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EU Tax Alert

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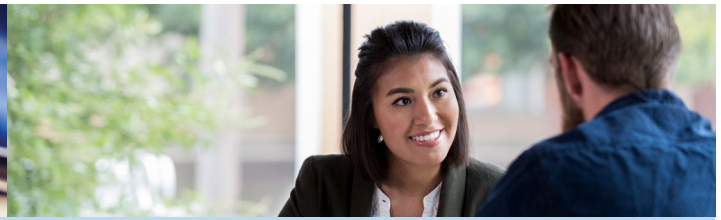

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EU Tax Alert

In this publication, we look back on recent tax law developments within the European Union (EU). We discuss, amongst other things, relevant case law of the Court of Justice of the European Union (CJ), Opinions of its Advocate Generals (AG), as well as relevant case law of the national courts of the Member States.

Furthermore, we set out important tax plans and developments of the European Commission (EC), the Council of the European Union (Council) and the European Parliament (EP).

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Content

1. Highlights in this edition

EU Commission reaffirms commitment to OECD-Led discussion on digital taxation and rules out proposing an EU Digital Tax at this stage

On 10 September 2025, the EU Parliament's Committee on Economic and Monetary Affairs held a debate regarding the oral questions raised to the EU Commission regarding the taxation of large digital platforms in light of recent international developments. Commissioner McGrath, responsible for justice and consumers, addressed these questions on behalf of Commissioner Hoekstra. He stated that the European Commission anticipates that discussions on Pillar 1 may resume later this year. However, he emphasised that it is premature to consider alternatives to the OECD-led process, reiterating the Commission's commitment to allowing the OECD sufficient space and time to deliver results. Furthermore, the Commission does not intend to propose an EU digital tax, and consequently, no impact assessment has been prepared. McGrath also noted that predicting the impact on consumers in advance and in abstract terms would be impossible. The Commission will continue to monitor the latest investigations under Section 301 and, should a solution not be found, will engage with the European Parliament and Member States to determine the next steps.

During the debate, most speakers from pro-EU centrist political groups - including the Socialists & Democrats, Greens/EFA, Renew Europe, and the European People's Party - expressed broad support for reforming tax regimes. They viewed digital taxation as essential for safeguarding European sovereignty, welfare systems, small businesses, and citizens. The concepts of tax justice and sovereignty were frequently invoked, with a strong emphasis on the EU's need to act independently. There was also a proposal for the EU to promote fair taxation of large digital platforms through global agreements and national tax practices, thereby fostering good practices within the sector.

In contrast, representatives from right and far-right groups were largely absent from the debate. The sole intervention from the Europe of Sovereign Nations group criticised the EU's increasing debt and suggested that digital taxation was merely a means to repay the NextGenerationEU debt. Additionally, several Members of the European Parliament voiced criticism of the EU-US trade agreement, arguing that it undermined tax justice.

An MEP representing the European People's Party from Spain, was the only one to oppose unilateral EU action on digital taxation. He cautioned that such an approach could provoke further conflict and advocated for the EU to lead by example in creating favourable conditions for business growth. He commended the Commission for refraining from including digital taxation in the new own resources package.

France's Constitutional Court upholds French Digital Service Tax (DST)

On 12 September 2025, the French Constitutional Council issued a landmark decision confirming the compatibility of France's Digital Service Tax (DST) with the French Constitution (Decision n° 2025-1157 QPC - September 12, 2025 *Société Digital Classifieds France*).

The case was brought by the company, Digital Classifieds France, and supported by major digital players such as Airbnb Ireland and LBC France. The constitutionality of the French DST (i.e., a 3% levy on French-source turnover from certain online services, applying to both resident and non-resident companies with consolidated worldwide revenues over EUR 750 million and French revenues over EUR 25 million) was challenged through a *Question Prioritaire de Constitutionnalité*.

The applicant companies raised several arguments against the French DST, which were all rooted in the French Constitution and, in particular, on the principles of equality before the law and equality before public burdens under Articles 6 and 13 of the 1789 Declaration of the Rights of Man and of the Citizen. These arguments were that: (i) the DST excludes from its scope certain digital services that rely on users' free work and includes activities that are merely digital versions of traditional ones, making the scoping criteria neither objective nor consistent; (ii) the thresholds, to be assessed at the group level and covering two types of services, create an irrebuttable presumption of fraud and lack rationality; (iii) the DST's revenue allocation rules ignore the actual place of activity or origin of revenue, and are contrary to the traditional territoriality requirement; (iv) calculating the amount of French DST for 2019 based on the representative percentage of the share of the services connected with France during five months (instead of the whole year) is inconsistent and prevents objective assessment of ability to pay; (v) the DST leads to double taxation, is confiscatory, introduces unjustified inequality between French and foreign companies, as the tax applies in addition to the corporate income tax a flat rate of 3% without progressivity .

In its judgment, the Constitutional Court rejected all the arguments put forward by the applicants and confirmed the constitutionality of the French DST. First, it found that the distinction between taxable and non-taxable services made by the French DST (i.e., taxing services where value depends heavily on user activity such as targeted advertising and digital intermediation and, excluding payments, streaming, financial services) is justified by the purpose of the tax, which targets online services whose value essentially derives from user activity. Second, the Court found that the criteria for taxation thresholds (i.e., worldwide revenues over EUR 750 million and French revenues over EUR 25 million) are objective and consistent with the aim of taxing online businesses with a significant digital presence in France and worldwide. Third, the Court assessed the DST tax base, which is determined on the basis of a representative percentage of users located in France in relation to the total number of users, and concluded that such aspect is aligned with the DST's purpose, even if part of the service's value is created outside France. Fourth, the Court confirmed that by allowing - for the year 2019 - to calculate the percentage of French users over a five-month period (instead of over the whole year) following the introduction of the DST the legislature relied on objective and rational criteria, which did not infringe the principles of equality before the law and before public charges. Fifth, the Court found that the amount of the DST rate (3%) is not confiscatory because it is based on turnover from taxable services supplied in France, not on profits, and does not impose an excessive burden on taxpayers. The Court noted that it is irrelevant whether the online services are also subject to corporate income tax. Furthermore, the Court found that the DST does not create unequal treatment because the rate applies uniformly to all companies operating taxable digital services, regardless of where they are established. Finally, the Court found that DSTs' flat tax rate (and lack of a progressive rate or smoothing mechanism) does not violate constitutional principles. Based on all the above, the Constitutional Court rejected the applicants' complaints and confirmed that the DST provisions are constitutional, as they do not violate the freedom to conduct a business or any other constitutional right.

Although this is not a case on EU law per se, the judgment of the French Constitutional Court on France's DST is relevant in this area. This is mainly because it deals with important questions about non-discrimination, proportionality, and the allocation of taxing rights (which are also core principles of EU law) and, therefore, the French Court's reasoning may influence EU-wide debates, future legislation, and a potential judicial review of the DSTs under EU law.

Belgian Constitutional Court refers case to the CJ on the compatibility of the UTPR with EU Law

On 17 July 2025, the Belgian Constitutional Court referred questions to the Court of Justice of the European Union (CJ) regarding the compatibility of the Undertaxed Profits Rule (UTPR), as implemented under the EU Minimum Tax Directive (2022/2523), with fundamental principles of EU law. The case was brought by the American Free Chamber of Commerce (AmFree), which was represented jointly by Loyens & Loeff and Jones Day

The Court's referral seeks clarification on whether the UTPR violates: (i) the right to property; (ii) the freedom to conduct a business; (iii) the principle of equal treatment; and/or (iv) the principle of fiscal territoriality. At the core of these grounds for challenge lies a common question: is it compatible with fundamental rights for an entity to be taxed under the UTPR on profits earned by entities in other jurisdictions, without consideration of its own financial capacity?

