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EU Tax Alert

Recent developments for
tax specialists

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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, the Council of the European Union (Council) and the European Parliament.

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1. Highlights in this edition



CJ judgment on whether Belgium correctly implemented the CFC rules under the ATAD (*Commission v Belgium, C-524/23*)

On 26 February 2026, the CJ delivered its judgment in the case *Commission v Belgium* (Case C524/23). The case concerns the alleged failure by the Kingdom of Belgium to transpose Article 8(7) of Directive (EU) 2016/1164 (the Anti-Tax Avoidance Directive, **ATAD**), which requires Member States to allow a deduction for taxes paid by a controlled foreign company (**CFC**) abroad, when its income is attributed to the domestic taxpayer. The central legal issue addressed by the CJ in this case is whether the provision mentioned above must be implemented when a Member State opts for the CFC regime set out in Article 7(2)(b) ATAD, which targets only non-genuine arrangements aimed at securing a tax advantage.

The case arose after Belgium implemented CFC rules in 2017 following Article 7(2)(b) of the ATAD, which limits the CFC regime to income arising from non-genuine arrangements. In this context, Belgium did not transpose Article 8(7) of the ATAD which provides for a deduction of foreign taxes paid, on the basis of the ATAD's minimum harmonisation clause provided for in Article 3. Belgium took the position that the application of Article 8(7) was not mandatory in cases of non-genuine arrangements and that permitting deductions pursuant to Article 8(7), would undermine the intended deterrent effect of the CFC measure.

The European Commission disagreed with this view. It sent a letter of formal notice on 2 July 2020, followed by a reasoned opinion on 2 December 2021, requesting Belgium

to comply within two months. Although Belgium indicated that legislative changes were contemplated, no political agreement was reached, and no transposition of Article 8(7) occurred within the prescribed period. Consequently, the Commission brought infringement proceedings before the CJ on 11 August 2023.

In the context of the infringement proceedings, the central legal issue before the CJ was whether Article 8(7) of the ATAD must be transposed by Member States in all situations covered by Article 7(2) ATAD, including where a Member State applies the option provided for in Article 7(2)(b). Or could Member States, on the other hand, retain discretion not to implement Article 8(7) and thus refuse a deduction of foreign taxes paid on the basis of minimum harmonisation and/or antiabuse considerations.

In its judgment, the CJ first recalled that a directive is binding with regard to the result to be achieved and that Member States must ensure its full effectiveness within their legal orders. Even where a directive provides for minimum harmonisation, Member States may not adopt or maintain measures that undermine the objectives or mandatory provisions of that directive.

Following a grammatical interpretation of Article 8(7) ATAD, the CJ emphasized that mandatory language had been used, leaving no discretion as to whether such a deduction must exist in national law. According to the CJ, the wording clearly indicated that such a deduction provision needed to be transposed in the respective national law of the Member State. The CJ held that the context of Articles 7 and 8 ATAD confirms this interpretation. Following a systematic interpretation, the CJ held that the deduction mechanism of Article 8(7), forms an integral and exhaustive part of the CFC framework which, therefore,

was required to be transposed irrespective of whether the CFC approach in Article 7(2)(a) or Article 7(2)(b) had been chosen.

The CJ rejected Belgium's reliance on Article 3 ATAD (minimum level of protection), holding that Member States may not invoke stricter national measures to disapply a provision that exhaustively regulates a specific issue, such as the elimination of double taxation arising from the CFC rules. It also dismissed the argument that denying the deduction was justified by deterrence or by the arm's length allocation under Article 8(2), noting that double taxation is neither necessary nor proportionate to combat tax avoidance.

Finally, the CJ stressed that Article 8(7) ATAD serves a dual objective: combating tax avoidance while preventing new barriers to the internal market, such as double taxation. Allowing Member States to omit the deduction would lead to unequal treatment of taxpayers and conflicts between national systems, contrary to the Directive's objectives. On that basis, and contrary to the Opinion of AG Kokott (see [EUTA 211](#)) the CJ concluded that Belgium was required to transpose Article 8(7) ATAD and that its failure to do so constituted a breach of EU law.

European Commission launches call for evidence on Omnibus on Taxation

On 17 February 2026, the European Commission launched a [call for evidence](#) for its upcoming 'Omnibus on taxation', a largescale tax simplification initiative intended to reduce reporting and compliance burdens for businesses and strengthen EU competitiveness. The legislative proposal is expected to be published in the second quarter of 2026.

Through this consultation, the Commission seeks feedback on the functioning of key corporate tax directives, including the ParentSubsidiary Directive, the Interest and Royalties Directive, the Merger Directive, ATAD and the Tax Dispute Resolution Mechanisms Directive. The input collected will help the Commission assess policy options aimed at reducing unnecessary compliance requirements, eliminating outdated or overlapping rules,

simplifying and clarifying legislative provisions, and streamlining procedures and reporting obligations.

