DG TAXUD
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SUBJECT:

EPRA's feedback on the call for evidence on the Omnibus Taxation

The European Real Estate Association (EPRA) is the voice of Europe's listed real estate companies, their investors, and suppliers. With more than 290 members covering the entire spectrum of the listed real estate industry, EPRA represents over EUR 940 billion in real estate assets and 95% of the market capitalisation of the FTSE EPRA Nareit Europe Index.

EPRA's mission is to promote, develop, and represent the European public real estate sector. We achieve this by providing better information to investors and stakeholders, actively engaging in public and political debates, promoting best practices, and fostering cohesion and strength within the industry.

In this capacity, we welcome the opportunity to provide further input in response to the Call for Evidence on the Taxation Omnibus initiative.

1. THE LISTED REAL ESTATE MARKET: BACKGROUND AND CONTEXT

Listed real estate (LRE) is a significant market, with a global market cap of around EUR 3 trillion. LRE companies are guardians of our cities' high-quality assets, covering all types of real estate, from offices to retail, and are increasingly present in healthcare, retirement facilities, life science facilities, and data centres. In Europe alone, European LRE companies own over 12,000 commercial assets. These diversified portfolios span 9 sectors and 20 countries, with the EU LRE property portfolio currently totalling an impressive EUR 620.8 billion. They are also great contributors to GDP and society, as they represent hundreds of thousands of jobs on our continent. In terms of tax contribution, A PwC Total Tax Contribution assessment showed that REITs in Europe contribute taxes equivalent to 32.8% of their turnover, more than double the average for large multinational enterprises. In addition, with respect to employee-related taxes, REITs rank as the second-highest contributor relative to workforce size, after the energy sector.[1]

The LRE sector can be divided into two main categories: ordinary listed property companies and listed Real Estate Investment Trusts (REITs).[2] Operationally, there is very little difference between these two vehicles. REITs are property investment companies that benefit from special tax treatment in exchange for meeting certain conditions, such as restrictions on debt financing and an obligation to distribute the majority of their profits annually. Both standard listed property companies and REITs operate as regular listed companies with internal management structures. They are constituted with capital divided into tradeable shares (securities) and are managed by a CEO, CFO, board of directors, supervisory boards, and annual shareholders' meetings. They follow corporate governance and auditing requirements under national corporate and commercial rules, rather than investment fund

[1] https://www.epra.com/application/files/8917/6131/7090/Total_Tax_Contribution_of_European_REITs_web_version_4_dated.pdf

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rules such as AIFMD. Hence, their legal and operational structures resemble those of any industrial or commercial company that is publicly listed and traded.

Understanding the REIT tax model

Before addressing specific Directive issues, this paper establishes the foundational tax logic of a REIT, a logic that is central to understanding why REITs face obstacles under the existing EU framework.

REITs are designed to achieve single-level taxation: taxation either at the vehicle level or at the investor level, but not both. **This tax neutrality is intended to place investments in a REIT on equal footing with direct individual investment in real estate or investment through a tax-transparent structure.**

The typical REIT model operates as follows:

- The REIT is effectively exempt from corporate income tax at the entity level (either through a 0% rate, a subjective exemption, or dividend deductibility);
- In return, the REIT must distribute the majority of its profits to shareholders (often 80-90% or more, depending on the jurisdiction);
- These distributions are subject to withholding tax in the REIT's state of residence;
- Investors are taxed on the distributions they receive in accordance with their own tax residence rules.

This structure ensures a single level of taxation comparable to what would apply if the investor held the real estate directly.

> *A REIT is therefore defined as being a widely held entity holding predominantly immovable property, directly or indirectly, subject to a tax regime that achieves a single level of taxation, either in the hands of the vehicle or in the hands of its investors. This single level of taxation is typically achieved through an effective exemption from corporate income tax at the REIT level, combined with a mandatory distribution of profits to investors and the application of withholding tax on those distributions.*[3]

In a purely domestic situation, this mechanism works cleanly: the REIT is exempt from income tax, distributes its profits, and the investors are taxed on those distributions. Cross-border situations, however, break this logic. There are three possible scenarios of increased tax burden when a REIT invests across borders:

