Hong Kong, Section 20AC of the Inland Revenue Ordinance provides that non-resident funds are exempt from tax on qualifying transactions (transactions in securities and transactions in futures contracts) and an offshore fund is restricted from carrying on any other business in Hong Kong other than the specified transactions (or transaction incidental to those specified transactions).
    Lastly, in Australia, under Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015 – Federal Register of Legislation, if a fund is entitled to the IMR concessions (i.e., Investment Manager Regime), returns or gains it makes from the disposal of shares, or returns or gains from loans or derivatives, are exempt from Australian income tax. And none of the returns, gains or losses for the year from the arrangement are attributable to a permanent establishment (PE) in Australia.
39. The UK Investment Management Exemption (IME), established in 1995 and refined through Statement of Practice 1/2001 (SP1/01), has undergone several revisions to adapt to changing market practices and regulatory changes. The current regulatory framework for the UK IME is contained in Chapter 2B, Part 14 of the Income Tax Act 2007 (ITA 2007) and Chapter 2, Part 24 of the Corporation Tax Act 2010 (CTA 2010). These provisions limit taxation provided that a number of requirements are met to ensure that the exemption applies if the UK investment manager acts on behalf of the non-resident as an independent operator.
40. In Luxembourg, article 214 of the Law dated 12 July 2013 related to Alternative Investment Fund Managers (see also Circular LITL n° 14/4 dated 9 January 2015) provides for a presumption according to which Investment Funds, established as (special) limited partnerships, do not carry a trading activity. The consequence being that non-resident investors cannot be deemed to have a PE in Luxembourg.
41. The conditions set out in the Italian IME legislation are as follows:
    i. the non-resident investment vehicle and its subsidiaries are resident or located in a country included in the white list (all EU countries are, of course, included in this list);
    ii. the non-resident investment fund must meet certain independence requirements, namely:
        a. professional investment management;
        b. subject to supervision;
        c. the plurality of investors; and
        d. the performance of management activities in the interests of investors and independently of them, in accordance with a predetermined investment policy;
    iii. the appointed entity (i.e., the Italian management or advisory company) does not hold any position in the administrative or control bodies of the investment fund and its direct or indirect subsidiaries, nor does it hold a stake that attributes more than 25% of the fund's profits;
    iv. the appointed entity (i.e., the Italian management or advisory company) receives remuneration documented in accordance with transfer pricing rules.

    Furthermore, if the above conditions are met, the foreign investment fund is not considered to have a *fixed place of business* in Italy solely because a resident entity carries out an activity, on its own premises and with its own staff, that may be beneficial to the fund.
42. To reach consensus among the 27 EU member States for the creation of a new, innovative, and harmonized investment management regime with comprehensive EU-wide tax rules addressing Permanent Establishment (PE) exposures, several arguments can be advanced:
    i. Facilitation of Cross-Border Investment: Harmonized tax rules would reduce administrative complexity and legal uncertainty for investment managers operating across multiple EU jurisdictions. This would lower barriers to entry and encourage the free flow of capital within the Single Market, supporting economic growth and integration.
    ii. Ensuring a Level Playing Field: Uniform tax treatment for investment management activities would prevent harmful tax competition and regulatory arbitrage among member States. This approach aligns with the EU's principles of fair competition and fiscal neutrality, ensuring that businesses compete on merit rather than tax advantages.
    iii. Enhancing Tax Certainty and Reducing Disputes: Clear and consistent rules on PE exposures would provide greater legal certainty for both taxpayers and tax authorities, reducing the risk of double taxation and costly disputes. This predictability is especially important for attracting global investors and asset managers to the EU.
    iv. Supporting Member State Tax Sovereignty: While the directive would set high-level principles and objectives, individual member States would retain flexibility in the method of implementation. This respects national legal traditions and tax systems, addressing potential concerns over loss of sovereignty.
    v. Alignment with International Standards: A harmonized EU regime can be designed to align with OECD guidelines on permanent establishment, ensuring that EU rules are compatible with global best practices and minimizing the risk of international disputes.
    vi. Combating Tax Avoidance and Ensuring Fair Revenue Allocation: Comprehensive rules would help close loopholes that facilitate tax avoidance, ensuring that profits are taxed where economic activities take place and value is created. This enhances trust in the tax system and supports fair revenue allocation among member States.
    vii. Promoting the EU's Global Competitiveness: By offering a coherent and predictable investment management tax environment, the EU can position itself as an attractive hub for international asset managers, fostering innovation and job creation within the Union.