The outcome of the CJ's ruling may have significant implications for the application of the UTPR across the EU and the implementation of the Pillar Two rules by Member States. Since proceedings before the CJ take on average 1,5 year, a decision can be expected by the end of 2026. Despite the ongoing legal challenge, businesses are advised to continue preparing for UTPR compliance as the rules remain in effect pending a final decision, although taxpayers may want to consider taking proactive steps to safeguard their rights. Further developments on this case will be reported in future editions of the EU Tax Alert.

For more information on this development, please read our dedicated web post or reach out to one of our specialists.

EU Commission Budget Proposal and Corporate Contribution (CORE) as New Own Resource: Discussions in the Council show pushback from Member States

On 16 July 2025, the European Commission presented its proposal for the next Multiannual Financial Framework (MFF), outlining a nearly EUR 2 trillion budget to guide EU investments between 2028 and 2034. To fund these priorities, while also repaying what the EU has borrowed under NextGenerationEU and reducing pressure on national budgets, the Commission presented new own resources, including a Corporate Resource for Europe (CORE).

The CORE proposal is founded on the notion that companies operating within and benefitting from the world's largest internal market should contribute directly to the financing of the EU budget. Pursuant to the proposal and the Commission's explanations, CORE would apply to all EU-resident companies and permanent establishments of non-EU entities within the EU with a net turnover exceeding EUR 100 million annually. Financial services firms, governmental entities or non-profit organizations are excluded, although the former may be included in the scope at a later date. The CORE contribution consists of a flat annual levy, tiered according to net turnover rather than profits, which the Commission considers a more objective metric. For multinational groups, CORE contributions would be assessed and paid separately in each Member State in which the company or permanent establishment is located. Thus, Member States would collect the CORE on behalf of the European Union and such collected payments would be allocated directly to the EU budget. The Commission anticipates that the Own Resources Decision will enter into force in early 2028, with the CORE levy taking effect on 1 January 2029.

The Council is currently discussing the Commission's CORE proposal. The Presidency is committed to advancing negotiations, with further discussions planned at ECOFIN in October and continuing under the Danish Presidency. It should be noted that several Member States have expressed criticism on the 2028-2034 budget, indicating that in view of the challenges faced by the EU, it was 'simply not enough'. Regarding the CORE,

Member States have specifically raised several objections. They argue that the proposal could undermine the competitiveness of European companies and question the accuracy of the data used as well as the use of net turnover as the key parameter. Concerns were also expressed about the administrative burden on national authorities and the potential negative impact on SMEs. Additionally, there is scepticism about excluding the financial sector and about the EU Commission's authority to introduce such a levy. France and Germany have strongly criticized the proposal, and no Member State seems to currently support the proposal it in its present form.

The CORE proposal now awaits further deliberation by the Member States in the Council and by the EP as part of the broader 2028-2034 budget negotiations.

CJ Judgment regarding VAT treatment of transfer pricing adjustments for intra-group services (*Arcomet*, C-726/23)

On 4 September 2025, the CJ delivered its judgment in the *SC Arcomet Towercranes SRL* (C726/23), where it ruled that transfer pricing adjustments may be subject to VAT when they are contractually stipulated in an intra-group agreement.

The case concerns the VAT consequences of a TP agreement concluded between Arcomet Belgium and Arcomet Romania that arranged for a guaranteed profit margin for Arcomet Romania. Under this TP agreement based on the transactional net margin method (TNMM), Arcomet Romania was guaranteed a target profit margin. Arcomet Belgium, who bears the main economic risks associated with the group's business and assumed the group's central economic and strategic functions issued annual settlement invoices to Arcomet Romania when its profit margin exceeded or fell short of the profit margin range agreed. In dispute is (amongst others) whether the TP adjustments as invoiced by Arcomet Belgium constitute a remuneration for the services provided by Arcomet Belgium to Arcomet Romania.

The CJ ruled that the TP adjustments in the *Arcomet* case are a remuneration for the services provided by Arcomet Belgium to Arcomet Romania. This means that such TP adjustments are within the scope of VAT. In this context, the CJ considered that the TP adjustments were contractually agreed and could be directly linked to the services provided by Arcomet Belgium to Arcomet Romania. This conclusion is not altered by the fact that the significance of the year-end TP adjustment depends on Arcomet Romania's profits or losses in a given year. According to the CJ, what matters is that the remuneration modalities are contractually agreed according to precise criteria.

Regulation simplifying CBAM adopted by the Council of the European Union

On 29 September 2025, the Council of the European Union adopted a regulation introducing changes to the Carbon Border Adjustment Mechanism (CBAM) as part of the EU Omnibus simplification package, which also includes proposals for legislative changes to other EU sustainability legislation such as the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD).

The changes to CBAM include the introduction of a mass-based threshold, which is initially set at 50 tonnes of net mass of imported CBAM products per importer per year. Importers who fall below this threshold would be exempt from the obligations under CBAM, including submitting an annual CBAM declaration, purchasing CBAM certificates, and registering as an authorised CBAM declarant. This mass-based threshold does not apply to imports of electricity or hydrogen.

To import CBAM products after 31 December 2025, importers or indirect customs representatives should obtain the status of authorised CBAM declarant. The regulation introduces a derogation to this requirement, by which imports of CBAM products may continue provided that an application for the status of authorised CBAM declarant has been submitted to the competent authorities by 31 March 2026.

Further changes include simplifications such as to the authorisation procedure, the calculation of embedded emissions, and the verification rules. The regulation is expected to be published in the Official Journal of the EU shortly.

US-EU trade developments: Joint Statement and Proposal

On 21 August 2025, the US and EU issued a Joint Statement outlining the framework of the political agreement that was reached on reached on 27 July 2025. Below is a concise overview of the commitments outlined in the Joint Statement.

Under the key terms outlined in the Joint Statement, the US will apply either the Most-Favoured-Nation (MFN) tariff or a 15% rate - whichever is higher - on imports of products originating in the EU, thereby capping Section 232 duties on key exports like semiconductors, and lumber. Furthermore, from 1 September 2025, certain strategic EU products, such as aircraft and aircraft parts, will be subject only to the MFN rate. Lastly, tariffs on automobiles and automobile parts originating in the EU have been retroactively reduced to a 15% rate, effective from 1 August 2025, following the EU's submission of its legislative proposal to enact the tariff reductions listed below.

Furthermore, the Joint Statement outlines that the EU intends to eliminate tariffs on all industrial products originating in the US. In addition, the EU will provide preferential market access for a wide range of US seafood and agricultural products. The legislative proposal published by the European Commission on 28 August 2025[1] provides further detail: a 0% tariff rate is proposed for all industrial products originating in the US that are being imported into the EU, such as machinery, wood products and leather. In addition, the proposal provides for preferential market access for select seafood and non-sensitive agricultural products, such as nuts, dairy products, and pork and bison meat, with tariff reductions applied through tariff quotas. Sensitive agricultural products such as beef, poultry, unprepared rice and ethanol are excluded. It should be noted that the European Parliament and Council of the European Union must adopt the proposal under the ordinary legislative procedure before the EU's tariff reductions laid down in the proposal can enter into force.