Initially, the call for evidence was open until 16 March 2026. This date was later extended to 30 March 2026.

European Commission confirms application of OECD Side-by-Side Package

On 5 January 2026, the OECD published the Side-by-Side Package as part of the Inclusive Framework, aimed at supporting a coordinated and workable implementation of Pillar Two. The package seeks to simplify compliance and ensure a level playing field through a number of coordinating measures, including a simplified effective tax rate (ETR) safe harbour, an extension of the transitional country-by-country reporting (CbCR) safe harbour, a substance-based tax incentive safe harbour and a Side-by-Side system addressing the interaction between different regimes. The package has a technical and facilitating character and adds new optionality and technical complexity that MNE Groups will need to navigate carefully. For further background on the Side-by-Side Package, reference is made to our [webpost](#).

Following the publication of the Side-by-Side Package, on 12 January 2026 the European Commission published a Notice (C/2026/253) in which it acknowledged the OECD Inclusive Framework Agreement on the Side-by-Side Package and confirmed its application in the context of Article 32 of Council Directive (EU) 2022/2523 of 14 December 2022 (**Minimum Taxation Directive**). In doing so, the European Commission confirmed that all Member States consented to the measures in the OECD Side-by-Side Package so that the OECD guidance may be considered when applying the EU Pillar Two Rules.

In addition, in response to a Parliamentary question delivered on 4 February 2026, Commissioner Wopke Hoekstra [confirmed](#) that the Side-by-Side Package provides for the full application of Pillar Two domestic top-up taxes in implementing jurisdictions, including the European Union, also with respect to US businesses. At the same time,

the package is intended to deliver significant compliance simplifications and a more favourable treatment of certain tax incentives applied by EU Member States..

CJ judgment regarding VAT treatment of loyalty points (*Lyko Operations AB*, C-436/24)

On 5 March 2026, the CJ delivered its judgment in the case C-436/24 (*Lyko Operations AB*). The case concerns the question of whether loyalty points must be treated as a 'voucher' within the meaning of the VAT Directive (Directive 2006/112).

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 and the taxable amount in respect of the points.

The CJ ruled that the Lyko points do not constitute vouchers within the meaning of the VAT Directive. The reasoning is that the points do not create any obligation on the part of the supplier presented with them to accept the Lyko points as consideration for a supply of goods. The Lyko points only enable holders who decide to make a new purchase from that supplier to obtain, as a bonus, additional goods of low value. This ruling of the CJ implies that the issuance of the points itself does not attract VAT.

Opinion of AG Kokott on VAT implications of transfer pricing adjustments (*Stellantis Portugal*, C-603/24)

On 15 January 2026, the Opinion of AG Kokott was published in the case C-603/24 (*Stellantis Portugal*). The case deals with the VAT aspects of a transfer pricing (TP) adjustment for intra-group supplies of goods.

The case concerns an international group that is involved in the distribution of motor vehicles. Stellantis Portugal functions as a domestic distribution company. It acquires the vehicles from an affiliated manufacturing company and subsequently sells the vehicles to (third-party) dealers. The dealer sells the vehicles to end-customers.

Based on intra-group transfer pricing policy, Stellantis Portugal is required to realize a certain minimum operating margin for the distribution activities. That margin is based on a 'resale minus' approach and by considering the external vehicle sales prices and distribution costs (including repair costs and other operating expenses). To bring the actual operating margin of Stellantis Portugal in line with the agreed operating margin under the intra-group transfer pricing policy, the manufacturing company periodically issues debit and/or credit invoices for its supplies to Stellantis Portugal (depending on whether the underlying vehicle prices paid by Stellantis Portugal should be decreased or increased). In the litigated year, credit notes were issued by the manufacturing company, which resulted in a payment by the manufacturing company to Stellantis Portugal. No VAT is included on the credit invoices as parties considered the transfer pricing adjustments as payments outside the scope of VAT.

The Portuguese tax authorities argued that in return for the payment received from the manufacturing company Stellantis Portugal rendered VAT taxable services to the manufacturing company. As no VAT was declared by Stellantis Portugal on the amounts received from the manufacturing company, the Portuguese tax authorities imposed VAT assessments on Stellantis Portugal.

According to the AG, the amounts due by the manufacturing company to Stellantis Portugal should be qualified as a (downward) price adjustment for the vehicles supplied by the manufacturing company to Stellantis Portugal. In that regard, the AG deemed relevant that the contractual agreement between the manufacturing company and Stellantis Portugal relates to vehicle sales, that there is a direct link between the TP adjustment and the vehicle sales and that there is no separate legal relationship under which Stellantis Portugal provides any services for consideration to the manufacturing company.