- Direct cross-border investment: a REIT holds real estate located in another Member State. Income is taxed in the source state; if that state also levies withholding tax on distributions back to the REIT, and the residence state then imposes withholding tax on redistributions to investors, double taxation arises.
- Indirect investment via a tax-exempt special purpose vehicle (SPV): the SPV distributes income to the REIT (subject to withholding tax in the source state), and the REIT redistributes to investors (subject to withholding tax in the residence state). Two layers of withholding tax create double taxation.
- Indirect investment via a taxable SPV: first, corporate income tax at the SPV level; second, withholding tax on distributions from SPV to REIT; third, withholding tax on redistribution by the REIT to its investors. This gives rise to triple taxation.

Resolving these issues is inherently complex, as they stem from the interplay between the free movement of capital, the diversity of national REIT frameworks and withholding tax regimes, but also,

[3] OECD's definition of a REIT used for the purpose of the OECD Model Tax Convention.

in the context of this call for evidence on the Taxation Omnibus, the constraints embedded in the Parent-Subsidiary Directive.

2. PARENT-SUBSIDIARY DIRECTIVE (COUNCIL DIRECTIVE 2011/96/EU)

In practice, most REITs do not qualify for the benefits of the Parent-Subsidiary Directive.[4] In Wereldhave (C-448/15), the CJEU interpreted the subject-to-tax requirement in a manner that effectively excludes entities operating under tax-neutral regimes providing for a zero corporate tax rate or equivalent exemption.

The case concerned a Belgian REIT (as subsidiary) and a Dutch REIT (as parent company). The Belgian REIT was formerly subject to corporate income tax on a reduced taxable base, subject to mandatory distribution to its shareholders. The Dutch REIT was subject to corporate income tax but entitled to a 0% rate of taxation, subject to mandatory distribution to its shareholders. Belgian-sourced dividends were subject to withholding tax in Belgium, which the Dutch REIT disputed.

In assessing whether the PSD applied, the ECJ had to determine whether the Dutch REIT was subject to tax within the meaning of the PSD. The ECJ held that:

> *"Although, formally, a company which is subject to tax at a zero rate, provided that all of its profits are paid to its shareholders, is not exempt from that tax, it is, in practical terms, in the same situation as the one which Article 2(c) of Directive 90/435 seeks to exclude, that is to say, a situation in which it is not liable to pay that tax."*

In other words, a special tax rate at 0% or a subjective exemption is "tantamount to not subjecting those companies to that tax." The ECJ explicitly found that "the risk of double taxation on the part of that parent company of profits which were distributed to it by its subsidiary is ruled out." Consequently, granting the PSD benefits would go beyond the scope of the Directive.

This reasoning on the risk of double taxation is also found in the anti-hybrid mismatch rule in the PSD, which was included in 2014. According to Article 4(1)(a), Member States shall refrain from taxing profits "to the extent that such profits are not deductible by the subsidiary, and tax such profits to the extent that such profits are deductible by the subsidiary."

The special tax regime of a REIT may take the form of deductible dividends. Under this regime, a REIT is fully subject to tax on the profits received, but can deduct timely distributed dividends, such deductibility leading to an effective tax rate of 0% (if all dividends are redistributed to the investors).

A literal reading of Article 4(1)(a) would mean that the dividend should be taxed at the level of the vehicle. This was a topic of discussion in the Council prior to the adoption of the anti-hybrid mismatch rule in 2014. The publicly available documents show that Sweden insisted the wording in Article 4(1)(a) be clarified. At the time, Sweden had a regime for collective investment vehicles that subjected profits to tax and created a deduction for the dividends redistributed. The Commission concluded that the Swedish regime should not fall within the scope of the anti-hybrid mismatch rule.

In this context, the adoption of the anti-hybrid mismatch rule was accompanied by a Commission statement which:

> *"[c]onfirms that the proposed amendments to Article 4.1(a) of the Parent Subsidiary Directive are not intended to be applicable if there is no double non-taxation or if their application would lead to double taxation of the profit distributions between parent and subsidiary companies."*

[4] On that point, see 'Tax Challenges for Real Estate Investment Trusts Operating and Investing in Europe' by A. Brohez and J. Steenbergen, published in Finance and Capital Markets (formerly Derivatives & Financial Instruments), 2026 (Volume 27), No. 1. https://doi.org/10.59403/59a1b9

Nonetheless, some national court decisions seem to interpret the anti-hybrid mismatch rule as potentially restricting the application of the PSD to foreign REITs operating under dividend-deduction regimes comparable to that discussed in the Swedish context.