The Joint Statement indicates that the US and EU will negotiate rules of origin to ensure that the benefits of the political agreement accrue primarily to the US and the EU. For now, non-preferential rules of origin apply, meaning that products imported into the EU are considered to be originating in the US if they are wholly obtained there or if they undergo their last substantial, economically justified processing in the US, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacturing.

Aside from tariff measures, the EU has committed to easing several non-tariff barriers affecting US-EU trade. This includes streamlining sanitary certificate requirements for pork and dairy products and offering greater flexibility in the implementation of CBAM for US SMEs. The EU also states that it will address concerns over the EU Deforestation Regulation. Furthermore, the EU aims to further minimize trade restrictions under the CSDDD and CSRD by reducing administrative burdens and reconsidering certain liability provisions related to due diligence failures and climate transition obligations.

Finally, the EU committed to procure USD 750 billion worth of US energy products, such as LNG, oil and nuclear energy products through 2028, and USD 40 billion in US AI chips, while also advancing transatlantic investment, thus expecting EU companies to invest USD 600 billion across strategic US sectors.

1 COM(2025) 471 final.

2. Direct Taxation

Case Law

CJ rules that Italian regional tax on production activities that includes dividends in its assessment base is incompatible with the Parent-Subsidiary Directive (*Banca Mediolanum*, Joined Cases C92/24 to C94/24)

On 1 August 2025, the CJ delivered its judgment in the case *Banca Mediolanum* (Joined cases C-92/24 to C-94/24), which assessed the compatibility of the Italian regional tax on productive activities (*Imposta Regionale sulle Attività Produttive*, hereinafter: IRAP) with Article 4 of the Parent-Subsidiary Directive (PSD). In its ruling, the Court found that such provision precludes the levying of the IRAP because such tax includes in its basis of assessment dividends (or a fraction thereof) that parent companies received from their subsidiary's resident in other Member States.

The case concerns Banca Mediolanum SpA (Mediolanum), an Italian bank that receives dividends from its subsidiaries based in other Member States. The dividends were included at a rate of 5% in Mediolanum's corporate income tax base under the Italian corporate income tax, known as *Imposta sul Reddito delle Società* (IRES). However, 50% of the dividends were also included in the company's tax base under the Italian IRAP. Mediolanum submitted a request for a refund of the IRAP levied on these dividends, claiming that such taxation violates Article 4 of the PSD, which limits taxation of intra-group dividends to 5%. The Italian tax authorities rejected the request, arguing that Article 4 of the PSD applies only to corporate income tax and not to IRAP, which is not a tax on corporate income.

In its judgment, the CJ first clarified that once a Member State has chosen the exemption system provided for in Article 4(1)(a) PSD (as it was the case with Italy), it is obliged to refrain from taxing dividends received by resident parent companies from subsidiaries established in other Member States. The Court noted that this obligation is not limited to a tax in particular, and extends to any tax whose taxable base includes such dividends (or a portion of them), regardless of whether the tax is formally classified as a corporate income tax. The CJ then emphasized that the purpose of the PSD is to eliminate economic double taxation of distributed profits and that such objective would be undermined if Member States could circumvent it by levying another form of tax, such as IRAP, on the same income. The Court also noted that the fact that IRAP is not listed in Annex I of the Directive does not exclude it from the material scope of Article 4. Finally, regarding the Italian Government's claim of reverse discrimination affecting Italian parent companies, the CJ held that the principle of equal treatment under EU law cannot be invoked in a purely domestic situation and that such aspect must be assessed by the referring court under national law. Accordingly, the CJ held that the Italian legislation infringes the PSD by subjecting 50% of such dividends to IRAP, in addition to the 5% inclusion in the IRES.

This judgment diverges significantly from the Opinion of AG Kokott, delivered on 27 March 2025 (See EUTA 210). In her view, the decisive legal question was whether Article 4 PSD covers only corporate income tax (or comparable taxes) or also extends to other levies like IRAP, which partially include dividends in their tax base. She analysed the nature and structure of IRAP and stressed its fundamental differences from corporate income tax. IRAP applies even where no corporate profit exists, has a sector-specific base more akin to value added, and applies to a wide range of entities including public

administrations. These features, she argued, indicate that IRAP is not a profit tax but a distinct levy. For that reason, she was reluctant to treat IRAP as falling within Article 4 PSD and suggested leaving the final determination to the Italian court, providing guiding criteria for assessing whether IRAP could be considered equivalent to corporate income tax.

While the AG adopted a technical approach, focusing on the conceptual differences between IRAP and corporate income tax and leaving the final assessment to the national court, the CJ adopted a broad and functional interpretation of Article 4 PSD. The CJ made clear that the Directive applies to any form of taxation of dividends at the parent-company level, irrespective of the nature or classification of the tax, as long as such dividends form part of its base. In doing so, the CJ prioritized the Directive's objective of eliminating economic double taxation over the formal characteristics of national taxes.

Based on the considerations above, the CJ concluded that Italy's IRAP rules, insofar as they subject 50% of foreign-sourced dividends to taxation, are incompatible with Article 4 PSD.

AG Emiliou's Opinion on the Compatibility of Belgium's Non-Resident Tax Surcharge with the Free Movement of Workers (*DK, JO v État Belge*, C-119/24)

On 4 September 2025, AG Emiliou issued his Opinion in the case *DK, JO v État Belge* (C-119/24), which addresses the question of whether the free movement of workers must be interpreted as precluding Belgium from levying a state income tax surcharge of 6%-7% from non-resident taxpayers *in lieu* of municipal surcharges levied from resident taxpayers. The AG opined that the free movement of workers must be interpreted as not precluding such income tax surcharge, provided that the rates applicable do not exceed the rates applied to residents subjected to the municipal surcharges, without an objective justification and subject to the principle of proportionality.

The case concerned a married couple, DK and JO ('the Applicants') who resided in France and earned Belgian-sourced income arising from work and real estate in such country. For this income, the Applicants were subject to taxation in Belgium as non-residents and therefore, the Belgian tax authorities applied the non-resident surcharge to their income tax. The Applicants challenged their income tax assessments, including the surcharge, but their appeals were dismissed. Following an unsuccessful first-instance action and an appeal, the Liège Court of Appeal. referred the case to the CJ asking whether the free movement of workers precludes Member States so subject non-resident taxpayers to a State income tax surcharge of 6 – 7% in lieu of municipal surcharges that are levied from Belgium residents with their residence in Belgian municipalities.

In his Opinion, AG Emiliou first assessed whether residents and non-residents are in a comparable situation. In this respect, he found that residents and non-residents are indeed in a comparable situation with respect to the legislation at issue. He substantiates this conclusion on the understanding that, even when non-residents are taxed only on their Belgian-sourced income and residents on their worldwide income, both the non-resident surcharge and the municipal surcharge: (i) are not determined by reference to the taxpayer's personal ability to pay tax nor linked to his or her personal and family circumstances; and (ii) they merely constitute an increased income tax rate applied on the respective taxable bases of residents and non-residents. The AG further noted that this conclusion is not affected by the fact that the non-resident surcharge is levied and utilized at the national level and the municipal surcharge at the municipal level as, in both cases, the fundamental purpose of the surcharges is to finance public services, and they are not fees or charges for specific services. Second, the AG examined whether there is a difference in treatment between resident and non-resident taxpayers regarding both: (a) the imposition of the non-resident surcharge in lieu of the municipal surcharge, and (b) the rate of the surcharges (i.e., a flat rate of 6-7% for non-residents and rates ranging from 0% to 9.5% for residents depending on the municipality). Concerning the first aspect, the AG found that, although governed by different legislative frameworks, the surcharges

are equivalent in their calculation method, purpose, and effect - resulting in no difference in treatment between residents and non-residents. On the second aspect related the different rates of the surcharges, he found that although the flat rate of the non-resident surcharge often resulted in equal or more favourable treatment for non-residents compared to most residents, it still led to less favourable treatment for non-residents in municipalities with lower surcharge rates. Therefore, in his view, this discrepancy constitutes unequal tax treatment, potentially amounting to indirect discrimination based on nationality, as non-residents are typically foreign nationals.

