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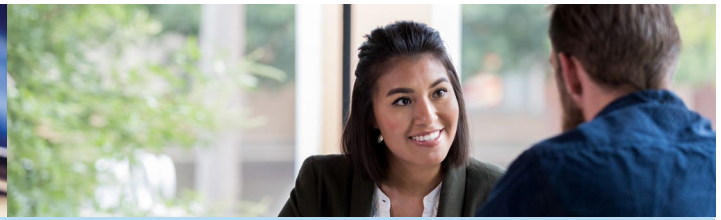

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EU Tax Alert

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

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Content

1. Highlights in this edition

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The case revolved around a Lithuanian company that distributed dividends to its Cypriot parent company, which carried out genuine economic activities and qualified as the beneficial owner of the dividends. Nevertheless, the tax authorities denied the withholding tax exemption on the ground that the dividends formed part of a chain of transactions through which they were transferred to the ultimate beneficiary of the group, and that this chain constituted a nongenuine arrangement.
https://eur-lex.europa.eu/eli/C/2025/3398/oj/eng

The referring court asked, in essence, whether the antiabuse rule permits a Member State to deny the exemption where dividends are paid to a genuine parent company established in another Member State and acting as beneficial owner, but which is considered to participate in a chain of nongenuine transactions leading to a tax advantage.
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The Advocate General further clarifies that, as a rule, the application of the ParentSubsidiary Directive cannot be denied where dividends are distributed to a parent company that is both the beneficial owner and engaged in genuine economic activity.

However, in exceptional circumstances, a finding of abuse remains possible where the dividend flow forms part of an overall nongenuine arrangement. Such circumstances may arise where the recipient, despite having substance, participates in a broader scheme that lacks valid commercial justification and is designed to channel profits to the ultimate beneficiary in a manner that defeats the objective of the Parent-Subsidiary Directive.

The Advocate General emphasises that the concept of abuse under the Parent-Subsidiary Directive requires an assessment of whether an arrangement lacks economic reality and is aimed at obtaining a tax advantage contrary to the purpose of the Parent-Subsidiary Directive. In that context, the existence of a genuine economic activity and/or beneficial ownership at the level of the direct recipient does not categorically preclude a finding of abuse since the analysis may extend to the overall purpose of the structure.

CJ Advocate General Opines on Denial of Tax Consolidation-Linked Benefits Where Parent Falls Outside National Tax Sovereignty Does Not Breach Freedom of Establishment (Case C-592/24)

On 26 March 2026, Advocate General Kokott delivered her Opinion in *Société Générale and Others* (C-592/24). The case concerns the scope of the freedom of establishment under Articles 49 and 54 TFEU in the context of the Italian group taxation regime and the deductibility of interest payments.

The dispute arose in a situation where a French parent company has a permanent establishment in Italy. Several Italian subsidiaries were included in the Italian group taxation

scheme, as the shareholdings in those controlled subsidiaries formed part of the assets of the Italian permanent establishment. Four other Italian subsidiaries did not participate in the scheme since their shareholdings were attributed to the assets of the French head office. As a result, they could not benefit from the advantages of the group taxation regime, under which interest payments would have been fully deductible. Instead, they were only allowed to deduct 96% of the interest payments.

Following the rejection of reimbursement claims by the Italian tax authorities, the case ultimately came before the Corte suprema di Cassaziona, which took the view that the freedom of establishment may be infringed where, under a group taxation scheme, companies whose parent company has its seat in another country are denied the possibility of deducting interest payments, whereas that possibility is granted to companies with a common parent company established in national territory. In addition, it raises the question as to whether an application for group taxation is necessary even in a situation where that possibility was not available.

The referring court, therefore, referred three questions to the CJ. The first two questions concern the interpretation of Articles 49 and 54 TFEU, asking whether these provisions preclude national rules that deny companies access to a tax consolidation regime where the parent company is established in another Member State and the controlled shareholdings are not subject to domestic tax sovereignty, and whether they prohibit legislation that allows only vertical integration for resident groups or horizontal integration between resident subsidiaries, while excluding integration between subsidiaries and a non-resident parent company. The third question, on the other hand, concerns whether EU law requires group taxation to be granted retroactively or without an application when such taxation was previously not allowed.

With regard to questions 1 and 2, the Advocate General concludes that Articles 49 and 54 TFEU do not preclude the Italian group taxation rules, because the unequal treatment does not arise from the parent company being established in another Member State but from the fact that the controlled shareholdings are not subject to Italian tax sovereignty. Italy allows group taxation with a non-resident parent only when the shareholdings are attributed to a qualified Italian permanent establishment; if instead, they are held by the foreign head office, the situation is not comparable to a domestic group, and the exclusion from group taxation is justified by the need to preserve the balanced allocation of taxing powers between the Member States.

In answer to question 3, the Advocate General concludes that EU law does not require Member States to grant group taxation retroactively or without an application, even where the regime was previously unavailable due to national rules potentially incompatible with EU law. According to the Opinion, Member States may rely on reasonable time limits for opting into group taxation, provided that those limits do not render the exercise of EU law rights practically impossible or excessively difficult.

European Institutions plan Agreement on ‘Omnibus on Taxation’ by End of 2027

On 23–24 April 2026, during an informal meeting of the Heads of State or Government held in Cyprus, it was announced that representatives of the European Commission, the European Parliament and the Council of the European Union aim to reach an agreement on the proposed ‘Omnibus on taxation’ package by the fourth quarter of 2027. This objective was subsequently formalised in a joint commitment set out in the document entitled ‘One Europe, One Market Roadmap of the European Parliament, the Council of the European Union and the European Commission.’

The ‘Omnibus on taxation’ refers to a large-scale tax simplification initiative aimed at reducing reporting and compliance burdens for businesses and enhancing the competitiveness of the European Union. The initiative forms part of the Commission’s broader tax decluttering agenda and seeks to review and streamline existing EU corporate tax directives, which have resulted in a fragmented landscape due to divergent national implementations.