In any case, the application of the PSD to the operations of a REIT seems difficult. While there may be discussion possible on the rationale in the *Wereldhave* case—the subsidiary also benefited from a REIT regime and the distributed profits were therefore not subject to tax—the Court's reasoning indicates that a REIT operating under a 0% rate or equivalent exemption regime will, in principle, fail to satisfy the PSD's subject-to-tax requirement. Therefore, **any exemption from dividend withholding tax for distributions in the Source State largely depends on national law.**

The case for action in the Omnibus

EPRA recognises the merit of the objective set out in the Call for Evidence: to streamline, enhance and clarify the corporate tax Directives with a view to reducing administrative burden and compliance costs for businesses, thereby improving the functioning of the internal market.

For REITs, the current PSD framework presents a structural barrier to cross-border investment:

1. Wereldhave case-law excludes *de facto* most REITs from the withholding tax exemption, forcing reliance on fragmented national law. **The existence of 13 different REIT regimes** across the EU further increases complexity and administrative burden;

2. The anti-hybrid mismatch rule is being misapplied by some Member States in ways that contradict the Commission's own guidance, creating double taxation risks;

3. The absence of harmonised relief mechanisms therefore forces REITs to navigate different national regimes when investing across borders, an administrative burden that ordinary MNEs operating under the PSD do not face.

Therefore, in light of Wereldhave, the PSD currently offers limited practical relief for REIT structures; the Commission could usefully clarify the interaction between the subject-to-tax requirement and tax-neutral regimes, ensuring that structures achieving a demonstrable single level of taxation are not inadvertently excluded from relief.

3. ANTI-TAX AVOIDANCE DIRECTIVE (ATAD I, COUNCIL DIRECTIVE 2016/1164 EU)

Besides the PSD, this paper also examines obstacles related to the Anti-Tax Avoidance Directive (ATAD I, Council Directive (EU) 2016/1164).

EPRA welcomed the Commission's extensive stakeholder outreach, including the in-depth review of ATAD I conducted by the external contractor (ATAD Study). We also appreciated DG TAXUD's response to our August 2025 letter, which acknowledged the concerns of the listed real estate sector, as well as those of the wider real estate industry, regarding the Interest Limitation Rule.

As noted in the Call for Evidence, the Commission Services engaged in targeted consultations with around 50 multinational groups and business associations. EPRA contributed to this process through the questionnaire prepared for the ATAD Study and through direct exchanges with the Commission.

In our letter to Commissioner Hoekstra and DG TAXUD, we outlined the structural challenges that the Interest Limitation Rule poses for the EU real estate sector. In particular, we highlighted the asymmetric treatment of legitimate third-party financing, the importance of preserving national adaptations within REIT regimes, and the need to reassess the de minimis threshold and EBITDA cap in light of evolving macroeconomic conditions.

The Commission's September 2025 reply recognised the relevance of these concerns within the broader evaluation and simplification agenda. The recommendations set out below build on this constructive dialogue and aim to further substantiate the sector's position in the context of the present Call for Evidence.

The Interest Limitation Rule (ILR)

Ensuring fair taxation and treatment is essential to maintaining stability within the EU real estate market. However, caps on interest deductions under ATAD I can significantly limit the amount of interest that can be deducted, leading to asymmetrical tax treatment. The concept of asymmetrical treatment in the context of ATAD I refers to the differing tax treatment of interest income and interest expenses between lenders (such as banks) and borrowers. This asymmetry arises because the Directive restricts the ability of borrowers to deduct interest expenses, while lenders are fully taxed on the interest income they receive. Lenders, such as banks or other financial institutions, provide loans to borrowers and receive interest payments in return. For these lenders, interest income is a form of taxable income. Therefore, they pay tax on the entire amount of interest they receive without any limitation. This means that the government collects tax revenue on the interest income in full.