The AG then examined whether an appropriate justification is available for this indirect discrimination. He outlined that the Belgian government argues that the flat-rate non-resident surcharge aims to prevent reverse discrimination, ensuring residents are not disadvantaged compared to non-residents. While EU law does not prohibit reverse discrimination, its prevention can be a legitimate objective, according to the AG. Finally, the AG examined the proportionality of the measure at issue and outlined that it is ultimately up to the national court to assess whether the national measure complies with the principle of proportionality, based on the specific facts and legal context of the case. Due to the lack of comprehensive verified information regarding the relevant national context (including, notably, the applicable municipal surcharge rates) and lacking an explanation by the Belgian Government as to the choice of the measure at issue, AG Emilio limited the analyses to general observations on the three proportionality criteria, being suitability, necessity and proportionality *stricto sensu*.

Based on the above, AG Emilio opines that the free movement of workers does not preclude national legislation, such as that at issue in the main proceedings, which imposes on non-residents an income tax surcharge in lieu of the municipal surcharges borne by residents, provided that the rates applicable to that surcharge do not exceed the rates applied to residents in any given region, without an objective justification and subject to the principle of proportionality.

Developments

EU Commission Recommends boosting Savings and Investment Accounts with Simplified Tax Compliance and Incentives

On 30 September 2025, the EU Commission adopted a recommendation on 'Increasing the Availability of Savings and Investment Accounts (SIAs) with Simplified and Advantageous Tax Treatment'. The Recommendation outlines several tax proposals for Member States, which are included under Articles 7 and 8.

Article 7 (Facilitated tax compliance), provides that, first, Member States should ensure that comprehensive information on the tax treatment of assets held in SIAs is made available in a way that is easily accessible and understandable for retail investors and financial services providers that intend to offer SIAs. Second, it notes that Member States should ensure simple and easy tax compliance procedures for SIA account holders regarding taxable income related to assets held in one or several SIAs by putting in place a framework enabling SIA providers to offer services that encompass: (a) the collection of tax on behalf of the SIA account holder; and/or (b) the sharing of all relevant data with the tax authority of the Member State of the tax residence of the SIA account holder so that it can be used to pre-fill the tax return of the account holder in question. Third, it provides that Member States should allow SIA providers authorised and supervised in any other Member State to provide the services to any retail investor in relation to the SIA framework in their jurisdiction under the same conditions as providers established in their territories.

In turn, in Article 8 (Beneficial tax treatment), the Commission encourages the uptake of SIAs, recommending Member States to introduce tax incentives and ensure that SIAs and assets held in SIAs are given at least the most favourable tax treatment available that is given to income from any asset class or given to an investment product or account. Without prejudice to the above, the recommendation states that Member States may consider incentivising SIAs through measures such as, but not limited to: (a) deductions

from the taxable base, including allowing an amount invested in an SIA to be deducted from the taxable income; (b) tax exemptions, including providing an exemption from tax on the taxable income generated by the assets in an SIA; (c) tax deferrals, including deferring the taxation of the income generated through an SIA until it is withdrawn from the SIA; or (d) applying a uniform tax rate to the income generated by or the value of assets held in an SIA.

It is important to note that a Recommendation is a non-binding legal instrument under Article 292 TFEU. It does not impose legal obligations on Member States but serves as guidance. While Member States are not required to implement it, the Recommendation can influence national legislative agendas and policy debates.

Member States Raise Concerns about Implementing Pillar 2 Side-by-Side System without amending the EU Directive

On 24 September, during the discussions regarding the state of play on Pillar 2 at a meeting of the EU Council's high-level working party on tax questions, nine EU Member States reportedly voiced legal doubts or questions about the possibility of implementing the so-called side-by-side system the G7 has promised to the United States via the mechanism foreseen under Article 32 of the EU Minimum Tax Directive and without the need of amending such Directive.

Article 32 of the Pillar 2 Directive states that EU Member States 'shall' ensure that the top-up tax due by a group in a jurisdiction shall be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of a 'qualifying international agreement on safe harbours'. Article 32 further specifies that a 'qualifying international agreement on safe harbours' means 'an international set of rules and conditions which all Member States have consented to, and which grants groups in the scope of this Directive the possibility of electing to benefit from one or more safe harbours for a jurisdiction'.

It should be noted that the EU Commission has repeatedly emphasized that a 'temporary' safe harbour agreement was already valid for US MNEs until the end of 2025 and that such measure would now be converted into a 'permanent' safe harbour, without the need to reopen the EU Minimum Tax Directive. This possibility is justified by the council legal service on Recital 24 of the Directive, which states that in implementing the directive, Member States should use commentary, the Pillar 2 implementation framework, including its safe harbour rules, and more generally, the OECD administrative guidance 'as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that those sources are consistent with this Directive and Union law.'

The EU Commission's position on the possibility of implementing the so-called side-by-side system without amending the EU Minimum Tax Directive has been recently confirmed by Benjamin Angel, head of direct taxation for the Commission, who addressed this issue during a conference of CFE Tax Advisers Europe and stated that: 'Whatever is agreed and labelled safe harbour in the OECD is automatically part of Union law and binding on Member States'.

ECON Committee adopts position on BEFIT proposal

On 24 September 2025, the Economic and Monetary Affairs Committee of the European Parliament adopted its position on the EU Commission's proposed legislation establishing a common way for calculating the tax base of multinationals operating in the EU (BEFIT). In a vote yielding 33 in favour, 19 against, and 5 abstentions, members of the European Parliament (MEPs) introduced five significant amendments to the Commission's proposals.

First, while broadly backing the key elements of the Commission proposal, MEPs added a 'significant economic presence clause' which states that companies having more than EUR 1 million in revenues in a Member State will be considered to be permanently established there. This clause would help in the identification of which Member States are to be considered for the apportionment of tax that multinational needs to pay in the EU.

This aims to especially ensure that digital companies pay taxes in the jurisdictions where they are effectively making profits, whether by providing services or selling products, irrespective of whether they have an important physical presence there.

Second, to guarantee a minimal level of taxation of royalties, MEPs proposed introducing a royalties limitation rule for companies forming part of a BEFIT group. If a company in the group pays royalties or licence fees to another group company that is taxed at less than 9%, the paying company must add those payments back to its own taxable income - unless the receiving company carries out substantive economic activity supported by staff, equipment, and offices.

Third, MEPs also proposed introducing a rule to prevent companies from shifting profits to foreign subsidiaries in low tax jurisdictions that lack real economic activity. If those subsidiaries earn passive income (such as interest or royalties) and lack real economic activity, that income would need to be added to the parent company's taxable income.

Fourth, the committee proposed a faster tax write-off for certain assets that support EU climate, social, digital, or defence goals. This would help spur investment, achieve a sustainable transition and enhance the EU's ability to prevent and respond to emerging threats and crises.