The legislative proposal underlying the Omnibus package is expected to be adopted by the European Commission on 24 June 2026 (indicative date). It is anticipated that the proposal

will address key elements of the current EU tax framework, including the Parent-Subsidiary Directive, the Interest and Royalties Directive, the Merger Directive, the Anti-Tax Avoidance Directive and the Tax Dispute Resolution Directive, with a view to simplifying rules, reducing administrative complexity and improving their interaction with recent international tax developments.

Against this background, the agreement, planned by the end of 2027, reflects the political priority attached to tax simplification at EU level and underlines the intention of the EU institutions to deliver a more coherent and business-friendly tax framework for cross-border activities within the internal market.

VAT Fraud; EU Council Agrees to Strengthen Cooperation with EU Investigative

The Council of the EU has reached a provisional agreement on new rules to strengthen the fight against VAT fraud by enhancing cooperation between Member States, the European Public Prosecutor's Office (EPPO), and the European Anti-Fraud Office (OLAF).

Key measures

- Direct access to VAT data: The new framework will grant EPPO and OLAF more direct access to key VAT data on cross-border business transactions in the EU, including information held by Eurofisc, the EU's anti-VAT fraud network.
- First-hand information for investigations: EPPO and OLAF will receive the first-hand information they need to launch and support investigations into suspected cross-border VAT fraud under their respective competences.
- Improved coordination and faster investigations: The framework is designed to improve coordination between the various actors involved, speed up investigations, and strengthen the EU's overall capacity to detect and combat VAT fraud affecting the Union's financial interests.
- Level playing field: The measures will also help put the EU's legitimate businesses on a more level playing field by tackling fraud that distorts competition.

Cross-border VAT fraud, in particular missing trader intra-community fraud (commonly known as carousel fraud), is a serious problem in the EU. According to the European Commission, this criminal activity costs Member State treasuries and the EU budget between EUR 12.5 billion and EUR 32.8 billion annually and is primarily carried out by organized crime groups.

The new rules take the form of a regulation amending Council Regulation 904/2010 on administrative cooperation and combating VAT fraud. The measure builds on the agreement reached in March of last year to make VAT reporting obligations fully digital by 2030 for companies selling goods and services to businesses in other EU Member States.

Next Steps

1. The European Parliament is expected to adopt its opinion on the file in July 2026.
2. Following Parliament's opinion, the Council will formally adopt the new rules.
3. The regulation will enter into force twenty (20) days after its publication in the Official Journal of the EU.

E-commerce: EUR 3 flat-rate customs duty

As from 1 July 2026, new customs duty rules will apply to low-value goods imported via ecommerce. Following the removal of the EUR 150 customs duty exemption threshold, goods contained in consignments with an intrinsic value not exceeding EUR 150 will become subject to customs duties.

A simplified EUR 3 flat-rate customs duty will apply per item for low-value distance sales. Where a parcel contains different categories of goods, the customs duty will be levied separately on each category of goods.

On 30 April 2026, the Commission published a delegated regulation amending the UCC Implementing framework to introduce the definitions, data requirements and customs declaration rules (including updates to the H7 declaration) for this new regime.

2. Direct Taxation

Case Law

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The Advocate General emphasises that the concept of abuse under the Parent-Subsidiary Directive requires an assessment of whether an arrangement lacks economic reality and is aimed at obtaining a tax advantage contrary to the purpose of the Parent-Subsidiary Directive. In that context, the existence of a genuine economic activity and/or beneficial ownership at the level of the direct recipient does not categorically preclude a finding of abuse since the analysis may extend to the overall purpose of the structure.

CJ Decides on Whether State Tax Supplement Imposed on Non-Resident Taxpayers Is Compatible with Free Movement of Workers (Case C-119/24)

On 12 March 2026, the CJ delivered its judgment in *DK and JO v Belgian State* (C 119/24). The case concerned two applicants (DK and JO), who were tax residents of France. During tax years 1992 to 1998, 2001 to 2003 and 2007 to 2009, they received income from two Belgian sources, employment and real estate. As such, they were taxed as non-residents in Belgium for their Belgian income. Under Belgian national tax law, the Belgian income tax due was increased by a surcharge. The surcharge is only applicable to non-residents that receive Belgian sourced income.

In Belgium, municipalities and agglomerations can levy a supplementary municipal tax. The municipal tax is determined and imposed at the discretion of and by the individual municipalities and agglomerations. Some municipalities and agglomerations do not levy the supplementary municipal tax. The municipal tax is only levied from Belgian tax residents.

The Belgian government introduced a surcharge for non-residents in the Belgian income tax as a counterpart of the municipal tax. It was introduced to ensure that non-residents also contribute to the facilities and services provided by the Belgian public authorities. If the non-residents receive Belgian sourced income, a surcharge of 6% (for tax years up to 2005) or 7% (for tax years from 2005) is levied, regardless of the municipality or agglomeration that income arises from.

The applicants argued that the surcharge was incompatible with Article 45 TFEU because it placed non-resident taxpayers at a structural disadvantage compared to residents. Only residents are subject to the municipal surcharge, whereas non-residents face a State level surcharge that is imposed uniformly and without any link to a specific municipality.

Some municipalities choose not to levy the supplementary municipal tax, and compared to those taxpayers, non-resident taxpayers are placed at a structural disadvantage. The applicants argued that this difference in treatment constitutes a restriction on the free movement of workers within the meaning of Article 45 TFEU.

The Belgian Court of Appeal aligned with the view of the Belgian Constitutional Court that the surcharge is intended to ensure that non-residents contribute in a manner comparable to residents who pay the municipal tax. This does not constitute discrimination, and the measure is proportionate because it is calculated based on income taxable in Belgium. However, as a result, non-residents end up paying a State level tax of 6%–7% that residents are not liable to pay.

The Belgian Court of Appeal, therefore, sought clarification from the CJ as to whether Article 45 TFEU precludes national legislation that imposes a fixed State surcharge exclusively on non-residents, established by analogy with a municipal tax that applies only to residents and whose rate is determined locally.

