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EU Tax Alert

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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

Commission proposes Taxation Omnibus to simplify direct taxation and boost EU competitiveness (Taxation Omnibus)

On 24 June 2026, the European Commission published an ambitious tax simplification package comprising two proposals. These include the Recast of the Directive on Administrative Cooperation and a proposal for a Council Directive - informally referred to as the Taxation Omnibus - amending six core EU direct tax directives. It forms part of the broader agenda aimed at simplifying EU tax rules, cutting administrative burdens and strengthening the competitiveness of the EU market.

The Taxation Omnibus introduces amendments to the Parent-Subsidiary Directive, Interest and Royalties Directive, Tax Merger Directive, Anti-Tax Avoidance Directive and Dispute Resolution Mechanisms Directive, together with a targeted amendment to the FASTER Directive on withholding tax relief (the ‘Proposal’). This initiative reworks rules that were adopted at different points in time and which, taken together, have grown complex, overlapping and in places out of line with more recent international developments, in particular, the global minimum tax under Pillar Two.

The Proposal will now be submitted to the Council for adoption. Based on its current wording, Member States will have to adopt the Proposal ultimately by 31 December 2028 and, generally, apply the provisions as of 1 January 2029. Most changes to the Parent-Subsidiary Directive and the Interest and Royalties Directive as well as the mandatory safe harbour of the interest deductibility limitation rule will be applicable at a later date. The proposal will be discussed in more detail below.

European Commission proposal for a recast of the Directive on Administrative Cooperation (DAC Recast)

On 24 June 2026, the European Commission published a proposal to codify the Directive on Administrative Cooperation, and its eight amendments (i.e., DAC1 through DAC9), into one single legal act (the ‘DAC Recast’). The main objective of the DAC Recast is to simplify, clarify and enhance the EU legal framework for administrative cooperation in the field of direct taxation. Below, we will elaborate on the proposed changes for DAC6 and briefly mention other relevant proposed amendments.

CJ judgment on VAT exemptions as State aid (*Schoger II*)

On 9 July 2026, the CJ delivered its judgment in Case C360/25 (*Schoger II*).

The case concerned an Austrian VAT exemption for services supplied between undertakings operating primarily in the banking, insurance and pension fund sectors. The referring court asked whether that exemption constituted prohibited State aid under EU law.

The CJ held that the exemption had no basis in the VAT Directive and therefore, was attributable to the Austrian State. It conferred a selective advantage on the undertakings benefiting from it by relieving them of VAT that would otherwise have been due. The Court further found that the measure was liable to distort competition and affect trade between Member States. It therefore concluded that the exemption constituted State aid within the meaning of EU law. The Court also rejected Austria’s request to limit the temporal effects of the judgment.

AG Opinion on the General Rule 2(a) and split-consignment imports (*Prestige Rijwielen*)

On 10 June 2026, Advocate General Martín y Pérez de Nanclares delivered his Opinion in Case T-529/25 (*EPPO and Belgian State v Prestige Rijwielen and Others*).

The case arose from criminal proceedings against a Belgian bicycle importer accused of evading conventional customs duties, anti-dumping duties and countervailing duties by declaring electric bicycle parts rather than complete bicycles through separate customs declarations spread over several months. According to the referring court, the imported parts collectively corresponded to thousands of complete electric bicycles.

The Antwerp Court of Appeal asked whether General Rule 2(a) of the Combined Nomenclature ('CN') can be applied on the facts in the case at hand.

Under General Rule 2(a) CN, a complete article imported in an unassembled or disassembled state may nevertheless be classified as the finished product for customs purposes. In the present case, this means that electric bicycle parts classified under CN heading 8714 could, in certain circumstances, be classified as complete electric bicycles under CN heading 8711. If Rule 2(a) applies, the imports become subject to the conventional customs duties, anti-dumping duties and countervailing duties applicable to electric bicycles, rather than the generally more favourable tariff treatment available for individual parts.