Finally, to reduce abuse of potential losses, MEPs proposed that if a subsidiary's loss creates a negative taxable amount, the parent company should be able to use it to reduce its own taxable income but only for up to five years and shall be set off against the next positive BEFIT tax base. However, the eventual tax deductions cannot reduce the company's taxable income to below zero.

The Committee's amendments to the Commission proposal will now be put to a plenary vote, expected in November. The position as adopted by plenary would then be transmitted to the Member States who would then adopt the final text, taking account of Parliament's position.

EU Commission Adopts DAC9's Implementing Regulation

On 7 July 2025, the European Commission adopted an Implementing Regulation to facilitate the automatic exchange of top-up tax information between EU Member States under DAC9. DAC9 requires multinationals and large domestic groups to submit a standardized top-up tax information return under the Minimum Taxation Directive and mandates automatic exchange of such information.

The Implementing Regulation introduces an IT schema, developed by the OECD, ensuring interoperability between DAC9 reporting and the OECD framework. The measure aims to reduce administrative burdens for both taxpayers and tax authorities while enhancing cooperation in tax administration across the EU.

The 28th Regime: EU Commission's Public Consultation and EU Parliament's Analysis Supporting the Proposal

On 9 July 2025, the European Commission launched an open public consultation on the proposed 28th Regime to gather stakeholder feedback on company law, tax, and labour law aspects relevant to the potential introduction of this regime. The consultation aims to assess the need for an optional, targeted EU-level legal framework to address these barriers. Stakeholders were invited to submit feedback until 30 September 2025, and 879 commentaries were submitted. The input received will be considered by the EU Commission in the preparation of its legislative proposal to be presented at the beginning of 2026.

Following the launch of this consultation (10 July 2025), the European Parliament published a report providing an in-depth analysis identifying persistent barriers faced by companies - particularly innovative start-ups and scale-ups - across the EU, which may justify the introduction of the 28th Regime. The analysis, prepared by the Centre for European Policy Studies, highlights tax fragmentation, divergent VAT systems, and incompatible tax compliance requirements as significant obstacles to cross-border business activity and

scaling within the Single Market. These issues are noted to disproportionately affect smaller businesses and hinder the EU's competitiveness and attractiveness for global investment.

The European Parliament is preparing nonbinding recommendations on the 28th regime and considering the possibility of including several fiscal elements suggested by the Members of the Legal Affairs Committee into the discussion (e.g., an EU-wide tax deferral for reinvested profits in R&D and innovation to support startups and avoid double taxation). However, the EU Commission's stance on including taxation in the 28th Regime remains unclear, with mixed signals in recent communications.

ECON Committee publishes draft report on 'Tax Simplification, Competitiveness and Countering Tax Fraud, Evasion and Avoidance'

On 15 July 2025, the European Parliament's Committee on Economic and Monetary Affairs (ECON) adopted a draft report emphasizing the importance of tax simplification and enhanced cooperation to improve competitiveness and combat tax fraud, evasion, and avoidance. The report recommends, among other measures, the creation of an EU Tax Data Hub and calls for further simplification of R&D tax incentives.

Infringement Procedure opened against Italy for Failure to End Discriminatory Income Taxation of Certain Non-Resident Self-Employed Individuals

On 17 July 2025, the EU Commission sent a letter of formal notice to initiate an infringement procedure against Italy for failure to align its flat tax regime for individuals engaged in business, arts or independent professions (*regime forfetario*) with the freedom of establishment as laid down in Article 49 TFEU and Article 31 EEA Agreement.
The favourable flat tax regime is available to resident individuals who meet certain conditions. Conversely, individuals not resident in Italy but in another EU Member State or EEA country are excluded from such tax regime unless at least 75% of their total income is derived from Italy. Consequently, these excluded individuals are generally subject to the ordinary individual income tax (*imposta sul reddito delle persone fisiche*, IRPEF), which involves more burdensome compliance obligations and higher tax rates.

Following the formal notice sent by the Commission, Italy has two months to provide a response. If Italy fails to provide a satisfactory response to the letter, the EU Commission may proceed with its infringement procedure and ultimately, refer Italy to the CJ.

EU Commission Sends Reasoned Opinion to the Netherlands over Dividend Tax Remittance Reduction Scheme

On 17 July 2025, the EU Commission issued and sent a reasoned opinion to the Netherlands as part of an ongoing infringement procedure concerning its dividend tax remittance reduction scheme. The opinion follows the letter of formal notice sent to the Netherlands on 25 July 2024.

The Commission contends that the Netherlands has failed to extend its dividend tax remittance reduction scheme to foreign investment funds that are comparable to Dutch investment funds. In its view, this selective application restricts the free movement of capital within the EU (Article 63 TFEU and 40 of the EEA Agreement). In their response to the formal notice of July 2024, the Dutch tax authorities rejected the existence of such a restriction and defended the scheme on the basis of overriding public interest grounds. The Netherlands has indicated that it will not amend the relevant legislation.

The issuance of the reasoned opinion brings the infringement procedure started against this Member State to its second stage. If the Netherlands does not address the concerns raised to the EC's satisfaction, the case may be referred to the CJ for adjudication.

Dutch Supreme Court Refers Cases to the CJ Requesting Clarification on the *Schumacker* doctrine

On 18 July 2025, the Supreme Court of the Netherlands referred two cases to the CJ seeking clarification on the application of the *Schumacker* doctrine (C-279/93) in relation to non-resident taxpayers' entitlement to personal tax deductions in the employment State.

The cases concern non-resident EU taxpayers who earn a significant, but not all, of their income in the Netherlands and whether they are entitled to personal and family deductions typically reserved for residents. Under Dutch law, non-residents are generally only eligible for such deductions if at least 90% of their worldwide income is taxable in the Netherlands, or if EU law so requires.

The Supreme Court questioned whether, under EU law, the Netherlands as the employment State must take into account the personal and family circumstances of non-resident taxpayers when the residence State lacks sufficient taxable income to do so, even if the 90% threshold is not met. The Court highlighted uncertainties regarding the required proportion of income earned in the employment State and the methodology for determining comparability with resident taxpayers.

The Dutch Supreme Court referred several preliminary questions to the CJ which concern whether and to what extent, the employment State must grant non-resident taxpayers personal and family deductions - especially when not all or almost all income is earned there - including how to determine the relevant income threshold and whether the partner's income and other income types should be considered.

The CJ's answers are expected to provide important guidance on the scope of the *Schumacker* doctrine and the rights of non-resident taxpayers within the EU. Proceedings before the CJ are pending.

EU Parliament Calls for Tax Reform to enhance EU's Competitiveness, Productivity and Investment Climate

On 10 September 2025, the EU Parliament adopted and published a resolution, inspired by the Draghi and Letta reports, outlining a strategic roadmap to enhance the EU's competitiveness, productivity and investment climate. The resolution stresses that tax policy plays an important role, both as a critical enabler - and sometimes a barrier - in achieving the abovementioned goals.

It further indicates that tax regimes across Member States remain substantially unaligned. This tax fragmentation - *inter alia* characterized by 27 distinct corporate tax systems - remains a significant barrier for EU businesses and cross-border investments in the internal market. The resolution outlines that this should be better aligned through a more coordinated EU tax framework which, in turn, would facilitate the free movement of workers' goods and services and would support growth and private investments. In this respect, the document recalls the 'Business in Europe: Framework for Income Taxation' (BEFIT) proposal that establishes a single set of rules for calculating companies' corporate income taxation. The resolution notes that such coordinated framework could help cut compliance costs, reduce the administrative burden, create a level playing field for businesses operating across the internal market, encourage expansion, enhance legal certainty and stimulate investments and growth in the Union.