The CJ held that the legal basis for the non-resident surcharge references the municipal tax. It is therefore clear that the objective of the additional tax is to impose a comparable tax burden on residents and non-residents. In addition, it is clear from the aim, purpose and content of the national legislation that residents and non-residents should be treated similarly with respect to the financing of public services through income taxation.

Consequently, the CJ concluded that residents and non-residents are in a comparable situation. The rule could be indirectly discriminatory if the treatment of non-residents were more disadvantageous than that of residents. In the case at hand, the non-residents can face a higher tax burden as compared to some of the residents as they are charged a standard rate of 6% or 7%, irrespective of the municipality or agglomerate that their income arises from. It does not matter for this conclusion that some Belgian residents pay more tax than the non-residents due to a higher local rate. Such a difference in treatment constitutes a restriction on the free movement of workers within the meaning of Article 45 TFEU.

Such a restriction is only allowed if it can be justified by the attainment of a legitimate objective and it does not go beyond what is necessary to attain that objective. The CJ recognized that ensuring that all taxpayers contribute equally to public services is a legitimate objective.

However, the Court found that the Belgian measure does not impose an equal tax burden. Instead, it causes an unequal, i.e., heavier tax burden on non-resident individuals in some instances. The Belgian legislation at hand is not appropriate for ensuring an equal tax burden and goes beyond what is necessary.

Moreover, the Court refuted the Belgian government's argument that not imposing the surcharge for non-residents would amount to a reverse discrimination on its residents as residents would be subject to a higher tax burden than non-residents. Allowing that argument would render the free movement of workers meaningless because it would allow Member States to implement legislation to protect their residents.

Taking the aforementioned arguments into account, article 45(2) TFEU precludes national legislation that puts a higher tax burden on non-residents than on residents of a Member State due to a flat-rate surcharge that is a substitution for a municipal or agglomerate tax.

CJ Decides on Consideration of Maintenance Payments by Member State of Residence for Personal Income Tax Purposes (Case C-150/25)

On 12 March 2026, the CJ ruled in the case BX v Belgian State (C-150/25) on whether Article 45 TFEU requires Belgium to grant a resident taxpayer the full deduction of maintenance payments when the other State of employment does not grant that deduction. Article 45 TFEU ensures the free movement of workers and prohibits any nationality in employment, pay, and working conditions.

BX is a Belgian tax resident who also derives income from France and Luxembourg. BX pays maintenance payments to his daughter and former spouse, who also reside in Belgium. In Belgium, these payments are only deductible in proportion to the Belgian source income.

According to the Belgium-France tax treaty, BX should also be allowed to deduct these maintenance payments from his French sourced income. However, based on French national tax law, France does not allow any deduction, as the recipients of the payments (BX's daughter and former spouse) are not taxable in France. Consequently, a significant part of BX's personal and family circumstances is not considered in either State.

In that context, the Belgian court submitted a preliminary question to the CJ, asking whether Article 45 TFEU requires Belgium to grant a full deduction of the maintenance payments when the State of employment, France, does not take those payments into account, despite the tax treaty providing for proportional consideration of personal and family circumstances.

The Court held that Article 45 TFEU precludes national legislation that causes resident taxpayers to lose part of a tax deduction linked to their personal and family circumstances when they earn income in another Member State that is exempt in the State of residence under a bilateral tax treaty. The Court added that such a loss of deduction is unlawful where the work State does not, in practice, compensate this, as this places cross border workers at an unjustified disadvantage compared with residents who earn all their income domestically.

CJ Advocate General Opines on Appeals Arising from the Excess Profit Scheme (Case C-734/23 P)

On 26 March 2026, Advocate General Kokott delivered her Opinion in the joined appeals *Soudal NV* (C-734/23 P) and *Esko Graphics BVBA* (C-735/23 P), which concern the Belgian 'excess profit exemption' and the Commission's finding that this constituted unlawful State aid. The appeals were brought against the judgment of the General Court ('GC') of 20 September 2023, which had upheld the Commission's 2016 decision.

Between 2004 and 2014, Belgium operated a tax ruling practice under which companies belonging to multinational groups could obtain an advance ruling allowing part of their profits - described as 'excess profits' allegedly arising from group synergies - to be exempt from corporate income tax. In its decision of 11 January 2016, the Commission concluded that this practice amounted to a systematic scheme granting selective tax advantages to certain multinational groups, in breach of Articles 107 and 108 TFEU.

Before the Court of Justice, the appellants argued, inter alia, that the Commission and the General Court had misinterpreted Belgian tax law and that, for the purposes of State aid

review, they were bound by the Belgian tax authorities' settled administrative interpretation of the relevant provision. The central question was whether the Commission and the EU Courts are required to follow a Member State's interpretation of its national tax law when determining the applicable reference framework, even where that interpretation does not correspond to the wording of the law.

Advocate General Kokott took the view that, although Member States enjoy broad autonomy and discretion in designing and interpreting their national tax systems, that autonomy has its limits. Where a tax provision is applied in a manner that is manifestly inconsistent with its wording or a manifestly contra legem, the Commission and the EU Courts are not bound by the national authorities" interpretation.

Judicial review in that context is limited to a plausibility check, namely whether the national interpretation or practice can still be plausibly reconciled with the wording and structure of the law.

Applying that standard, the Advocate General considered that the Belgian 'excess profit exemption' was manifestly incompatible with the wording of Belgian corporate tax law and therefore, properly treated as a derogation conferring a selective advantage. She accordingly proposed that the Court dismiss the appeals in their entirety.

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Following the rejection of reimbursement claims by the Italian tax authorities, the case ultimately came before the Corte suprema di Cassaziona, which took the view that the freedom of establishment may be infringed where, under a group taxation scheme, companies whose parent company has its seat in another country are denied the possibility of deducting interest payments, whereas that possibility is granted to companies with a common parent company established in national territory. In addition, it raises the question as to whether an application for group taxation is necessary, even in a situation where possibility that was not available.