43. Allowing SPV's that are predominantly owned by EU AIFs or any other type of PE funds to elect their tax classification (transparent or opaque) and thereby allowing the application of the 'look-through' approach, would provide flexibility and reduce mismatches when recognized by all EU MS. It would allow the fund manager to achieve its commercial / legal objectives using a corporate entity but allow taxation to take place as if the holding structure did not exist. Especially for tax transparent PE funds with holding structures, this would enhance tax neutrality as each investor will ultimately be taxed as if it would have invested directly in the underlying portfolio companies.
44. External financing is often not feasible at the fund level due to regulatory or structural constraints. A SPV can act as the borrowing entity, enabling tailored financing arrangements for each investment of the fund. Furthermore, different lenders may have different risk-return profiles and multiple SPV's allow for bespoke capital stacks, accommodating senior debt, subordinated debt, mezzanine debt, preferred equity, and common equity in a controlled manner.
45. Other reasons may include: equity participation by portfolio company management is a cornerstone of value creation. SPV's provide a clean and flexible platform for issuing management shares or options, often with bespoke rights and vesting conditions. In jurisdictions where shareholder agreements are weak or unenforceable, SPV's can be established in more robust legal environments to ensure enforceability of investor rights. The use of SPV's allows for effective asset segregation, helping to ring-fence and minimize bankruptcy risks for investors. It also streamlines asset ownership, providing greater control over the management of specific investments, and facilitates co-investment opportunities and exit strategies.
46. In addition, SPV's can also be used to simplify and centralize tax compliance obligations for investors in PE funds, although it is more common to achieve this via feeder funds for a particular group of investors.
47. It is important to emphasize that the main (or one of the main) purposes PE funds use SPV's is not to obtain a tax advantage, but rather for sound and legitimate business purposes, as outlined above. In practice, this means that SPV's should not be considered or perceived as abusive structures or aggressive tax structures. That said, as we will discuss in the next section, this remains a growing challenge for PE funds and a key source of tax disputes, which can ultimately discourage investors.
48. A headline example of such challenge has been the Danish withholding tax cases (see, See the two combined judgements issued by the Court of Justice of the European Union (the CJEU) in N Luxembourg 1 (Case C-115/16), X Denmark (Case C-118/16), Danmark I (Case C-119/16) and Z Denmark (Case C-299/16) v Skatteministeriet and T Danmark and Y Denmark Aps (C 116/16 and C 117/16) (the so-called 'Danish withholding tax cases'). These cases considered whether intermediate HoldCo'sare the beneficial owners of dividends received from Danish companies, a key requirement for claiming reduced withholding tax under tax treaties or EU directives. For PE funds, the cases underscore the importance of substance and transparency. Tax authorities in many other European countries are since then challenging the use of HoldCo's by PE funds based on similar arguments, i.e., on abuse, beneficial ownership and lack of substance reasons.
49. The proposal set out minimum substance requirements such as having own premises, minimum number of staff, active bank accounts, and local directors, that entities must meet to avoid being classified as a shell. If an entity failed these tests, it would be denied tax benefits and required to report additional information to tax authorities.
    At the time of writing this article, the Unshell Directive proposal has evolved and may be integrated into updates of the EU's DAC instead of being adopted as a standalone measure. From the first draft of the Unshell Directive, a carve-out for regulated financial undertakings was included. However, the final scope of this carve-out remains unclear – particularly whether it will extend to underlying holding structures – and the type of evidence required, such as demonstrating that no tax advantage was obtained. Additionally, the carve-out will likely need to be confirmed on an entity-by-entity basis.
50. In its most simple form, tax neutrality can be relatively easily achieved by PE funds that make use of tax transparent fund vehicles such as the German GmbH & Co KG or Luxembourg SCSp. However, even for such funds, tax neutrality is not always a given. For example, because of a (deemed) trading activity at fund level or the application of the reverse-hybrid rules under ATAD2. In this respect, it is essential that each investor's country of tax residence aligns with the tax treatment of PE funds to ensure consistency and avoid unintended tax mismatches – particularly those beyond the control of the funds themselves.
    For opaque funds or when HoldCo's are introduced, achieving tax neutrality quickly becomes very complex. However, as outlined above, not all EU Member States have partnership-style fund structures and HoldCo's are often necessary for legal / commercial reasons. The challenge is to reconcile this reality with the principle of tax neutrality. As demonstrated below, there are several ways to ensure that tax neutrality is effectively achieved.
51. This ensures that taxation only takes place at the level of the investors when they receive distributions from the funds and will thus by its very nature consider the tax status of the respective investor. In addition, this would also ensure that there would be no discrimination between the tax treatment of domestic and EU PE funds, including their holding structures. Noting that, in this respect, an important point would be to ensure that achieving the same tax status would not be overly burdensome. In addition, this would help ensure that domestic and EU PE funds – including their holding structures – are treated equally for tax purposes. Importantly, achieving such equal tax treatment should not impose an undue administrative burden, but rather be achieved with the minimum complexity and hassle possible.

50. In this proposal, the way in which the beneficial ownership test and access to tax advantages would be granted would be objectivized and streamlined across the EU.
    In this respect, the 'beneficial ownership' test should be considered to be met if the
    PE fund and their holding structures
    i. commit to mirror the distribution received from the underlying portfolio company to the investors via PE fund and their holding structures;
    ii. can show that the PE fund and their holding structures have substance at the AIFM level (with substance requirements to be interpreted and required for AIFMs in light with the AIFM Directive);
    iii. can show that the vast majority of the investors (at least, 75%) can be considered as equivalent beneficiaries as they would have access the same benefits under the same or equivalent European Directives or double tax treaties between the country of the target company and of the investors or between the country of the portfolio company and of the PE fund and their holding structure.
53. A. Ramachandran: *Advanced Artificial Intelligence in Private Equity and Venture Capital: A Functional Framework for Lifecycle Transformation* (2025).

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Angelo founded Studio Camozzi & Bonissoni in 1985 and was Managing Partner of CBA Studio Legale e Tributario, from 2007 to 2023.

He worked for a major Milan-based firm of certified tax advisors, accruing experience in the sector of tax and corporate consulting for medium-large companies. Under the scope of extraordinary transactions, he has assisted national and international private equity funds, both during start-up and investment/divestment, and has assisted banks and companies in financial restructuring transactions.

Over the years, Angelo has also gained significant experience through his involvement in corporate governance matters, having served and continuing to serve on the boards of directors and statutory bodies of listed and non-listed companies. He is also the author of books and articles on the taxation of investment funds, the tax treatment of extraordinary transactions, corporate governance and the role of the activist funds.

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