The AG proposes a strict reading of the General Rule 2(a). In his view, the rule applies in principle only where the constituent parts are presented to customs simultaneously. Imports in split consignments fall within its scope only where the CN expressly provides for such treatment, notably for certain machinery under Section XVI and specific goods under Section XVII. Since electric bicycles and their parts fall outside those derogations, Rule 2(a) cannot be extended to them by analogy, although the EU legislature remains free to amend the CN accordingly. The AG further considers that the prohibition of abuse of rights cannot be used to extend the scope of Rule 2(a) *contra legem*, although abusive conduct may be a relevant objective factor where the rule is otherwise applicable

The AG, therefore, proposes that the General Court of the European Union (the 'GC') rule that Rule 2(a) does not apply to electric bicycle parts imported in successive split consignments and that such imports cannot be classified as complete electric bicycles on that basis.

2. Direct Taxation

Case Law

AG Addresses Recovery of State Aid from Group Companies in Excess Profit Scheme Appeal (*Dow Silicones*, Case C-752/23 P)

On 26 March 2026, Advocate General Kokott delivered her Opinion in *Dow Silicones Corp. v Commission* (C-752/23 P), one of the appeals arising from the Belgian 'excess profit exemption' scheme. The appeal raises two principal questions. First, it concerns the extent to which the European Commission and the EU Courts are bound by a Member State's interpretation of its national tax law when determining the reference framework for State aid purposes. Second, it concerns the recovery of unlawful State aid and, more specifically, whether recovery may be ordered from other companies belonging to the same corporate group as the direct recipient of the aid.

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.

As regards the first question, AG Kokott largely followed the approach set out in her Opinions in the related appeals *Soudal NV* (C-734/23 P) and *Esko Graphics BVBA* (C-735/23 P) (see EUTA 215). In line with those Opinions, she considered that the Commission is not bound by a national interpretation of tax law that is manifestly incompatible with the wording of the relevant legislation. She therefore agreed that the Belgian excess profit exemption constituted a derogation from the ordinary corporate income tax system and conferred a selective advantage on its beneficiaries.

The Opinion also addresses the separate issue of recovery. According to AG Kokott, unlawful State aid must in principle be recovered from the undertaking that actually benefited from the advantage. In her view, the mere fact that different entities belong to the same corporate group is not sufficient to justify recovery from those entities. The Commission cannot rely solely on the concept of an economic unit to order recovery from other group companies where it has not established that those companies actually enjoyed the benefit of the aid. The fact that a tax ruling was granted to a particular group company does not automatically mean that the entire group can be treated as the beneficiary of the aid.

Advocate General Kokott therefore proposed that the Court dismiss the appeal with regard to the substantive State aid findings but partially annul the Commission decision insofar as it provides for subsidiary recovery from other group companies. She accordingly proposed annulment of Article 2(2) of the Commission decision, while dismissing the appeal in all other respects.

AG Questions Selectivity Analysis of the Swedish Risk Tax (*Svenska Bankföreningen*, Case C-459/24 P)

On 21 May 2026, Advocate General Biondi delivered his Opinion in *Svenska Bankföreningen v Commission* (C-459/24 P), concerning the compatibility of the Swedish risk tax with the EU State aid rules. The appeal concerns the application of the selectivity criterion under Article 107(1) TFEU and, in particular, the identification of the objective of a tax measure for State aid purposes.

The Swedish risk tax applies to credit institutions whose liabilities exceed a specified threshold. As a result, only a limited number of large credit institutions are subject to the tax. The European Commission concluded that the measure did not constitute State aid and decided not to open a formal investigation procedure. The General Court subsequently upheld that decision.

The central issue in the appeal concerns the objective of the tax. The Commission and the General Court proceeded on the basis that the tax was intended to target credit institutions posing a systemic risk to the financial system. AG Biondi considered, however, that the Swedish legislature had instead presented the objective as the taxation of large credit institutions. According to the AG, that distinction is significant because the identification of a tax measure's objective forms the basis for the selectivity analysis, including the determination of the reference framework and the assessment of whether comparable undertakings are treated differently.