The resolution further supports the use of targeted tax incentives to stimulate investment in strategic sectors. These incentives should be designed to prioritise investments within the EU and align with broader competitiveness goals. It also welcomes guidelines from the EU Commission on the design of tax incentives, ensuring consistency while respecting Member States' fiscal autonomy and invites the Commission to assess the benefits and drawbacks of the option of the 28th Regime.

Additionally, the resolution urges the Commission to implement measures that incentivise participation in EU capital markets and to provide Member States with technical support in designing and implementing tax policies that encourage such participation. Finally, the Commission is called on to address existing barriers to cross-border retail investments (e.g., overly complicated withholding tax refund procedures).

3. State Aid

Developments

EU Commission Makes Recommendations on Tax Incentives to Support Clean Industrial Transition

On 2 July 2025, the European Commission issued its recommendation on tax incentives supporting the Clean Industrial Deal ('CID'). The recommendation forms part of the CID implementation package and is aimed at guiding EU Member States in designing tax incentives that contribute to the objectives of the CID, which are: to accelerate industrial decarbonisation, promote clean technologies and enhance EU competitiveness and resilience. In this respect the recommendation specifically aims to stimulate private investment in clean technologies and industrial decarbonisation by providing cost-effective tax measures.

The recommendation *inter alia* advocates for the following two key cost-effective tax measures to enhance and drive clean investment. These measures are: (i) Allowing companies to deduct the full cost of eligible clean technology investments faster via accelerated depreciation up to immediate expensing; and (ii) Implementing targeted tax credits to incentivise investments in strategic sectors.

Moreover, the recommendation stresses that certain principles play an essential role in ensuring that the implementation of such tax measures is cost-effective, simple and timely. These principles are the following: (i) The tax measures should establish targeted support, meaning that the incentives should only apply to clean technologies and industrial decarbonization and hence should exclude fossil fuel-related investments; (ii) The tax measures need to be simple and need to provide certainty, meaning that the measures must be easy for companies and tax authorities to implement; and (iii) The tax measures should provide timely support to companies making investment decisions.

The recommendation stipulates that the tax measures must be compliant with the EU State aid rules, whereby the Member States should give due considerations to the Clean Industrial Deal State aid Framework (CISAF).

Lastly, the Commission invites EU Member States to report any announcements or introductions of relevant measures aimed at implementing this recommendation - including any existing measures and changes thereto - to the Commission by 31 December 2025.

4. VAT

Case Law

CJ Judgment on VAT treatment of administration fees for export refunds (*Határ Diszkont Kft.*, C-427/23)

On 1 August 2025, the CJ delivered its judgment in the case *Határ Diszkont Kft.* (C-427/23).

This case concerns the VAT treatment of administration fees charged by Határ Diszkont Kft. for processing VAT refunds to non-EU customers who purchase goods in Hungary and export them outside the EU. Határ Diszkont Kft argued that the fees should be VAT exempt as either ancillary to the VAT exempt export of goods or as VAT exempt financial services.

The CJ held that the administration of VAT refunds constitutes a supply of services that is distinct from the export supply. As such, the VAT exemption for export supplies does not apply. The CJ ruled that the services also do not fall under the exemption for financial transactions. The CJ held that the administration fee must be treated as including VAT if the supplier cannot recover the VAT from its customer.

CJ Judgment on liability for incorrectly invoiced VAT (*Finanzamt Österreich*, C-794/23)

On 1 August 2025, the CJ issued its judgment in the case *Finanzamt Österreich* (C-794/23).

This case concerns the liability for incorrectly invoiced VAT when a taxable person issues invoices that state an incorrect VAT rate. P GmbH operated an indoor playground in Austria and applied the standard VAT rate (20%) to admission fees. The reduced rate (13%) should have been applied instead. After initially declaring VAT at 20%, P GmbH requested a refund of the overpaid VAT. The Austrian tax authority refused the correction, citing the impossibility of amending the simplified invoices and the risk of unjust enrichment.

The CJ ruled that when a supplier applies an incorrect VAT rate, that supplier in principle is not liable for the excess VAT amount if the customer is a non-taxable person (no risk of loss of tax revenues).

CJ Judgment on special margin scheme for works of art supplied via legal entities (*Galerie Karsten Greve*, C-433/24)

On 1 August 2025, the CJ delivered its judgment in the case *Galerie Karsten Greve* (C-433/24).

This case concerns the application of the special VAT margin scheme to works of art supplied by the creator through a legal person. Art gallery Galerie Karsten Greve (GKG) acquired paintings from Studio Rubin Gideon (SRG), a UK company of which the artist Gideon Rubin was a partner. GKG applied the margin scheme to its sales of these works. The French tax authorities challenged this, arguing the margin scheme was not available because the works had not been supplied directly by the creator but by a legal person.

The CJ held that the VAT Directive allows the special margin scheme to apply to supplies of works of art by taxable dealers where the works were supplied to the dealer by the creator or their successors in title, even if the supply is made through a legal person. This is subject to two conditions: first, the supply by the legal person must be attributable to the creator or their successors in title (for example, where the legal person was established for the purpose of marketing the creator's works); and second, the supply to the taxable dealer must constitute the first introduction of those works onto the EU market. Any subsequent supply from the taxable dealer should be subject to the regular margin scheme if the applicable requirements are met.

CJ Judgment on joint and several VAT liability in fraud cases (*KONREO*, C-276/24)

On 10 July 2025, the CJ delivered its judgment in the case *KONREO* (C-276/24).

The Czech tax authorities held FAU jointly and severally liable for unpaid VAT on certain transactions. At the same time, the authorities denied FAU the right to deduct input VAT on those transactions by arguing that FAU knew or should have known it was involved in VAT fraud. FAU challenged the simultaneous application of these measures. It argued that the measures were disproportionate, especially since it had already paid VAT to its supplier and was unable to recover such VAT due to the supplier's insolvency.

The CJ confirmed that both measures can be applied simultaneously in cases where the taxable person knew or should have known they were involved in VAT fraud. Each measure serves a distinct purpose. On the one hand, refusal of deduction aims to prevent unjust enrichment and combat fraud. On the other hand, joint liability ensures the collection of tax revenue. The CJ ruled that the combined application of these measures does not breach the principle of proportionality even if the recipient had already paid the VAT to its supplier.

AG Ćapeta's Opinion regarding VAT rates for ancillary hotel services (*J-GmbH and Others*, joint cases C-409/24, C-410/24 and C-411/24)

On 25 September 2025, the Opinion of AG Ćapeta was published in the joint cases *J-GmbH and others* (C-409/24, C-410/24 and C-411/24).

Under German VAT law, a reduced VAT rate applies to short-term accommodation services. The German VAT law requires ancillary services - such as breakfast, parking, or access to wellness facilities - to be taxed separately at the standard rate, even if they are provided together with accommodation and included in a single price. This 'breakdown requirement' aims to prevent hotels from gaining a competitive advantage over standalone providers of similar services (e.g., restaurants or car parks), ensuring fiscal neutrality.

The applicants argued that services such as breakfast and parking should be taxed at the same reduced rate as accommodation, as they are ancillary and inseparable from the accommodation.