Borrowers, on the other hand, face a restriction on the amount of interest they can deduct. The de-minimis threshold or 30% EBITDA cap means that even if they pay more interest than these caps allow, they cannot deduct the excess, leading to a higher taxable income and, consequently, a higher tax burden. This asymmetry is problematic, as it penalises genuine economic activity, where borrowing is a legitimate and necessary part of funding large-scale developments. Large infrastructure and real estate projects often require significant amounts of debt due to their capital-intensive nature. The inability to deduct the full amount of interest paid on these loans leads to over-taxation of the borrower, despite there being no avoidance of taxation on the interest income at the lender's end.

Thus, while ATAD I effectively addresses tax avoidance in aggressive tax planning schemes, it unintentionally affects legitimate third-party financing. In this context, it is worth highlighting that certain Member States have acknowledged this situation and introduced targeted provisions to address it. For instance, in Italy, interest on mortgage loans borrowed from banks is fully deductible and not subject to the 30% EBITDA limitation. This approach aligns logically with the underlying principle of protecting legitimate third-party financing. By allowing full deductibility in such cases, the Italian system avoids penalising economically sound borrowing practices that are essential for financing capital-intensive real estate and infrastructure projects.

Adding to this burden, the ATAD rules have significantly increased the cost and complexity of group structuring, further elevating both administrative and financial pressures. To illustrate, a company within our membership, operating cross-border with more than 100 employees and €350 million in annual turnover, estimates ongoing additional compliance costs of at least €3–4 million annually, with approximately 40% of that spent on external consultants.

Furthermore, the way Member States have implemented the Directive, along with subsequent modifications, has raised concerns within the industry. Constant adjustments and regulatory uncertainty regarding EBITDA rules and the de minimis threshold can discourage long-term investors and risk undermining the competitiveness of the EU and individual countries, especially at a time when capital investment is urgently needed. In addition, smaller entities within the real estate industry find the EBITDA rules overly complex and prefer to rely on the de minimis threshold. However, when implementing the Directive, some countries have set significantly lower thresholds, putting these entities at a disadvantage. Therefore, there is value in enhancing the current framework to ensure that the de minimis threshold of €3 million and the 30% EBITDA is not lowered, while also recognising the importance of exempting legitimate third-party financing—such as in the Italian example, where mortgage interest on bank loans remains fully deductible.

A good example of the divergent rules and uncertainty is Sweden. Sweden has recently taken steps to ease the interest deduction limitations implemented under Article 4 of ATAD. Previously, the exemption threshold was set at a very low level—only €450,000—which created a disproportionately heavy burden, especially for smaller entities. This threshold will now be raised to the Swedish krona equivalent of €3 million, aligning with the maximum allowed under the Directive. In addition, improvements are being introduced to allow for more effective group-level adjustments. These new rules were scheduled to enter into force on 1 January 2026. Nevertheless, even with these changes, Sweden continues to apply stricter interest deduction rules than many other Member States, which may impact the country's relative attractiveness in an international investment context. For the property sector, the interest deduction limitation rules are particularly burdensome. The industry relies heavily on loan-financed investments and represents a major, strategically important client base for credit institutions, whose financing activities are, of course, closely monitored in the context of national financial stability. As a result, tax rules and financial stability together play a critical role in shaping the property market and its overall economic performance, and must therefore be factored into the debate as key elements influencing this in-depth analysis of ATAD I.

Finally, it must be emphasised that for much of the past decade, the EU experienced relatively stable interest rates, with little fluctuation as inflation remained consistently low. However, recent developments have marked a significant shift. Rising inflation, driven by various factors, has increased interest rates to combat inflationary pressures. This shift is currently not reflected in ATAD I. The Directive's failure to acknowledge these changes risks placing additional pressure on industries like real estate, which are particularly sensitive to borrowing costs and inflation dynamics. Furthermore, real estate income (rents) doesn't always adjust with inflation due to lease constraints, meaning rising interest costs can't be offset by revenue.