In the AG's view, the General Court erred in accepting the Commission's characterisation of the objective of the tax. As a result, the subsequent assessment of the measure's threshold mechanism and potential selectivity was based on an incorrect premise. He further considered that those issues should have given rise to serious doubts as to the compatibility of the measure with the State aid rules, requiring the Commission to open a formal investigation procedure.

AG Biondi therefore proposed that the Court of Appeal set aside the judgment of the General Court and annul the Commission's decision not to raise objections.

CJ Clarifies Scope of Commission's Obligation to Act in State Aid Complaint Procedure (*Laurent Merlin*, Case C-69/25 P)

On 11 June 2026, the CJ delivered its judgment in *Merlin and Others v Commission* (C-69/25 P), concerning an action for failure to act under Article 265 TFEU in the context of alleged State aid granted to Dutch shipowners engaged in electrical pulse fishing.

The appellants, consisting of French, Dutch and UK fishermen and the organisation Low Impact Fishers of Europe (LIFE), lodged complaints with the European Commission in 2021 concerning financial support allegedly granted to Dutch pulse fishing operators. They argued that certain funding provided under the European Fisheries Fund ('EFF') and the European Maritime and Fisheries Fund ('EMFF'), as well as certain national support measures, constituted unlawful and incompatible State aid. According to the appellants, some of the beneficiaries had received funding despite operating in breach of EU rules governing pulse fishing.

Following an exchange of correspondence, the European Commission took the view that no breach of the EFF or EMFF rules had been established and that there were no indications of unlawful State aid requiring further investigation. After the appellants had formally invited the Commission to act and adopt a decision under Regulation 2015/1589, the Commission informed them that it intended to close the file.

The dispute before the CJ concerned whether the Commission had thereby sufficiently defined its position with regard to the complaints concerning the EFF and EMFF funding. The appellants argued that the Commission remained under an obligation to adopt a formal decision under the State aid procedural rules and therefore, had unlawfully failed to act.

The CJ rejected those arguments and upheld the judgment of the GC. The Court confirmed that, when determining whether an institution has adopted a position for the purposes of Article 265 TFEU, account may be taken not only of its response to a formal invitation to act, but also of the correspondence preceding that invitation. In the circumstances of the case, the Commission had already made it sufficiently clear that it considered the EFF and EMFF funding to fall outside the State aid procedure and that it saw no indications of unlawful aid requiring further action.

The Court, therefore, concluded that the Commission had clearly and definitively defined its position and could no longer be regarded as having failed to act. The judgment provides further clarification on the notion of a ‘definition of a position’ under Article 265 TFEU and confirms that a formal State aid decision is not necessarily required in order to bring an alleged failure to act to an end.

AG Confirms Limits on Judicial Review of Decisions Opening Formal State Aid Investigations (*Mead Johnson*, Case C-670/24 P)

On 25 June 2026, Advocate General Biondi delivered his Opinion in *Mead Johnson Nutrition and Others v Commission* (C-670/24 P), concerning the admissibility of actions for annulment against Commission decisions opening or extending a formal State aid investigation under Article 108(2) TFEU.

The case forms part of the long-running State aid proceedings concerning the Gibraltar corporate income tax regime. In 2018, the European Commission concluded that certain tax rulings granted to companies within the Mead Johnson group constituted unlawful and incompatible State aid. In 2022, following the partial annulment of that decision by the GC, the Commission adopted a new decision extending the formal investigation procedure to examine the tax treatment of a Gibraltar group company between 2014 and its dissolution in 2018.

Mead Johnson challenged that decision before the GC. It argued, inter alia, that the Commission lacked competence to adopt the decision following the United Kingdom’s withdrawal from the European Union and that the decision produced direct legal effects capable of being challenged under Article 263 TFEU. The GC dismissed the action as inadmissible, holding that the measure under investigation had already been fully implemented and that the contested decision therefore did not produce independent binding legal effects.