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With regard to questions 1 and 2, the Advocate General concludes that Articles 49 and 54 TFEU do not preclude the Italian group taxation rules, because the unequal treatment

does not arise from the parent company being established in another Member State but from the fact that the controlled shareholdings are not subject to Italian tax sovereignty. Italy allows group taxation with a non-resident parent only when the shareholdings are attributed to a qualified Italian permanent establishment; if they are held by the foreign head office instead, the situation is not comparable to a domestic group, and the exclusion from group taxation is justified by the need to preserve the balanced allocation of taxing powers between the Member States.

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Developments

European Parliament Calls for Adoption of Tax Incentives to Curb EU Housing Crisis

The European Parliament recognises that Europe is facing a severe housing affordability crisis, characterised by rapidly rising rents and prices, growing homelessness, declining construction activity, heavy cost burdens on urban households, and widespread energy inefficient buildings. Together, these developments pose both a social and economic threat to the European Union.

In its resolution of 10 March 2026, the Parliament sets out non-binding political priorities and recommendations to address these challenges. It is the first time the European Parliament has adopted a comprehensive roadmap on the housing crisis, signalling that housing has become a strategic EU priority.

The proposed solutions call for a broad package of measures including a call on the Member States to adopt an efficient and incentive-based tax system for housing policies. This system should promote social inclusion, stimulate renovation and new construction, remove tax barriers for first time buyers, and ensure that fiscal incentives support a sustainable and affordable housing market without creating price inflation or market distortions.

European Commission Opens Infringement Procedures Against France for Incorrect Implementation of the Parent-Subsidiary Directive

The European Commission has opened an infringement procedure against France for failing to correctly implement the Parent-Subsidiary Directive (2011/96/EU). This Directive ensures that profits distributed by a subsidiary to its parent company in another Member State are not subject to withholding tax and are not taxed again at the level of the parent company The purpose is to ensure single taxation within the EU and prevent double taxation that could hinder cross border business activity.

The Commission considers that France applies an additional condition not provided for in the Directive. Under French law, the withholding tax exemption is granted only if the parent company's place of effective management is in another Member State. However, the Directive defines a parent company solely by reference to whether it is regarded as tax resident under the legislation of its own Member State. By imposing its own residency criteria on foreign EU parent companies, France effectively challenges their tax resident status and unlawfully restricts access to the Directive's benefits.

Commission Calls on OECD to Relaunch Discussion on Pillar One; Reveals Upcoming Actions on Tax Matters

The Director-General for Taxation and Customs Union of the European Commission stated at the EU Tax Symposium that the Commission remains engaged in major international tax discussions, including those on digital taxation, although further progress now depends

on the OECD. The Director-General explained that the Commission is currently focusing on simplifying the EU implementation of Pillar Two, with proposals expected in the summer of 2026. He also referred to ongoing work on tax incentives related to housing and the savings and investment union. In addition, he announced that the Commission will soon publish two studies on the taxation of highnetworth individuals and on the taxation of the financial sector, while clarifying that no legislative initiatives will follow from these studies.

Commission Calls for Rapid International Agreement on Principles of Taxation of Digital Economy, Pillar One

At the Tax Foundation Europe Conference, the Director-General for Taxation and Customs Union of the European Commission, Gerassimos Thomas, stressed that an international agreement on taxing the digital economy is urgently needed. He noted that governments are operating in a crisis environment that limits their ability to focus on tax policy, yet he insisted that the EU cannot afford to lose momentum. The EU remains ready to engage globally, but Thomas argued that the OECD must take the lead to relaunch discussions and, that in the course of 2026, agreement must be reached on the key principles.

The Director-General added that talks on Pillar Two are essentially closed until 2028 and that the EU is participating in UN discussions on a framework for international tax cooperation, while not supporting a grosstaxation model. Turning to simplification, the Director-General observed that political support rarely translates into practice because tax authorities are reluctant to surrender data. He contrasted this with the significant simplification achieved under the EU's Carbon Border Adjustment Mechanism, while acknowledging that achieving similar results in taxation will be far more difficult.

European Commission Confirms OECD Side-by-Side Package Does Not Suspend Minimum Tax for US Companies

Commissioner Wopke Hoekstra clarified in a 25 March 2026 Parliamentary reply that the OECD's SidebySide Package does not suspend the application of minimum tax rules to US companies operating in the EU. He explained that the package is designed to ensure coexistence between the US corporate tax system and the Pillar Two global minimum tax, meaning that US groups in the EU remain fully subject to the qualified domestic minimum topup taxes implemented by Member States. Hoekstra added that the package aims to create a level playing field and avoid a race to the bottom, particularly through its approach to tax incentives and refundable credits. The Commission will complete its assessment of the package's implementation and effects by 2029, in line with the OECD's own stocktake.

The response to the addressed questions about whether the Commission had assessed potential revenue impacts of the SidebySide agreement and on what basis it supported it. Hoekstra did not indicate that such estimates exist but repeated that the agreement was reached by 147 jurisdictions in the OECD/G20 Inclusive Framework and is intended to coordinate global minimum tax implementation through measures such as simplified effective tax rate safe harbours and transitional reporting relief. Further details on how these elements will apply within the EU will be published once available.

European Commission Publishes Study on Wealth Taxation

On 15 April 2026, the European Commission released a comprehensive study on wealth taxation, assessing a broad range of taxes on capital and their role in revenue generation, fairness and economic performance. The Commission concludes that while no single model of wealth taxation suits all EU Member States, there is clear potential to make more effective use of wealthrelated tax instruments in ways that strengthen both equity and efficiency.

The study analyses several categories of wealthrelated taxes, including net wealth taxes, recurrent taxes on unrealised gains, oneoff taxes on realised gains, inheritance and gift taxes and exit taxes. It also draws on experiences from several EU and nonEU countries to illustrate how design choices influence effectiveness, administrative feasibility and political acceptance.