Council has formally approved new customs duty rules for items contained in small parcels entering the EU

On 11 February 2026, the Council formally [approved](#) new customs duty rules for items contained in small parcels entering the EU, largely via e-commerce. The new rules respond to the fact that such parcels currently enter the EU duty free, leading to unfair competition for EU sellers. The rules abolish the threshold-based customs duty relief for parcels valued at under EUR 150 entering the EU. Customs tariffs will, therefore, start to apply to all goods entering the EU once the EU customs data hub - under discussion as part of a broader fundamental reform of the customs framework - is operational. This is currently expected in 2028.

Until that time, EU Member States have agreed to introduce an interim flat rate customs duty of EUR 3 on items contained in small parcels valued at less than EUR 150 sent directly to consumers in the EU. As of 1 July 2026, the duty will be levied on each different category of item, identified by their tariff sub-headings, contained in a parcel.

2. Direct Taxation



Case Law

CJ judgment on procedural aspects of withholding tax relief under the Interest and Royalties Directive (*Erdrich Umformtechnik GmbH v Odvolací finanční ředitelství*, Case C-828/24)

On 5 March 2026, the CJ delivered its judgment in the case *Erdrich Umformtechnik GmbH v Odvolací finanční ředitelství* (C-828/24) concerning the interpretation of Article 1(12) of the Interest and Royalties Directive (IRD), which provides the conditions and administrative procedure that a source State may require before granting the withholding tax exemption foreseen under the IRD.

Article 1(1) of the IRD provides that interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State. In turn, Article 1(12) of that directive allows the source Member State to make an administrative decision, which is adopted after the submission of an attestation and such supporting information as that Member State may reasonably have requested, a condition for exemption from any taxes.

In this case, a German company named Erdrich Umformtechnik (Erdrich) applied to the Czech tax authorities for an exemption from tax on royalty income it had received during the period 2014–2018. The latter granted the exemption for royalties received during 2017–2018 but refused it for those received in the period 2014–2016, holding that the

application filed by the company was submitted after the two-year time limit derived from Article 1(15) of the IRD. Erdrich challenged the decision before the Prague City Court, which dismissed the action on the basis that the two-year time limit applied, even though Czech law sets no explicit deadline. Erdrich appealed that decision, disputing the vertical direct effect of Article 1(15) and arguing that the time limit concerned refund applications, not exemption applications under Article 1(12).

In this context, two questions were referred to the CJ. The first question concerned the question of whether the IRD must be interpreted as allowing the source Member State to grant, on the basis of a decision pursuant to Article 1(12) of that directive, an exemption in respect of a period prior to the date of that decision, or even in respect of a period prior to the date of the provision to the competent authority of the attestation and supporting information as that Member State may reasonably request. In this respect, the CJ found that the provisions of the IRD do not provide for the scope of an exemption to be restricted solely to the period postdating that on which the decision referred to in Article 1(12) is adopted, or even postdating the provision of the attestation and supporting information to the competent authority. On this basis, the Court concluded that the IRD must be interpreted as allowing the source Member State to grant an exemption in respect of a period prior to the date of the decision mentioned in Article 1(12), or even in respect of a period prior to the date of the provision to the competent authority of the attestation and such supporting information as that Member State may reasonably request.

The second question referred to the Court concerned whether the IRD must be interpreted as setting a time limit for the provision of the attestation and such supporting information that the source Member State may reasonably request in order to adopt an exemption decision under Article 1(12) or as laying down a limit on the duration of the period prior

to the provision of that attestation and supporting information in respect of which an exemption may be granted. In this regard, the CJ found that neither paragraphs (12) or (13) of Article 1 of the IRD prescribe a time limit for the provision of the attestation and supporting information to the competent authority nor that it sets a limit on the duration of the period prior to the provision of that attestation and supporting information in respect of which an exemption may be granted. Furthermore, the Court noted that Article 1(15) does not prescribe a time limit applicable to exemption applications and that it appears, subject to verification by the referring court, that there was no obligation on Erdrich under such provision. In addition, the CJ recalled that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against that individual and clarified that, since the IRD does not set a time limit for the provision of the attestation and supporting information for an application for an exemption from tax on royalty income, it is for the domestic legal system of each Member State to set that time limit. Therefore, it noted that the referring court must verify whether, under Czech law, a time limit is applicable to the situation at issue in the main proceedings.

On such basis, the CJ concluded that the IRD must be interpreted as not setting a time limit for the provision of the attestation and supporting information that the source Member State may reasonably request in order to adopt an exemption decision under Article 1(12) of that directive, or a limit on the duration of the period prior to the provision of that attestation and supporting information in respect of which an exemption may be granted.