Before the CJ, the appeal centred on whether a decision opening or extending a formal State aid investigation constitutes a challengeable act where the measure concerned has already been fully implemented. AG Biondi confirmed the distinction developed in the case law between measures that are still being implemented and measures that have already been implemented. According to the AG, decisions opening a formal investigation with respect to measures that are still being implemented may produce independent legal effects, since they can trigger obligations linked to the standstill principle and may require national courts to suspend implementation of the measure.

The position is different, however, where the measure has already been fully implemented. In such circumstances, the opening of a formal investigation does not in itself create binding legal consequences for the Member State or the beneficiary. The mere possibility that national courts may subsequently order recovery, or that the Commission may ultimately adopt a negative final decision, is insufficient to render the opening decision directly challengeable.

AG Biondi therefore concluded that the GC correctly held that the Commission’s decision extending the formal investigation procedure did not constitute an act open to challenge under Article 263 TFEU. He accordingly proposed that the CJ dismiss the appeal.

CJ Asked to Consider State Aid Implications of Romanian Energy Transition Levy (*PPC Renewables Romania*, Case C-392/24)

On 5 June 2024, the Curtea de Apel București referred a number of questions to the CJ concerning the compatibility of Romania's contribution to the Energy Transition Fund with various provisions of EU law.

The proceedings concern a levy imposed on certain electricity producers, including producers of electricity from renewable sources. The referring court asks, inter alia, whether the levy is compatible with EU climate and energy legislation, the rules governing the internal electricity market and various Treaty provisions.

From a State aid perspective, the referring court specifically asks whether the exemption of certain categories of electricity producers from the contribution may constitute State aid within the meaning of Article 107(1) TFEU and, if so, whether the measure should have been notified pursuant to Article 108(3) TFEU.

The reference therefore raises, among other issues, the question whether differential treatment between categories of electricity producers under the Romanian Energy Transition Fund regime may give rise to a selective advantage for the exempted undertakings.

Developments

Commission proposes Taxation Omnibus to simplify direct taxation and boost EU competitiveness (Taxation Omnibus)

On 24 June 2026, the European Commission published an ambitious tax simplification package comprising two proposals. These include the Recast of the Directive on Administrative Cooperation and a proposal for a Council Directive - informally referred to as the Taxation Omnibus - amending six core EU direct tax directives. It forms part of the broader agenda aimed at simplifying EU tax rules, cutting administrative burdens and strengthening the competitiveness of the EU market.

The Taxation Omnibus introduces amendments to the Parent-Subsidiary Directive, Interest and Royalties Directive, Tax Merger Directive, Anti-Tax Avoidance Directive and Dispute Resolution Mechanisms Directive, together with a targeted amendment to the FASTER Directive on withholding tax relief (the 'Proposal'). This initiative reworks rules that were adopted at different points in time and that, taken together, have grown complex, overlapping and in places out of line with more recent international developments, in particular the global minimum tax under Pillar Two.

The Proposal will now be submitted to the Council for adoption. Based on its current wording, Member States will have to adopt the Proposal ultimately by 31 December 2028 and generally apply the provisions as of 1 January 2029. Most changes to the Parent-Subsidiary Directive and the Interest and Royalties Directive as well as the mandatory safe harbour of the interest deductibility limitation rule will become applicable at a later date.

Below, we set out the background and the key changes of the Proposal.

Background

In recent decades, the EU has adopted a broad range of direct tax directives aimed at facilitating cross-border activities, preventing tax avoidance, and eliminating double taxation. While these instruments have played a significant role in strengthening the EU market, the Commission observes that their cumulative development, combined with divergent national implementation and evolving international tax developments, has significantly increased the complexity of the EU tax framework and the compliance burden for cross-border businesses.

The aim of the Taxation Omnibus, therefore, is to simplify and streamline the existing framework while preserving the original objectives and the level of protection against tax avoidance. Hence, the Proposal supports the Commission's broader objective of enhancing the EU's competitiveness.