The study concludes that wealthrelated taxes have the potential to play a more meaningful role in addressing high and rising wealth inequality in the EU. When they are designed well, their economic sideeffects on savings, investment and entrepreneurship appear limited, and they can even support a more productive allocation of assets. The analysis suggests that a coherent mix of capital income taxation, capital gains taxation and robust inheritance and gift taxes could form the core of an effective approach to taxing wealth.

At the same time, the study stresses that outcomes depend heavily on the quality of tax design and administration, ranging from clear valuation and antiavoidance rules to reliable registers, strong thirdparty reporting and effective international cooperation. Finally, it emphasises that political feasibility remains crucial: reforms require transparent communication about who is affected, how revenues will be used and how the measures contribute to greater fairness.

European Parliament's FISC Members Discuss Feasibility of 28th Tax Regime

On 16 April 2026, the European Parliament's Subcommittee on Tax Matters (FISC) discussed the feasibility of a 28th tax regime for EU companies, based on a recently commissioned study.

During the discussion, the proposed regime was presented as a tool to enhance EU competitiveness. It proposes a framework parallel to the existing national tax regimes 'to reduce cross-border tax complexity and legal uncertainty while preserving subsidiarity, fiscal sovereignty, and safeguards against abuse'. Key design considerations include maintaining Member States' fiscal sovereignty, ensuring compatibility with existing EU directives, and incorporating safeguards against abuse. The regime would function as an optional system, allowing companies to opt into a harmonised set of rules without replacing national tax systems.

Key conclusions and recommendations of this study include the following:

- a 28th tax regime is justified by a structural competitiveness problem, with the starting point being 'the mismatch between the economic reality of the internal market and the continuing fragmentation of national tax systems';
- the 28th tax regime should not be designed as full tax harmonization but as an optional, targeted, and functionally integrated framework focused on areas of tax fragmentation that impede cross-border activity;
- the 28th tax regime should be designed as an optional and parallel EU framework;
- the tax dimension of the 28th regime should be viewed as part of the European Union's broader competitiveness agenda, and could contribute to that agenda by low friction costs, enhanced predictability, and better market access across EU Member States;
- the 28th tax regime should build on existing and forthcoming EU initiatives;
- the substantive tax framework should be modular rather than all-or-nothing, i.e., 'the various substantive elements should be understood as building blocks that the EU legislature may choose, combine, or sequence depending on policy priorities, legal constraints, and political feasibility'; and
- the overall design should be delimited and focused on clear added value as 'a focused European response to tax fragmentation in those areas where coordinated action can produce clear practical added value'.

The debate forms part of ongoing work within the European Parliament to assess whether and how tax elements can be effectively integrated into a broader '28th regime' for companies.

Commission Delegated Regulation for Calculation of Market Capitalization Ratio Under FASTER Directive Published in Official Journal

On 21 April 2026, the Commission Delegated Regulation (EU) 2026/110 was published in the Official Journal, laying down regulatory technical standards for the calculation of (i) market capitalisation of an EU Member State; and (ii) the market capitalisation ratio of an EU Member State under the FASTER Directive.

The market capitalisation ratio is a key parameter under the FASTER Directive, as it determines whether Member States are required to apply the standardised withholding tax relief procedures set out in Chapter III of the Directive. In particular, those procedures are mandatory only for Member States which:

- either do not operate a comprehensive relief-at-source system; or,
- that have a market capitalisation ratio of at least 1.5% over the last four consecutive years.

Conversely, Member States with a comprehensive relief-at-source system may retain their existing system if their market capitalisation ratio remains below this threshold, although they may voluntarily opt into the Directive's procedures.

Against this background, the delegated regulation provides detailed technical rules to ensure a consistent and comparable calculation of market capitalisation across Member States. These include the definition of market capitalisation as the total value of shares admitted to trading on regulated markets and multilateral trading facilities, as well as the specification of relevant price sources and data inputs for determining both share prices and the number of outstanding shares.

The market capitalisation ratio thus functions as a proxy for the relative size and depth of a Member State's capital market and directly affects the scope of application of the FASTER Directive. The Directive itself aims to streamline and harmonise withholding tax relief procedures across the EU, including by introducing digital tax residence certificates and fast-track refund or relief-at-source mechanisms, while also strengthening safeguards against abuse.

Member States are required to transpose the FASTER Directive by 31 December 2028 into their domestic legal systems, with the rules applying from 1 January 2030. The European Securities and Markets Authority (ESMA) is expected to publish the market capitalisation and corresponding ratios for each Member State annually from 2026 onwards, based on the harmonised methodology introduced by this delegated regulation.

European Institutions Plan Agreement on 'Omnibus on Taxation' by End of 2027

On 23–24 April 2026, during an informal meeting of the Heads of State or Government held in Cyprus, it was announced that representatives of the European Commission, the European Parliament and the Council of the European Union aim to reach an agreement on the proposed 'Omnibus on taxation' package by the fourth quarter of 2027. This objective was subsequently formalised in a joint commitment set out in the document entitled 'One Europe, One Market Roadmap of the European Parliament, the Council of the European Union and the European Commission.'

The 'Omnibus on taxation' refers to a large-scale tax simplification initiative aimed at reducing reporting and compliance burdens for businesses and enhancing the competitiveness of the European Union. The initiative forms part of the Commission's broader tax decluttering agenda and seeks to review and streamline existing EU corporate tax directives, which have resulted in a fragmented landscape due to divergent national implementations.

The legislative proposal underlying the Omnibus package is expected to be adopted by the European Commission on 24 June 2026 (indicative date). It is anticipated that the proposal will address key elements of the current EU tax framework, including the Parent-Subsidiary Directive, the Interest and Royalties Directive, the Merger Directive, the Anti-Tax Avoidance Directive and the Tax Dispute Resolution Directive, with a view to simplifying

rules, reducing administrative complexity and improving their interaction with recent international tax developments.

Against this background, the planned agreement by the end of 2027 reflects the political priority attached to tax simplification at EU level and underlines the intention of the EU institutions to deliver a more coherent and business-friendly tax framework for cross-border activities within the internal market.