Dutch Supreme Court judgment on the compatibility of the de-merger facility presumption of abuse with the EU Merger Directive (22/04085)

On 27 February 2026, the Dutch Supreme Court delivered its judgment in a case concerning the compatibility of a subparagraph of the Dutch demerger facility provision included in the Dutch corporate income tax Act 1969, with the European Merger Directive (Council Directive 2009/133/EG of 19 October 2009, the **Merger Directive**). The respective subparagraph effectively establishes a presumption of a tax avoidance

motive in case the shares of the demerged entity are alienated within a period of three years following a facilitated demerger.

The case concerned a Dutch funeral insurance company (the **Applicant**) that formed part of a Netherlandsbased insurance group. In 2017, the taxpayer informed the Dutch tax authorities of a proposed step plan which consisted of a sale of its business to an unrelated buyer through a facilitated (i.e., tax-neutral) demerger followed by a sale of the shares of the demerged entity. The notification of this step plan was made together with an explanation of the businesslike reasons behind the envisaged demerger and the subsequent sale of the shares in the demerged entity. This to substantiate that in the view of the Applicant, the demerger facility should apply. Accordingly, the Applicant had also filed a request with the Dutch tax authorities to obtain certainty that the demerger was not primarily aimed at avoiding or deferring taxation. The Dutch tax authorities rejected such request as in their view, the Applicant had not made plausible that the demerger was not primarily aimed at avoiding or deferring taxation. In this respect, the Dutch tax authorities relied, among other things, on the subparagraph of the demerger facility which states that a demerger is presumed not to be driven by businesslike reasons (and thus in principle is aimed at the avoidance or deferral of taxation) when the shares of the demerged entity are alienated within a period of three years following a facilitated demerger.

Despite the view of the Dutch tax authorities, the Applicant executed the step plan including the demerger and the alienation of the shares of the demerged entity. Accordingly, the Dutch tax authorities denied the application of the demerger facility. Following a successful appeal filed by the Applicant with a Dutch lower court of first instance, this first instance judgment was reversed by the Dutch Court of Appeal. Subsequently, the Applicant appealed to the Dutch Supreme Court arguing that the subparagraph included in the demerger facility that effectively establishes the aforementioned presumption of a tax avoidance/deferral motive, is incompatible with the anti-abuse provision included in the Merger Directive.

In its judgment, the Dutch Supreme Court first pointed out that the relevant subparagraph included in the demerger provision aims to implement the anti-abuse provision included in the Merger Directive. Hence, according to the Dutch Supreme Court, such subparagraph needs to be interpreted in light of the Merger Directive, the related case law of the CJ on abuse of rights and the applicable rules on the burden of proof.

The Dutch Supreme Court thereafter noted that it follows from case law of the CJ that, in implementing the anti-abuse rule of the Merger Directive, no general presumption of tax fraud or tax avoidance may be applied. According to the Dutch Supreme Court, the relevant subparagraph included in the demerger provision establishes such a general presumption of tax fraud or tax avoidance. This as the subparagraph applies even when the Dutch tax authorities have not provided *prima facie* evidence that the demerger was not driven by businesslike reasons and or that the demerger was aimed at the avoidance or deferral of taxation. According to the Dutch Supreme Court, the mere fact that a disposal of shares in the demerged entity takes place within three years of the demerger taking place does not in itself mean that the demerger is not based on businesslike reasons or that the demerger is aimed at avoiding or deferring taxation.

Accordingly, the Dutch Supreme Court held that the subparagraph included in the demerger facility provision is incompatible with the anti-abuse rule included in the Merger Directive insofar as the subparagraph implies a general presumption that there are no business-like reasons for the demerger in the event that the shares in the demerged entity are alienated within a three-year period following the demerger. This general presumption included in the subparagraph, therefore, must be disregarded. In the Court's view, the Dutch tax authorities have to provide at least *prima facie* evidence that no businesslike reasons are present or that the demerger is aimed avoiding or deferring taxation.

Developments

European Parliament's Subcommittee on Tax Matters (FISC) discuss the 28th regime, financial sector tax policy and the future of DEBRA

On 24 February 2026, the European Parliament's Subcommittee on Tax Matters (**FISC**) held meetings where three major taxpolicy debates shaping the EU's economic and regulatory agenda were discussed. In examining the feasibility of a '28th tax regime' for EU companies, stakeholders stressed the need for simplification, legal certainty, and optionality. Proposals ranged from a targeted 'Regime 0' model focused on innovative scale-ups (with streamlined incorporation and more favourable rules for employee equity compensation) to a modular framework aimed at reducing fragmentation while avoiding the creation of an additional, parallel rulebook. Across interventions, experts emphasised neutrality, practical simplification, and respect for Treaty constraints on tax harmonisation.