AG Ćapeta clarified that the VAT Directive does not preclude national legislation requiring hotels to tax ancillary services at the standard rate even if they are ancillary to the accommodation. The Opinion emphasized that Member States have discretion to apply reduced rates only to concrete and specific aspects of a supply category, as long as fiscal neutrality is respected. According to the AG, the breakdown requirement is compatible with EU law because it prevents hotels from gaining an unfair advantage over standalone providers of ancillary services. Ancillary services are not inseparable from accommodation, so national legislation may insist on separate VAT treatment for these supplies according to the AG.

AG Kokott's Opinion regarding VAT treatment of in-game currency trading (*Žaidimų valiuta*, C-472/24)

On 11 September 2025, the Opinion of AG Kokott was published in the case in the case '*Žaidimų valiuta*' (C-472/24).

This case concerns the VAT treatment of the trade in 'in-game gold'. The Lithuanian company 'Žaidimų valiuta' bought and sold virtual gold used in a game called RuneScape. The Lithuanian tax authorities argued that VAT was due as the activities constituted taxable supplies of electronic services.

The company argued that its activities should be VAT exempt as transactions concerning currency, or alternatively, that in-game gold should be treated as a multi-purpose voucher, with VAT only due upon redemption. The company also claimed that, at most, only the margin (difference between purchase and sale price) should be taxed, as the margin scheme for second-hand goods should apply.

AG Kokott concluded that the sale of in-game gold does not qualify for the VAT exemption for transactions concerning currencies, as in-game gold is not a legal means of payment nor a contractually accepted means of payment between market participants outside the game. The AG further stated that in-game gold does not meet the definition of a voucher for VAT purposes. The in-game gold does not embody an obligation to accept it as consideration for a supply of goods or services, nor does it have a determinable value for the issuer.

Regarding the margin scheme, AG Kokott acknowledged that the margin scheme applies to tangible goods. AG Kokott argues that the margin scheme should also be available for intangible items such as in-game gold if these items are traded on a secondary market in a way comparable to second-hand goods. Application of the margin scheme would, however, only be appropriate if the in-game gold was originally acquired by a non-taxable person or similar person not entitled to reclaim the VAT on its purchase.

AG Kokott's Opinion regarding VAT treatment of loyalty points (*Lyko Operations AB*, C-436/24)

On 11 September 2025, the Opinion of AG Kokott was published in the case *Lyko Operations AB* (C-436/24).

Lyko Operations AB operates a customer loyalty program in which customers earn points with each purchase. These points can later be redeemed for goods in a dedicated 'points shop' but only in connection with a subsequent purchase. The points are not transferable, have no fixed monetary value and cannot be exchanged for cash. The value of the goods in the points shop is relatively low and the points expire if not used within two years. Participation in the program is free for customers and the points are awarded automatically based on the value of purchases.

The question arose whether such loyalty points qualify as 'vouchers' for VAT purposes. The relevance lies in the tax point. In case of a multi-purpose voucher, the VAT becomes due at redemption of the voucher rather than at the time of issuance.

AG Kokott opined that the Lyko points do not constitute vouchers within the meaning of the VAT Directive. The AG explained that the points do not entitle the customer to goods independently, but only in conjunction with a new purchase. Lyko is not obliged to accept the points as standalone consideration for a supply. that the points lack a fixed monetary value and are not transferable. According to the AG, the points function as a discount mechanism, reducing the taxable amount when redeemed in a future transaction. As a result, the AG opined that the issuance of points should be outside the scope of VAT.

AG Kokott's Opinion regarding VAT exemption for cost-sharing groups (joint cases *Agrupació de Neteja Sanitària and Educat Serveis Auxiliars*, C-379/24 and C-380/24)

On 10 July 2025, the Opinion of AG Kokott was published in the joint cases *Agrupació de Neteja Sanitària* (C-379/24) and *Educat Serveis Auxiliars* (C-380/24).

These cases concern the VAT exemption for cost-sharing groups. This VAT exemption allows an (independent) cost-sharing group to provide services to its members without triggering VAT if specific conditions are met. The members must be engaged in certain VAT exempt activities or not qualify as VAT taxable persons. The exemption aims to take away adverse VAT effects in case certain activities for the benefit of the members are outsourced to a cost-sharing group.

The cost-sharing groups Agrupació de Neteja Sanitària and Educat Serveis Auxiliars provided cleaning services in hospitals and schools to their members and claimed the VAT exemption for cost-sharing groups. The Spanish tax authorities argued that the exemption does not apply when services are outsourced.

AG Kokott clarified that the exemption applies when the 'shared services' are used for the VAT exempt activities of the members and are typically necessary for those activities. Common services such as cleaning in healthcare and education may, under circumstances, qualify for the exemption. AG Kokott also emphasised that the exemption should be denied if there is a genuine and immediate risk of competition distortion. The mere existence of a market or outsourcing of services does not suffice as such, according to the AG.

AG Kokott's Opinion regarding VAT liability for partnerships without legal personality (*Česká síť s.r.o.*, C-796/23)

On 3 July 2025, the Opinion of AG Kokott was published in the case *Česká síť s.r.o.* (C-796/23).

The Czech tax authorities treated a group of four legal entities as a single taxable person for VAT purposes (partnership). Each entity provided internet services to its own group of customers. The authorities considered that, taken together as a partnership, the combined turnover exceeded the turnover threshold for the small enterprise exemption. Česká síť s.r.o. was designated as the responsible partner under Czech law and assessed for VAT on the combined turnover of all entities.

The question arose whether it is compatible with EU VAT law for one partner to be held liable for the VAT due on all transactions of the partnership, even if other partners dealt with customers in their own name. AG Kokott clarified that, for the qualification as a taxable person for VAT purposes, a person does not need to have legal personality but must have legal capacity. This is the case if the relevant person is able to hold rights and obligations and can take action in legal relations. A person with legal capacity is attributed with the activities performed in his/her/its name, on his/her/its behalf, under his/her/its responsibility, and whether the person bears the economic risk associated with the carrying-out of those activities. If each partner provides services in its own name and on its own behalf, each is to be regarded as a separate taxable person, liable for VAT on its own transactions. Internal agreements or partnership arrangements do not alter this outcome for VAT purposes.

AG Kokott's Opinion regarding the VAT taxable amount for intra-group services (*Högkullen* AB, C808/23)

On 3 July 2025, the CJ delivered its judgment in the case *Högkullen AB* (C808/23).

Högkullen AB is a Swedish holding company that provided intra-group services for consideration to its subsidiaries, which are engaged in real estate management and partially perform VAT exempt activities. The services include company management, financing, real estate management, IT, and personnel management. The fees for the services are calculated based on the so-called 'cost-plus' transfer pricing method. The subsidiaries cannot fully deduct the VAT on the fees charged by Högkullen AB.

As a general rule, VAT is levied on the consideration received for a supply. Member States may opt to apply the open market value if related parties perform supplies below the open market value and the customer cannot (fully) deduct the VAT. The open market value consists of the price of a comparable supply or, if no comparable supply exists, at least the full cost price of the services. Sweden has implemented such option.

The Swedish tax authorities revalued the VAT taxable amount on the intra-group services performed by Högkullen AB and applied the open market value. They considered the services provided as one single supply for which there is no comparable supply.

The CJ ruled that Högkullen AB provided multiple distinct services instead of a single service. Even though one overall price was charged using the cost-plus-method, each of the five services must be assessed individually for VAT purposes. Accordingly, for each service the open market value should be based on the price for comparable services, instead of the full cost base of Högkullen AB.

5. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ Judgment on the repayment or remission of wrongly collected customs duties (*Caves Andorranes*, C-206/24)

On 1 August 2025, the CJ delivered its judgment in the case of *Caves Andorranes* (C-206/24) on the obligation of EU Member States to repay customs duties levied in breach of European Union law on their own initiative.

Between 1988 and 1991, Andorran companies imported goods originating in third countries into Andorra that were transported through France. During this time, the French customs authorities required that, in such situations, the goods were to be released for free circulation when crossing French territory, thus incurring import duties in France. Following an opinion issued by the European Commission which stated that this practice breached EU law, the French authorities repealed this requirement in June 1991.

In 2015, the legal successors of the Andorran importers, *Caves Andorranes* and *YX*, brought proceedings against the French customs authorities, seeking repayment of the customs duties that had been wrongly collected between 1988 and 1991. They argued that the French customs authorities were obligated to repay wrongly collected customs duties on their own initiative when established within a time limit of three years from the date on which the customs duties were notified, regardless of the fact that the French customs authorities did not have the information necessary to determine the amount of customs duties to be repaid and the identity of the persons liable for payment.

Following the proceedings, the *Cour de cassation* (Court of Cassation, France) referred two questions to the CJ for a preliminary ruling.

The CJ considered that the customs legislation in question establishes an obligation for the customs authorities to repay customs duties incorrectly levied on their own initiative, without requiring the importer to request such repayment. This obligation arises when the national customs authorities have themselves established that the customs duties were wrongfully collected within a period of three years from the date on which the duties were entered into their accounts. In addition, the CJ noted that this does not mean that repayment of the wrongfully collected customs duties must take place within this period of three years, which means that the customs authorities can repay these customs duties after this time.

It is settled case law that the authorities of a Member State cannot plead practical, administrative or financial difficulties in order to justify a failure to observe obligations arising under EU law. Nevertheless, national customs authorities may require information for repayment, such as the identity of the person or person who succeeded the person who paid the wrongly collected customs duties, and the bank account details into which the repayment is to be made.

In such situations, the CJ considered that national customs authorities must take the necessary and appropriate measures to obtain this information, but without being required to conduct disproportionate research beyond what may reasonably be expected of a diligent administration. In any case, the CJ considered that a passive attitude on the part of national customs authorities is not compatible with the obligation to repay wrongfully collected customs duties on the own initiative of the national customs authorities.

General Court Judgment on whether excise duties become chargeable as a result of excise goods appearing on falsified invoices (*Gotek*, T-534/24)

On 9 July 2025, the General Court issued its judgment in the case of *Gotek* (T-534/24) regarding excise duties becoming chargeable on the basis of a fictitious supply of excise goods appearing on falsified invoices.

On 1 July 2019, the *Porezna uprava, Područni ured Virovitica* (Tax Office, Virovitica, Croatia) found that the owner of a craft business (MK) had deducted input VAT on the basis of invoices for supplies of petroleum products which had been proven to be falsified, and that no supplies of petroleum products had actually taken place. Subsequently, following a review carried out by officials of the customs authorities, it was concluded that MK had committed an abuse of rights in moving excise goods, namely petroleum products, resulting in excise duties becoming chargeable pursuant to national legislation. Consequently, MK was issued a tax assessment notice for excise duty payable on energy products.

By an administrative decision of the Ministry of Finance of the Republic of Croatia, the complaint of MK against the tax assessment notice was rejected. Subsequently, MK brought an action against that administrative decision before the *Upravni sud u Osijeku* (Administrative Court, Osijek, Croatia). MK argued before this court that the petroleum products which resulted in the excise duties at issue becoming chargeable had never existed. In light of this, this court recalled that excise duty constitutes a tax on the consumption of excise goods. Consequently, it questioned whether excise duties can be established in the situation in which there has not been any actual movement in relation to excise goods and falsified invoices were issued for the petroleum products for the purpose of unlawfully exercising the right to deduct input VAT. Under these circumstances, the Administrative Court referred one question to the CJ for a preliminary ruling.

The General Court first considered that the concept of release for consumption, which determines the time when excise duty becomes chargeable, should be interpreted in a uniform manner in all EU Member States. The situations in which a release for consumption occurs are set out in Article 7(2) of Directive 2008/118, and this provision does not allow for situations other than those listed in which goods subject to excise duty may be considered released for consumption, thus ensuring a uniform interpretation across all EU Member States.

Furthermore, the General Court considered that in the situation in the main proceedings, a tax assessment notice was imposed in the context of fictitious supplies of excise goods appearing on falsified invoices. As this situation is not mentioned in Article 7(2) of Directive 2008/118, it cannot be regarded as a release for consumption within the meaning of that provision.

Lastly, the General Court considered that EU Member States may take appropriate measures to protect their financial interests and that the prevention of possible tax evasion, tax avoidance and abuse are legitimate objectives that EU Member State may pursue. However, the regulatory power of EU Member States to adopt measures to undertake such objectives may not be exercised so as to infringe the provisions of Directive 2008/118, as this may undermine the objective of harmonisation pursued by the EU legislature.

Developments

European Commission proposal for the revision of the Tobacco Taxation Directive

On 16 July 2025, the European Commission adopted a proposal for a revision of Directive 2011/64/EU, on the structure and rates of excise duty applied to manufactured tobacco (Tobacco Taxation Directive).

The proposed revision of the Tobacco Taxation Directive aims to update the legal framework for the taxation of tobacco to ensure the proper functioning of the internal market and, at the same time, ensure a high level of health protection, promote the coherent fiscal treatment of tobacco and tobacco-related products, and mitigate the risk of fraud, such as the illicit manufacturing of cigarettes inside the EU.
The proposal contains an extension of the scope of the Tobacco Taxation Directive to other tobacco-related products which are currently outside the scope of EU excise legislation, such as liquids for electronic cigarettes, nicotine pouches and other nicotine products, thus harmonizing taxation of such tobacco-related products that are already subject to national tax regimes in some EU Member States.

In order to reduce the disparity in excise duty rates between EU Member States, the minimum excise duty rates on tobacco and tobacco-related products would be increased. These minimum excise duty rates would be established for each category of tobacco product or tobacco-related product, where a distinction is made between, for example, cigarettes, heated tobacco, and liquids for electronic cigarettes.

Furthermore, minimum excise duty rates will be partly determined by the specific economic situations in a specific EU Member State, based on the purchasing power of its residents, alongside an overarching EU minimum excise duty rate expressed in nominal terms. Furthermore, the proposal allows for a periodic review of the minimum excise duty rates based on changes in the purchasing power of residents in an EU Member State, as well as a periodic review of the overarching EU minimum excise duty rate expressed in nominal terms based on changes in the Harmonized Index of Consumer Prices (HICP) at the EU level.

In addition, the proposal includes the extension of the scope of the Tobacco Taxation Directive to raw tobacco, meaning any form of harvested tobacco that has been cured or dried and does not qualify as manufactured tobacco (which is already subject to the current Tobacco Taxation Directive). The inclusion of raw tobacco to the Tobacco Taxation Directive would make it subject to the excise movement and control system (EMCS) which would allow EU Member States to monitor supply-chain movements of raw tobacco and thus detect irregularities in order to fight against the surge of clandestine tobacco factories in the EU customs territory.

The European Commission aims for the revised Tobacco Taxation Directive to be adopted in national legislation by the EU Member States by 31 December 2027, and for the adopted measures to apply in the EU Member States as of 1 January 2028.

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