To address these challenges, policymakers should include a provision in the Directive that allows for the timely re-evaluation of the existing thresholds for tax deductibility of interest during periods of high interest rates and challenging economic conditions. This would ensure better alignment with shifting economic realities and help safeguard the real estate sector's competitiveness while maintaining the necessary flow of capital investment.

The Exceeding Borrowing Cost (EBC)

Exceeding Borrowing Cost (EBC) is defined as follows in the Directive: *'the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other economically equivalent taxable revenues that the taxpayer receives according to national law.'*

The Directive should be clarified or amended to provide that the EBC amount is the positive or negative result of (i) the total of the deductible borrowing costs less (ii) the total of the interest revenues and other economically equivalent taxable revenues.

Proposed modified definition (Article 2, paragraph 1, (2) of the Directive): exceeding borrowing costs means:

The difference between the deductible borrowing costs of a taxpayer and the taxable interest revenues and other economically equivalent taxable revenues that the taxpayer receives according to national law.

Furthermore, current Article 4, point 1, last paragraph of the Directive states that: *In such circumstances, exceeding borrowing costs and the EBITDA may be calculated at the level of the group and comprise the results of all its members.'*

Proposed modified text (Article 4, point 1, last paragraph):

In such circumstances, exceeding borrowing costs and the EBITDA may be calculated at the level of the group and comprise the results of all its members, and for the purposes of this calculation the exceeding borrowing costs of a member can be negative.

Explanation:

The current way of computing these EBC at the level of a group of taxpayers, and then applying the interest limitation at group level, might lead to a difference in treatment depending on how much companies are included in the group and how they are organised. The below example concerns a group of 4 Belgian taxpayers, with one company being a local cash-pooling company (i.e., all cash generated by the activity of the other companies within the country concerned – in this case Belgium) is transferred to this sub cash-pooling company, which in turns on-lends within the broader group outside Belgium.

This is illustrated by the following simplified example:

- Company C is the local cash pooling company.
- Interest paid by Company C to the other local group companies is not included in the borrowing costs. At the same time, interest revenues received by these companies from Company C are not included in the interest revenues (Article 4.1, par. 3 – exceeding borrowing costs determined at group level, and plus / minus positions therefore neutralise).
- Company C has no borrowing cost, only interest revenues, and therefore there is no "excess" of borrowing cost compared to interest revenues (cell in yellow). At group level, the total EBC amounts to 7.3 MEUR while the interest revenues of Company C have not been considered.

		1	2	3	4
Exceeding Borrowing Costs		Company A	Company B	Company C (local cash pooling)	Company D
(+) Interest expenses		6.209.916,48	1.172.476,84	838.055,50	0,00
(+) Other costs economically equivalent to interest		0,00	0,00	0,00	0,00
(-) intra-group interest and other economically equivalent costs paid to not excluded Belgian companies and establishments		0,00	0,00	-838.055,50	0,00
Qualifying interest cost and other economically equivalent costs		**6.209.916,48**	**1.172.476,84**	**0,00**	**0,00**
(+) Interest income		791.795,40	36.341,82	832.483,66	9.918,28
(+) Other economically equivalent taxable revenues		0,00	0,00	0,00	0,00
(-) intra-group interest and other economically equivalent income from not excluded Belgian companies and establishments		-791.795,40	-36.341,82	0,00	-9.918,28
Qualifying interest income and other economically equivalent income		**0,00**	**0,00**	**832.483,66**	**0,00**
Exceeding borrowing costs		**6.209.916,48**	**1.172.476,84**	**0,00**	**0,00**
Group Exceeding borrowing costs	*7.382.393,32*				
Total number of Belgian Group entities (Belgian companies and PE's)	*4,00*				

While,

- In case the interest revenues of Company C had been included in the computation (cell in yellow), the total EBC would have amounted to 6.5 MEUR.