FISC members also debated the future of financial-sector taxation during a presentation of the draft owninitiative report led by rapporteur Matthias Ecke. The discussion centred on the longstanding VAT exemption for financial services, which many see as a source of fragmentation and an incentive for Member States to introduce diverse sectorspecific taxes. While some political groups warned that additional taxation could undermine competitiveness, others highlighted the need for simplification, predictability, and possible EUwide solutions, including renewed consideration of a Financial Transaction Tax. Despite differing political views, there was broad agreement that the current landscape of financialsector taxation remains inconsistent and burdensome.

A third hearing assessed policy options to address the EU's persistent debtequity bias, particularly in light of the planned withdrawal of the DEBRA proposal. Experts agreed that the preferential treatment of debt distorts corporate behaviour and increases leverage but diverged on the best corrective approach. Some advocated improving the tax treatment of equity through an ACETYPE mechanism, while others favoured stricter limits on interest deductibility or warned that equity allowances could fuel tax competition.

Although consensus exists that the bias remains a real structural problem, opinions differed sharply on how the EU should address it and what should replace DEBRA going forward.

Members European Parliament express frustration over withdrawal of key EU tax initiatives

During a meeting on 9 February 2026 with Commissioner for Taxation, Wopke Hoekstra, Members of the European Parliament (**MEPs**) from the ECON and FISC committees voiced concerns over the withdrawal of several major tax files from the list of legislative initiatives of the European Commission. While acknowledging the MEPs' frustration, the Commissioner pointed to the changed geopolitical and economic environment and the lack of support among Member States as the main reasons for reassessing the viability of these proposals.

The discussion focused on the Financial Transaction Tax, the Transfer Pricing Directive, the Unshell Directive, the DEBRA proposal and elements of the VAT reform package. According to the Commissioner, these files face either no prospect of unanimity, no appetite in Council, or fundamental objections from Member States. He nevertheless confirmed that the Commission intends to preserve core elements of some initiatives by incorporating them into other future proposals.

MEPs urged the Commission not to abandon economically sound projects solely due to political resistance and suggested exploring enhanced cooperation for DEBRA. They also requested clarity on the way forward for Digital Services Taxes (DSTs) and the Unshell proposal. In outlining the Commission's tax priorities for 2026, Mr Hoekstra highlighted tobacco taxation, tax simplification, further work on the Directive on Administrative Cooperation (DAC) and the Energy Taxation Directive.

European Parliament's resolution with recommendations for the 28th Regime

On 20 January 2026, the European Parliament adopted a [resolution](#) with recommendations to the European Commission for the planned 28th Regime. The resolution emphasises that the 28th regime should create a uniform and coherent corporate framework across the Union, and it calls on the Commission to assess how taxation issues can be integrated into this framework to support innovation, attract international investment and facilitate cross-border operations. Although the regime is primarily conceived as a company-law instrument, the Parliament recognises that tax considerations are essential for start-ups and scale-ups operating across multiple jurisdictions, and it encourages the Commission to explore whether a coherent approach to taxation could add value without undermining Member State competences.

The resolution highlights the need for digital tools and transparent information systems (such as a Union-level digital portal, verifiable credentials and a single company identifier) which would also improve the enforcement of tax rules and help combat fraud, money laundering and tax evasion. The Parliament stresses that harmonised digital processes would enhance legal certainty for businesses and authorities, thereby reducing administrative burdens connected to cross-border tax compliance.

In discussing safeguards, the Parliament insists that companies with established infringements concerning fraud or tax or social-security evasion should not be allowed to opt in to the 28th regime. It also underlines that the regime must not weaken existing national standards related to tax enforcement. The S.EU framework, therefore, must ensure traceability, transparency and full respect for Member States' fiscal rules, particularly regarding workers' rights, social-security systems and anti-abuse safeguards.

Finally, the Parliament notes that harmonised rules for employee financial participation (such as stock options or equity schemes) require tax considerations to ensure their cross-border applicability and attractiveness. It calls on the Commission to address these

issues as part of the broader 28th regime package, recognising that tax treatment is both sensitive and critical to attracting top talent and fostering innovation.

Cyprus Presidency of the Council sets out tax priorities for first half of 2026

On 1 January 2026, Cyprus assumed the Presidency of the Council of the European Union until 30 June 2026. In the field of taxation, the Presidency places strong emphasis on advancing the EU's tax decluttering and simplification agenda as part of broader efforts to enhance competitiveness. Building on prior Council conclusions and ongoing Commission workstreams, Cyprus published its Presidency [programme](#) where it identifies several core priorities for the coming months.

First, it intends to continue work on initiatives aimed at countering tax evasion, aggressive tax planning and harmful tax competition. This includes updating the EU list of noncooperative jurisdictions in line with the February 2025 criteria on tax good governance. Second, the Presidency will initiate work on the upcoming recast of the Directive on Administrative Cooperation (DAC), following the Council conclusions adopted in March 2025 and recent Commission consultations on DAC simplification. The recast is expected to streamline reporting obligations, increase legal clarity and reduce administrative burden for taxpayers and tax administrations.