European Commission Urges Spain to Change Taxation of Non-Resident Taxpayers Dwellings Used as Habitual Residences

On 29 April 2026, the European Commission sent a reasoned opinion to Spain in which it takes the view that the domestic tax rules applicable to non-resident taxpayers on dwellings used as their habitual residence are incompatible with EU law.

Under the current Spanish tax system, individuals are taxed on deemed income derived from real estate ownership, generally calculated at 2% of the cadastral value of the property. However, an exemption applies where the property constitutes the habitual residence of a taxpayer resident in Spain. This exemption does not extend to non-resident taxpayers, even where the property concerned is used as their habitual abode.

According to the Commission, this differential treatment results in less favourable taxation of non-residents compared to residents and constitutes a restriction on the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union ('TFEU'). The measure forms part of an infringement procedure that was originally initiated in June 2025, following concerns regarding the compatibility of the Spanish regime with EU fundamental freedoms.

By issuing a reasoned opinion, the Commission has formally requested Spain to bring its legislation into compliance with EU law. Spain has a period of two months to respond and take the necessary corrective measures. In the absence of a satisfactory response, the Commission may decide to refer the matter to the Court of Justice of the European Union.

European Parliament's Draft Report Examines European Union's Corporate Tax Policy, Side-by-Side Package, Makes Recommendations

On 22 April 2026, the Committee on Economic and Monetary Affairs (ECON) of the European Parliament published a draft report, in the form of a motion for a European Parliament resolution, examining the European Union's corporate tax policy in a changing international environment. The report takes a critical perspective and sets out a series of policy recommendations.

The draft report places particular emphasis on restoring the competitiveness of the European Union, which it identifies as a 'top priority'. In this regard, it expresses concerns about the incomplete global implementation of the OECD Pillar Two rules and the coexistence of these rules with domestic minimum tax regimes, which are considered to contribute to fragmentation and weaken their overall effectiveness. The report further highlights potential competitive disadvantages for EU-headquartered multinational enterprises ('MNEs'), particularly in relation to operations in the United States, due to structural differences between the US Net Controlled Foreign Company ('CFC') Tested Income ('NCTI') regime and the Pillar Two framework.

In addition, the report raises concerns about the implications of the OECD Side-by-Side package, noting that US-headquartered companies may be effectively exempt from a significant part of the Pillar Two obligations, potentially placing European companies at a competitive disadvantage. Against this background, the European Commission is called upon to propose measures addressing the structural imbalances resulting from the Side-by-Side package.

With respect to the EU legislative framework, the report emphasises the need for simplification and clarification. It notes that recent international developments, including the Side-by-Side package, have increased legal and administrative complexity for European businesses. In this context, the report welcomes the European Commission's proposed 'Omnibus on taxation' initiative and calls for a broader review of EU corporate tax directives and overlapping national measures. It also recommends revisiting the BEFIT proposal in light of perceived fundamental incompatibilities with the Pillar Two rules.

Furthermore, the report addresses harmful tax practices and calls on both the European Commission and Member States to intensify international cooperation to combat base erosion and profit shifting ('BEPS') strategies, with a view to safeguarding domestic tax revenues.

Finally, the report considers broader developments in international taxation, including digital taxation. It notes the European Union's significant digital services trade imbalance and suggests that this development may require a reconsideration of existing rules governing the allocation of taxing rights. While the report acknowledges that unilateral digital services taxes may be perceived as discriminatory, particularly by the United States, it supports ongoing international dialogue and reiterates that a global multilateral solution remains the preferred approach.

The vote in plenary of the European Parliament on this report is expected to take place on 5 October 2026 (indicative date).

3. VAT

Case law

Opinion AG Medina on directors' joint and several liability for a company's VAT debt and the right to an effective remedy (*QJ*)

On 5 March 2026, the opinion of AG Medina was published in the case C158/25 (***QJ***).

The case concerns a Luxembourg regime under which company directors and managers may be held personally, jointly and severally liable for a company's unpaid VAT where VAT obligations were not complied with and the tax was not paid from the financial resources under their control. In the case at hand, the VAT debt was established by means of an ex officio assessment issued to the company, which became final after the company failed to lodge a timely appeal. On that basis, the tax authorities subsequently issued a guarantee call against the former manager seeking recovery of the outstanding VAT.

The AG concludes that it is contrary to EU law that the former manager, held liable as director for the company's unpaid VAT debt, cannot challenge the ex officio VAT assessments imposed on the company in his own name. According to the AG, a director must be entitled to contest the factual and legal findings underlying an assessment insofar as they are decisive for the proceedings brought against him.

CJ judgment on crossborder VAT refunds and technical errors in refund applications (*Harry et Associés*)

On 12 March 2026, the CJ delivered its judgment in case C527/24 (***Harry et Associés***).

The case concerned a taxable person established in France who applied for a refund of VAT incurred in Italy under the VAT refund portal procedure for nonresident taxable persons. Due to a technical defect in the electronic transmission, the Italian tax authorities were unable to open the electronic file and therefore, did not examine the refund application. In subsequent judicial proceedings, that defect led the application to being treated as nonexistent, with the result that the taxable person was considered to have no effective judicial remedy against the tax authorities' failure to act.

The CJ held that a taxable person cannot be deprived of the right to a VAT refund, nor of access to the courts, solely because of a technical fault affecting the electronic transmission of an otherwise duly submitted refund application. The CJ further indicated that the Italian court wrongly failed to treat the Italian tax authorities' inaction, caused by technical failures, as an implicit rejection. Effective judicial review must be available where no decision is taken on a refund claim. The tax authorities are required to act diligently, in particular by informing the taxable person of the defect and allowing it to be remedied. In that context, national rules on the finality of judicial decisions cannot be applied in a manner that perpetuates an interpretation contrary to EU law, including the principles of VAT neutrality, proportionality and effective judicial protection.

CJ judgment on late receipt of invoices and the right to deduct VAT on intraCommunity acquisitions (*Aptiv Services Hungary*)

On 12 March 2026, the CJ delivered its judgment in case C521/24 (*Aptiv Services Hungary*).