		1	2	3	4
Exceeding Borrowing Costs		Company A	Company B	Company C (local cash pooling)	Company D
(+) Interest expenses		6.209.916,48	1.172.476,84	838.055,50	0,00
(+) Other costs economically equivalent to interest		0,00	0,00	0,00	0,00
(-) intra-group interest and other economically equivalent costs paid to not excluded Belgian companies and establishments		0,00	0,00	-838.055,50	0,00
Qualifying interest cost and other economically equivalent costs		**6.209.916,48**	**1.172.476,84**	**0,00**	**0,00**
(+) Interest income		791.795,40	36.341,82	832.483,66	9.918,28
(+) Other economically equivalent taxable revenues		0,00	0,00	0,00	0,00
(-) intra-group interest and other economically equivalent income from not excluded Belgian companies and establishments		-791.795,40	-36.341,82	0,00	-9.918,28
Qualifying interest income and other economically equivalent income		**0,00**	**0,00**	**832.483,66**	**0,00**
Exceeding borrowing costs		**6.209.916,48**	**1.172.476,84**	**-832.483,66**	**0,00**
Group Exceeding borrowing costs	*6.549.909,66*				
Total number of Belgian Group entities (Belgian companies and PE's)	*4,00*				

In the absence of a local cash-pooling company (Company C), the three other companies would lend their excess cash separately to the broader group outside their jurisdiction, which will increase their interest income. In terms of EBC, this way of working also leads to an EBC of 6.5 MEUR – the same as if the negative EBC of Company C had been taken into account.

	1	2	3	4
Exceeding Borrowing Costs	Company A	Company B	Company C (local cash pooling)	Company D
(+) Interest expenses	6.209.916,48	1.172.476,84	0,00	0,00
(+) Other costs economically equivalent to interest	0,00	0,00	0,00	0,00
(-) intra-group interest and other economically equivalent costs paid to not excluded Belgian companies and establishments	0,00	0,00	0,00	0,00
Qualifying interest cost and other economically equivalent costs	**6.209.916,48**	**1.172.476,84**	**0,00**	**0,00**
(+) Interest income	791.795,40	36.341,82	0,00	9.918,28
(+) Other economically equivalent taxable revenues	0,00	0,00	0,00	0,00
(-) intra-group interest and other economically equivalent income from not excluded Belgian companies and establishments	0,00	0,00	0,00	0,00
Qualifying interest income and other economically equivalent income	**791.795,40**	**36.341,82**	**0,00**	**9.918,28**
Exceeding borrowing costs	**5.418.121,08**	**1.136.135,02**	**0,00**	**-9.918,28**

Group Exceeding borrowing costs	*6.544.337,82*
Total number of Belgian Group entities (Belgian companies and PE's)	*4,00*

The Directive should be amended to clarify that EBC can also be negative. In the absence of such an amendment, the current provision might restrict the freedom of establishment by treating differently, without, at first sight, a proper justification, taxpayers depending on the number of companies they have in a given Member State and how their activity is organised.

The Equity Escape Clause (ESC)

The example below illustrates how this rule contradicts the spirit of the ATAD Directive, which allows the equity escape clause when a company's capital structure is not tax-motivated.

Under the German interest barrier rules, net interest expenses (i.e. interest paid minus interest received) are only tax-deductible up to 30% of the EBITDA for tax purposes. However, if the net interest expenses do not exceed EUR 3 million per year per taxed entity or tax group, the entire amount can be deducted.

- If net interest expenses amount to EUR 3 million per year or more, full deductibility is only possible by invoking the so-called escape clause. This requires that:
    - the net equity ratio of the entire consolidated group (based on consolidated IFRS accounts) does not exceed the equity ratio of the relevant German entity or tax group (also based on IFRS consolidated accounts of that entity/group) by more than two percentage points; and
    - there is no harmful shareholder debt financing within the group. In particular, this means that no entity within the group pays more than 10% of its net interest expenses to external shareholders (those not included in the consolidated group) who hold 25% or more of the shares or voting rights in the relevant entity, or to third parties who have certain recourse to such shareholders. This applies to both domestic German and foreign entities.
    - Note:
        a. Contrary to the explanatory memorandum accompanying the legislative bill introducing the interest barrier rules, the financial decree issued by the German Federal Ministry of Finance insists that shareholder loans from companies that are not subject to taxation in Germany must also be taken into account. One interpretation advocates applying the harmful financing test primarily to group entities that are tax-resident in Germany, though this

position may conflict with the federal decree. Therefore, it is advisable to review financing arrangements across all group companies.

b. The overall framework of the interest barrier rules has been submitted by the Federal Court of Finance to the German Federal Constitutional Court due to concerns regarding its compatibility with the federal constitution.