Moreover, the Cyprus Presidency plans to open discussions on the upcoming Omnibus package on direct taxation, which aims to simplify and modernise EU direct tax rules and compliance processes in order to strengthen the competitiveness of EU businesses. Finally, Cyprus will advance the work of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation. The Presidency's stated ambition is to achieve a 'balanced and inclusive outcome' that reflects EU values while supporting convergence at global level.

These priorities are embedded within the broader programme of the Cyprus Presidency, which seeks to promote regulatory simplification, strengthen EU competitiveness and reinforce the Union's role in global tax governance.

European Commission publishes Guidelines under the Foreign Subsidies Regulation

On 9 January 2026, the European Commission published [Guidelines](#) under the Foreign Subsidies Regulation (**FSR**) to provide greater predictability and transparency for companies. The Guidelines clarify the Commission's twostep test for identifying distortive foreign subsidies, its approach to assessing unduly advantageous bids in public procurement procedures, and the methodology for balancing negative and positive effects of a subsidy.

The Guidelines also detail the Commission's use of the callin mechanism for below-threshold concentrations and public procurement procedures, introducing new safe harbours for lowvalue tenders, subsidies below EUR 4 million and subsidies granted in extraordinary circumstances. The Commission will present a report on the implementation and enforcement of the FSR by 14 July 2026, which may be accompanied by legislative proposals.

European Commission opens infringement procedures against several Member States for failure to transpose DAC8 and DAC9

On 30 January 2026, the European Commission issued letters of formal notice to a wide group of Member States for failing to fully transpose the most recent amendments to the Directive on Administrative Cooperation. With respect to DAC8 (Directive 2023/2226), infringement procedures were opened against Belgium, Bulgaria, Czech Republic, Estonia, Greece, Cyprus, Luxembourg, Malta, the Netherlands, Poland, Portugal and Spain. DAC8 introduces new reporting obligations for cryptoasset service providers and aims to enhance tax transparency and the exchange of financial account information.

Member States concerned now have two months to respond and complete transposition; otherwise, the Commission may proceed with a reasoned opinion.

In parallel, the Commission also opened infringement procedures for failure to transpose DAC9 (Directive 2025/872), which facilitates the filing and exchange of topup tax information returns under the Minimum Taxation Directive. In this case, letters of formal notice were sent to Belgium, Bulgaria, Czech Republic, Greece, Cyprus, Malta, the Netherlands, Portugal, Romania and Sweden. As with DAC8, the Member States have two months to reply and notify full implementation of DAC9. Both sets of procedures concerning DAC8 and DAC9 were published as part of the January 2026 Infringement Package.

3. State Aid



Developments

European Commission approves EUR 3 billion German State aid scheme supporting cleantech manufacturing

On 5 February 2026, the European Commission [approved](#) a EUR 3 billion German State aid scheme to support strategic investments expanding clean technology (cleantech) manufacturing capacity in line with the Clean Industrial Deal. The scheme, notified under Section 6.1 of the Clean Industrial Deal State Aid Framework (**CISAF**), supports additional manufacturing capacity for netzero technologies and main specific components, as well as the production of new or recovered critical raw materials needed for those technologies.

Aid may take the form of grants and tax advantages, interest subsidies for new loans or guarantees for new loans and is available across Germany until 31 December 2030. The Commission concluded that the scheme is necessary, appropriate and proportionate to accelerate the transition to a netzero economy and meets the conditions of Article 107(3)(c) TFEU and the CISAF. On this basis, the scheme was approved under EU State aid rules.

4. VAT



Case Law

CJ judgment on the VAT exemption for cost-sharing groups (*Agrupació de Neteja Sanitària & Educat Serveis Auxiliars*, Joint Cases C-379/24 and C-380/24)

On 22 January 2026, the CJ delivered its judgment in the joint cases C-379/24 (*Agrupació de Neteja Sanitària*) and C-380/24 (*Educat Serveis Auxiliars*).

The cases concerned two independent groups which provided cleaning services in hospitals and schools to their members and claimed the VAT exemption for cost-sharing groups. The groups subcontracted parts of the cleaning activities to thirdparty service providers. The Spanish tax authorities denied the VAT exemption, arguing that the services were not directly and exclusively linked to the exempt activities and that their general nature created a risk of distortion of competition.

The CJ ruled that services supplied by an independent group may qualify for the VAT exemption if those services are directly necessary for the exempt activity of the members. This requirement can also be met where the services are of a general nature and are not exclusively linked to the exempt activity. The CJ held that it is sufficient that the services contribute directly to the exercise of the exempt activity, such as cleaning services that are necessary in healthcare and education sector.