The dispute concerned a taxable person who received and recorded invoices relating to intraCommunity acquisitions of goods only several years after those transactions had taken place. The taxable person therefore exercised the right to deduct VAT in the tax period in which the invoices were actually received and recorded. The tax authorities refused the deduction, arguing that it should have been exercised in the original tax periods and that the taxable person should instead, rely on correction mechanisms which were no longer available.

The CJ reiterated that the right to deduct VAT is a fundamental feature of the EU VAT system and must be granted once the substantive conditions are satisfied. Refusing the deduction solely because the invoices were received late, where the taxable person acted in good faith and within the applicable limitation period, may constitute an excessive restriction on the exercise of that right and undermine the principle of VAT neutrality. Accordingly, the CJ held that such national legislation or administrative practices, which systematically prevent the exercise of the right to deduct VAT in those circumstances, are incompatible with EU VAT law.

CJ judgment on exclusion of VAT deduction for entertainment expenses under the standstill clause (*Randstad España*)

On 12 March 2026, the CJ delivered its judgment in case C515/24 (*Randstad España*).

The case concerned the denial of input VAT deduction on expenditure relating to tickets for sporting events and other leisure services that were provided free of charge to clients in the context of business relationships. The dispute arose in Spain and raised the question whether, upon accession to the European Union, a Member State which previously had no VAT system could retain exclusions from the right to deduct VAT that were introduced at the time of accession.

The CJ held that Spain's exclusion of input VAT deduction on representation expenses does not infringe EU law. The scheme entered into force upon Spain's accession to the EU and did not bring about any substantive change, as such VAT was previously nondeductible due to the absence of a VAT system. The Court further confirmed that the exclusion aligns with the EU legislature's intention that expenditure closely linked to private consumption does not, in principle, give rise to a right of deduction. Arguments based on business use or income tax deductibility were also rejected, as the assessment must be made exclusively within the VAT framework.

CJ review chamber judgment on review of earlier General Court ruling on late invoices

On 26 March 2026, the review chamber of the CJ delivered its judgment in case C167/26 ***RX.***

In its judgment of 11 February 2026 in the *I.S.A.* case, the General Court held that the right to deduct input VAT arises when the substantive conditions are met and cannot be deferred solely because the invoice is received in a later period, provided it is available when the VAT return is filed. On that basis, Poland's refusal to allow deduction for invoices not received within the relevant tax period was found to be contrary to EU law.

On 4 March 2026, the First Advocate General requested a review, citing a serious risk to the unity or coherence of EU law. The review chamber of the CJ granted the review, referring in particular to the case rulings in *Terra Baubedarf* (C152/02) and *Aptiv Services Hungary* (C521/24). Interested parties have one month to submit written observations.

Opinion AG Brkan on VAT adjustment for leased business premises after a TOGC (*A&P Deco*)

On 15 April 2026, the opinion of AG General Brkan was published in the case T397/25 (*A&P Deco*).

The case concerned the transfer of a garden centre business to another company, while the transferor retained ownership of the business premises and leased the building almost entirely to the transferee. The transferor had previously deducted input VAT on the construction and refurbishment of the building. Following the transfer, the building was leased under an exempt property lease, leading the tax authorities to require a timeapportioned adjustment of the original input VAT deduction.

The transferor argued that the building should be regarded as part of a transfer of a going concern, with the result that the transferee would step into its VAT position and that the transferee's continued taxable use of the premises would preclude any adjustment at the level of the transferor.

The AG rejected that approach. First, the AG considered that the leasing of the building does not form part of a transfer of a business as a going concern, since it constitutes a continuous supply of services rather than a oneoff transfer of assets. The lease may enable the transferee to continue the business, but it is not itself part of the transferred assets. Second, and in any event, the AG concluded that the VAT adjustment mechanism continues to apply at the level of the building owner once the building is no longer used for taxable transactions. Where the owner leases the building under an exempt property lease, the original elements underlying the right to deduct are altered, triggering a pro rata adjustment, irrespective of whether the business transfer itself qualifies for goingconcern treatment or whether the transferee continues the taxable activity. Accordingly, the AG proposed that the transferor remains obliged to adjust the original input VAT deduction on the building.

GC judgment on VAT adjustment after nonpayment and assignment of claim (*Mokoryte SRL*)

On 22 April 2026, the GC delivered its judgment in case T233/25 (*Mokoryte SRL*).

The dispute arose in a construction chain involving a developer, a main contractor and a subcontractor. The main contractor partially settled its debt towards the subcontractor by assigning its claim against the developer. The developer subsequently became insolvent and failed to pay the outstanding amounts. The subcontractor, as assignee of the claim, therefore sought a reduction of its output VAT on the basis that the assigned claim had become definitively irrecoverable.

The CJ ruled that the right to reduce the VAT taxable amount in cases of cancellation or definitive non-payment is inherently linked to the taxable person that carried out the original taxable supply and accounted for the VAT on that supply. A civil-law assignment of a claim does not transfer that VAT position or the associated right to adjust the taxable amount. Consequently, a subcontractor-assignee that was not the supplier in the relevant transaction cannot adjust the VAT taxable amount following the insolvency of the final customer. Moreover, the CJ noted that the subcontractor's claim against the contractor had been fully settled (through payment in cash and by assignment), leaving no basis for a reduction of the VAT taxable amount in respect of that transaction.

Opinion AG Brkan on VAT grouping and ownership requirements (*Sampension*)

On 22 April 2026, the opinion of AG Brkan was published in the case T268/25 (*Sampension Livsforsikring*).

The case concerned an insurance company carrying out VATexempt activities which sought to form a VAT group with its management company. Under Danish law, VAT grouping involving entities carrying out exempt or noneconomic activities was subject to a strict 100% ownership requirement.

The AG examined whether this 100% ownership requirement is compatible with the VAT Directive, which allows Member States to treat legally independent persons that are closely bound by financial, economic and organisational links as a single taxable person. In that context, Member States may also adopt specific measures aimed at preventing tax evasion or avoidance.