Preserving the national specificities

When considering potential legislative changes and their impact on the EU real estate market, we strongly encourage policymakers to conduct a careful impact assessment. Indeed, given the crucial role of real estate investments in generating returns that help fulfil the obligations of pension funds and insurance companies, any adjustments to existing legislation should be approached with caution and careful consideration. This holds significant importance for Real Estate Investment Trusts (REITs).

Currently established in 13 EU Member States, the introduction of REIT legislation by national governments has always been seen as an opportunity to attract new sources of capital into the local real estate market in a more open, transparent, liquid, and advantageous form of investment. As discussed above, a REIT is defined as "a widely held company, trust or contractual or fiduciary arrangement that derives its income primarily from long-term investment in immovable property (real estate), distributes most of that income annually and does not pay income tax on income related to immovable property that is so distributed."[5] The fact that the REIT vehicle is not required to pay tax on that income is the result of tax rules that provide for a single level of taxation in the hands of the investors in the REIT (with corresponding withholding tax obligations imposed on the REIT with respect to its distributions to foreign investors). Despite these common features, there may be differences between countries regarding how REITs are structured and how tax exemptions for income are provided. In some countries, REITs were developed using the tax rules generally applicable to trusts and companies; in others, a specific REIT tax regime has been adopted. The specific tax mechanisms that ensure REITs are tax-exempt can vary from country to country and can include, for example, rules that allow the deduction of REIT dividends or distributions; tax exemption of only the part of the REIT's income distributed within a specific period; tax exemption of a REIT that meets certain conditions or rules that allocate income to investors rather than to the REIT itself. In addition, REITs are increasingly investing across borders, including in jurisdictions that do not recognise a REIT status, resulting in full tax liability there. The structural nuances and tax exemptions associated with REITs vary significantly across different jurisdictions. This is why, when implementing ATAD I, Member States tailored their approach to accommodate the unique specifics of their REIT regime, ensuring practical and workable outcomes. These outcomes must be fully preserved, with thorough impact assessments conducted to avoid disrupting the delicate equilibrium that Member States have achieved in addressing their national specificities.

[5]OECD's definition of a REIT used for the purpose of the OECD Model Tax Convention.

POLICY RECOMMENDATIONS

Our recommendations:

- **Parent Subsidiary Directive (PSD): Clarify the interaction between the subject-to-tax requirement in Article 2 of the PSD and sector-specific tax-neutral regimes,** ensuring that structures achieving a demonstrable single level of taxation are not inadvertently excluded from relief.
- **Anti-Tax Avoidance Directive I (ATAD I): Ensure full deductibility of interest on legitimate third-party financing** by explicitly exempting interest on loans from banks that are unconnected with the borrower and on arm's length terms, as well as for other genuine arm's length financing arrangements.
- **Anti-Tax Avoidance Directive I (ATAD I): Clarify the definition of "Exceeding Borrowing Costs (EBC)"** to explicitly recognise that EBC can be negative in group-level calculations, eliminating unjustified disparities based on internal structuring.
- **Anti-Tax Avoidance Directive I (ATAD I): Clarify and strengthen the equity escape clause** to ensure consistent application across Member States and preserve its function of exempting economically driven structures.
- **Anti-Tax Avoidance Directive I (ATAD I): Preserve national-level adaptations for REIT regimes** adopted by Member States to ensure coherence between ATAD I and their national REIT frameworks.

EPRA is readily available to provide any additional information you may need. You can reach us directly at publicaffairs@epra.com.

About EPRA

For 25 years, the European Public Real Estate Association (EPRA) has been the voice of Europe's listed real estate companies, investors, and their suppliers. EPRA achieves this through providing better information to investors and stakeholders, active involvement in the public and political debate, promotion of best practices, and the cohesion and strengthening of the industry. With more than 290 members (companies, investors, and their suppliers), EPRA represents over 940 billion EUR of real estate assets (European companies only) and 95% of the market capitalisation of the FTSE EPRA Nareit Europe Index. Find out more about our activities on www.epra.com.

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