The CJ further held that a general presumption of distortion of competition is not permitted. The mere fact that services of a general nature may also be used for taxable activities or

supplied by third parties does not, in itself, justify refusing the VAT exemption. A distortion of competition must be assessed concretely and cannot be inferred automatically from the general nature of the services.

General Court judgment on VAT treatment of ‘penalty’ for the unlicensed communication of certain protected works (*Credidam*, T-643/24)

On 11 February 2026, the General Court delivered its judgment in the T-643/24 case (*Credidam*).

The case concerned a Romanian collective management organisation responsible for collecting and distributing remuneration due to performers and producers of phonograms and audiovisual works. A guest house operator had communicated protected works to the public without holding a licence. Under national law, such unlicensed use gives rise to remuneration equal to three times the amount that would have been payable under a licence.

The dispute concerned whether the amounts claimed by the collective management organisation constituted consideration for a supply of services and, if so, whether VAT should be levied only on the standard remuneration or on the full amount including the surcharge.

The General Court ruled that the unlicensed communication of protected works gives rise to a supply of services for consideration. The fact that the remuneration is imposed by law,

collected by a collective management organisation and cannot be opposed by the holders of the rights does not prevent the existence of a direct link between the service and the consideration. The Court further held that VAT applies to the total remuneration due, including the surcharge applicable in cases of unlicensed use, as that surcharge forms part of the consideration for the service and is directly linked to the communication of the protected works.

General Court judgment on the timing of the right to deduct input VAT where the invoice is received after the tax period (*I.S.A.*, T-689/24)

On 11 February 2026, the General Court delivered its judgment in the case T-689/24 (*I.S.A.*).

The case concerned a Polish trader that received purchase invoices after the relevant tax period, but before the VAT return for that period was to be filed.

Under Polish law, the tax authorities took the position that the right to deduct input VAT could only be exercised in the period in which the invoice was received, even if all substantive conditions for deduction were already satisfied in the earlier period. The company argued that this approach resulted in an unjustified deferral of the VAT deduction.

The General Court ruled that the right to deduct input VAT arises when the substantive conditions are met and cannot be postponed solely because the invoice is received in a later period, provided that the invoice is available at the time the VAT return is submitted. It held that a national rule that systematically delays the deduction in such circumstances undermines the principles of VAT neutrality and proportionality.

General Court judgment on services supplied by an association to its members (*Digipolis*, T 575/24)

On 25 February 2026, the General Court delivered its judgment in the case T575/24 (*Digipolis*).

Digipolis is an intermunicipal association incorporated by several Belgian cities which supplied ICT and telematics services to its members, as well as to third parties on an ad hoc basis. Belgium applied a long-standing administrative practice under which a commissioning association and its members were treated as a single entity for VAT purposes. As a result, services supplied by the association to its members were regarded as internal transactions falling outside the scope of VAT.

In 2010, additional autonomous public bodies, such as education, childcare and urban-development organisations, joined Digipolis as members. Following a tax audit, the Belgian tax authorities took the position that the services supplied to the newly joined members should be subject to VAT.

The General Court held that Digipolis qualified as a VAT taxable person, given that it supplied services for consideration and independently carried out an economic activity in its own name, on its own account and under its own responsibility. Its publiclaw status did not preclude this VAT liability, as the services were not performed under a special publiclaw regime and could equally be supplied by private operators.

The Court rejected the Belgian administrative practice, confirming that national law cannot reclassify taxable supplies as non-taxable transactions where an association independently carries out an economic activity.

General Court judgment on intra-Community acquisitions where VAT was incorrectly invoiced (*D GmbH*, T-638/24)

On 25 February 2026, the General Court delivered its judgment in the case T-638/24 (*D GmbH*).

D GmbH, established in Austria, acquired goods from Austrian suppliers which were delivered to other EU Member States. D GmbH communicated its Austrian VAT identification number to the suppliers. The suppliers issued invoices including Austrian VAT, even though the corresponding supplies qualified as VAT exempt intra-Community supplies.

Following a tax audit, the Austrian tax authorities took the position that the purchases resulted in taxable intra-Community acquisitions in Austria, as D GmbH had used an Austrian VAT identification number and had not demonstrated that VAT had been levied in the Member State of destination. At the same time, the VAT charged by the suppliers was considered incorrectly invoiced, with the suppliers remaining liable for that VAT.

The General Court ruled that those two VAT liabilities may coexist. It held that the taxation of the intra-Community acquisition in the Member State whose VAT identification number was used is not precluded by the fact that VAT was incorrectly invoiced on the corresponding supply. The Court further held that this outcome does not infringe the principles of VAT neutrality or proportionality, as incorrectly invoiced VAT can be corrected and refunded, thereby eliminating the risk of double taxation.