The AG emphasised that a 100% ownership requirement cannot be derived as such from the concept of 'close financial links' within the meaning of the VAT Directive. However, according to the AG, such a requirement may nevertheless be justified under EU law as an antiavoidance measure, aimed at preventing tax advantages other than those related to administrative simplification, provided that it complies with the principles of neutrality and proportionality.

Developments

VAT Fraud; EU Council Agrees to Strengthen Cooperation with EU Investigative Bodies

The Council of the EU has reached a provisional agreement on new rules to strengthen the fight against VAT fraud by enhancing cooperation between member states, the European Public Prosecutor's Office (EPPO), and the European Anti-Fraud Office (OLAF).

Key measures

- Direct access to VAT data: The new framework will grant EPPO and OLAF more direct access to key VAT data on cross-border business transactions in the EU, including information held by Eurofisc, the EU's anti-VAT fraud network.
- First-hand information for investigations: EPPO and OLAF will receive the first-hand information they need to launch and support investigations into suspected cross-border VAT fraud under their respective competences.
- Improved coordination and faster investigations: The framework is designed to improve coordination between the various actors involved, speed up investigations, and strengthen the EU's overall capacity to detect and combat VAT fraud affecting the Union's financial interests.
- Level playing field: The measures will also help put the EU's legitimate businesses on a more level playing field by tackling fraud that distorts competition.

Cross-border VAT fraud, in particular missing trader intra-community fraud (commonly known as carousel fraud), is a serious problem in the EU. According to the European Commission, this criminal activity costs Member State treasuries and the EU budget between EUR 12.5 billion and EUR 2.8 billion annually and is primarily carried out by organized crime groups.

The new rules take the form of a regulation amending Council Regulation 904/2010 on administrative cooperation and combating VAT fraud. The measure builds on the agreement reached in March of last year to make VAT reporting obligations fully digital by 2030 for companies selling goods and services to businesses in other EU Member States.

Next Steps

1. The European Parliament is expected to adopt its opinion on the file in July 2026.
2. Following Parliament's opinion, the Council will formally adopt the new rules.
3. The regulation will enter into force twenty days after its publication in the Official Journal of the EU.

4. Customs Duties, Excises and other Indirect Taxes

Case Law

GC judgment on Outward processing authorization and cooperation between Member States

On 15 April 2026, the GC delivered its judgment in the case T-589/24 (*A GmbH*).

The case concerned a German company that had obtained, on 1 December 2014, an authorisation for outward processing designating specific German customs offices as offices of placement. However, between June 2015 and September 2017, the company purchased crude groundnut oil in the Netherlands and exported the goods to Switzerland via a Dutch customs office not indicated in the authorisation, using a standard export procedure rather than the outward processing procedure. Following processing in Switzerland, the compensating products were re-imported into the EU and released for free circulation with partial relief from import duties, based solely on the processing costs.

After a post-clearance audit, the German customs authorities denied the benefit of the outward processing regime and issued a recovery of import duties on the full value of the processed goods, on the basis that the conditions of the authorisation had not been complied with.

The General Court held that the outward processing procedure, as an exceptional regime, requires strict compliance with the conditions of the authorisation. In particular, goods must be declared for export at a customs office designated in that authorisation. Where goods are exported via a non-designated customs office, the conditions for the regime are not fulfilled and partial (or total) relief from import duties is precluded.

GC judgment on Customs valuation and information provided by third country authorities

On 25 March 2026, the GC delivered its judgment in the case T-296/25 (*Lidikar*).

The case concerned the Bulgarian company Lidikar, acting as indirect representative of an importer, which filed a customs declaration on 18 January 2021 for the release for free circulation of a used motor vehicle imported from Canada. The customs value was initially determined on the basis of the transaction value under Article 70(1) UCC.

Following a post-clearance audit, the Bulgarian customs authorities received information from the Canadian customs administration that the export price was significantly higher than the value declared upon importation. As the supporting documentation did not overcome the authorities' doubts concerning the declared value, the transaction value was rejected. The authorities subsequently determined the customs value under the residual method of Article 74(3) of the Union Customs Code ('UCC"), relying on export price information obtained through customs cooperation between the EU and Canada.

The General Court held that export price data communicated by third-country customs authorities under an international customs cooperation agreement may constitute 'data available in the customs territory of the Union' and may be used as a reasonable means for determining the customs value under Article 74(3) UCC.

Developments

UCC Reform

On 26 March 2026, a political agreement was reached between the Commission, the Parliament and the Council on the negotiation of the new Union Customs Code ('UCC'). On 16 April 2026, the Internal Market and Consumer Protection (IMCO) Committee approved a provisional agreement between the Parliament and the Council Presidency on the reform.

The new UCC will replace the current framework and introduces several key concepts, including the 'deemed importer' with extended liability for compliance with non-fiscal legislation, the creation of an EU Customs Data Hub, a new 'Trust and Check' trader status, and a handling fee for certain transactions.

The reform is currently awaiting formal adoption by the Parliament and the Council. Publication and entry into force are expected in Q4 2026, with entry into force of the new rules foreseen from Q4 2027 (i.e., 12 months after publication).

A phased implementation of the EU Customs Data Hub is foreseen. Key milestones include the launch of the e-commerce data hub in July 2028, the start of voluntary use of the data hub in March 2031 and mandatory use for all operators by March 2034.

E-commerce: EUR 3 flat-rate customs duty

As from 1 July 2026, new customs duty rules will apply to low-value goods imported via ecommerce. Following the removal of the EUR 150 customs duty exemption threshold, goods contained in consignments with an intrinsic value not exceeding EUR 150 will become subject to customs duties.

A simplified EUR 3 flat-rate customs duty will apply per item for low-value distance sales. Where a parcel contains different categories of goods, the customs duty will be levied separately on each category of goods.

On 30 April 2026, the Commission published a delegated regulation amending the UCC Implementing framework to introduce the definitions, data requirements and customs declaration rules (including updates to the H7 declaration) for this new regime.

Get in contact

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