Opinion AG Brkan on the VAT treatment of credit management services in a securitisation structure (*A Oy*, T-184/25)

On 25 February 2026, the Opinion of AG Brkan was published in the case T-184/25 (*A Oy*).

The case concerned a Finnish bank that granted housing loans and subsequently transferred those loans to another group entity. Following that transfer, the acquiring entity became the holder of the loans, while the original lender continued to carry out the management of those loans, including related securities, in return for remuneration paid by the acquiring entity.

The tax authorities took the view that the VAT exemption for credit management applies only where such management is carried out by the person granting the credit, and not where the original lender continues to manage the loans after they have been transferred to another entity.

AG Brkan opined that the management of credit by an undertaking which has transferred the loans and continues to manage them for consideration does not fall within the VAT exemption. In the view of the AG, the exemption for credit management is limited to cases where the management is performed by the person granting the credit or forms part of the granting of credit itself. Extending the exemption to former lenders would be incompatible with fiscal neutrality and would allow credit management services to be supplied without VAT through contractual arrangements.

The AG further opined that the management services could not be brought within other VAT exemptions relating to guarantees or transactions concerning debts. Allowing a different exemption to apply would undermine the specific regime established for credit management and deprive it of its intended effect. Such an interpretation would effectively circumvent the legislative choice to regulate credit management separately, according to the AG. As a result, the AG advised the General Court that credit management services provided by the original lender to the acquiring entity should be subject to VAT.

CJ judgment regarding VAT rates for ancillary hotel services (*J-GmbH and Others*, joint cases C-409/24, C-410/24 and C-411/24)

On 5 March 2026, the CJ delivered its judgment in the joint cases C-409/24, C-410/24 and C-411/24 (*J-GmbH and Others*).

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.

The CJ ruled 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 ruling 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 CJ, the breakdown requirement is compatible with EU law as 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 court ruling.

5. Customs Duties, Excises and other Indirect Taxes



Case Law

General Court judgment on the subsequent amendment of a customs declaration in order to benefit the inclusion in a tariff quota (*C. sp. z o.o. sp.k.*, T-177/25)

On 28 January 2026, the General Court delivered its judgment in the case of *C. sp. z o.o. sp.k.* concerning whether an economic operator may amend a previously submitted customs declaration in order to replace the *erga omnes* rate initially applied with a preferential duty rate resulting from a tariff quota.

On 1 October 2017, a Regulation entered into force enabling, *inter alia*, the application of EU zero-tariff quotas for natural honey originating from Ukraine with an annual quota volume of 2,500 tonnes of net weight. As this date was a Sunday and not a working day, the quota number had not yet been integrated into the European TARIC and the Polish ISHZTAR. On this day, C. attempted to submit a customs declaration for honey produced by bees in Ukraine to benefit from quota No 09.6750 but failed to do so as the relevant quota number could not yet be entered into the customs declaration. On 2 October 2017, C. submitted the customs declaration again and requested the application of a zero-rate customs duty by entering quota No 09.6750. The Polish customs authority found that the tariff quota had been exhausted on the first day of its validity (1 October 2017) by other economic operators engaging in the same business who submitted customs declarations without initially claiming a preferential duty rate but subsequently amending their customs declarations to add quota No 09.6750 to those customs declarations. As the tariff quota

had been exhausted on 2 October 2017, the customs authority set the duties owed by C. at the *erga omnes* rate of 17.3%.

C. brought actions against the decision of the customs authority. This authority argued that all importers, including C., had the opportunity to submit an initial customs declaration followed by a request to amend that declaration to apply a zero-rate customs duty under quota No 09.6750. Following the legal proceedings, the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) raised doubts as to whether it is possible for economic operators to amend customs declarations in order to benefit from a preferential tariff which those economic operators knowingly chose not to claim when initially submitting those customs declarations, since there was no technical possibility of doing so. As such, preliminary questions were referred to the CJ for a preliminary ruling.

First, the CJ considered that EU customs legislation places an obligation on importers to provide accurate and complete information in customs declarations. Furthermore, the information provided in a customs declaration is in principle irrevocable, exceptions to which are defined in EU customs legislation and these exceptions should be interpreted strictly. Article 173(3) of Regulation (EU) No 952/2013 concerning the amendment of customs declarations provides that customs declarations may only be amended after the release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.

Furthermore, the CJ considered that the initial submission of a customs declaration without an application to benefit from a tariff quota in accordance with EU customs legislation is a voluntary choice by declarants, and that subsequently amending such a customs

declaration to claim a zero-rate customs duty by entering a quota number is not intended to regularise the customs declaration but instead, to claim a preferential duty rate linked to the relevant tariff quota.

Consequently, the CJ concluded that Article 173(3) of Regulation (EU) No 952/2013 precludes the application of post-release amendments to customs declarations that have been previously submitted in order to add a specific quota number to benefit from a preferential tariff.

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