Parent-Subsidiary Directive: broadened and simplified tax exemption on intra-EU profit distributions

The Parent-Subsidiary Directive (the 'PSD') exempts dividends and other profit distributions paid by subsidiaries to parent companies in other EU Member States from withholding tax at source and eliminates double taxation at the level of the parent. The Commission considers the minimum-holding condition and divergent upfront procedures to be sources of inconsistency and unnecessary cost. The following main amendments are proposed to apply as of 1 January 2037:

- The 10% minimum holding requirement will be removed. Distributions between companies in the EU may benefit from both a withholding tax exemption and a participation exemption regardless of any level of participation. The option to substitute a voting-rights criterion for a capital criterion is also eliminated to ensure more uniform application.
- The scope of the PSD is to be extended to explicitly cover pension funds, irrespective of their legal form. Pension funds would qualify for the benefits of the PSD through a derogation from the subject-to-tax condition. The explicit inclusion of pension funds in the scope of the PSD would remove significant tax obstacles to cross-border investments by pension funds.
- The option for Member States to disallow deduction of charges relating to the shareholding is limited to cases where there is a relevant holding of at least 10%.
- Member States may no longer require prior authorisation or administrative procedures to verify eligibility for the exemption at the time of distribution. Eligibility becomes self-assessed by the taxpayer, subject to ex-post controls by the relevant authorities and the application of anti-abuse rules.
- Where withholding tax is withheld at source (for example, because eligibility cannot be verified upfront), Member States must, in line with the Interest and Royalties Directive, ensure refund within one year following due receipt of the application and such supporting information it may reasonably ask for. The minimum length of the period to apply for a refund must be two years from the date of distribution.
- For publicly traded securities, the FASTER directive procedures will be made available.

Finally, as of 1 January 2029, the annex to the PSD listing the company forms eligible for the PSD is updated and the Commission is empowered to further amend the list via delegated acts.

Interest and Royalties Directive: exemptions extends beyond associated companies

The Interest and Royalties Directive (the 'IRD') exempts cross-border interest and royalty payments between associated companies (requiring a minimum 25% holding) from withholding tax in the source State. As with the PSD, the Commission considers that procedural barriers and legal uncertainty have arisen in practice and that the limited material scope no longer fits today's economic reality. The following main amendments are proposed to apply as of 1 January 2037:

- The concept of associated company, including the 25% holding requirement, is removed as a condition for the exemption. As a result, interest and royalty payments between companies in the EU may benefit from the exemption regardless of any level of participation between them. The IRD is also amended to apply to payments attributable to the activities of a permanent establishment, irrespective of whether those payments are tax-deductible in the Member State where the establishment is situated.
- Mirroring the proposed amendments to the PSD, Member States will no longer be permitted to require prior authorisation or administrative procedures to verify, at the time of payment, whether the conditions for the exemption are met. Eligibility becomes self-assessed by the taxpayer, subject to ex-post controls by the relevant authorities and the application of anti-abuse rules.
- For publicly traded securities where the investor is unknown to the paying company, the Proposal instead, channels relief through the FASTER directive procedures.
- To prevent the proposed broader exemption from producing double non-taxation, Member States must either levy withholding tax or deny deductibility at source where the recipient is established in a jurisdiction where no corporate income tax is levied or where a zero rate is applied on interest and royalty flows. This safeguard does not apply, in principle, where the recipient is subject to a qualified domestic top-up tax

(the 'QDMTT'), or is part of an MNE group within the scope of the Pillar Two Directive (or, for third countries, the OECD GloBE Model Rules), which reflects the interaction with the global minimum tax.

Finally, as of 1 January 2029, the annex to the IRD listing the company forms eligible for the IRD is updated and the Commission is empowered to further amend the list via delegated acts.

Tax Merger Directive: closing the gap with EU company law

The Tax Merger Directive (the 'TMD') defers taxation of capital gains arising from certain cross-border reorganisations - mergers, divisions, transfers of assets and exchanges of shares - until such time that the assets are actually disposed of, so that restructurings can take place without immediate taxation. The Commission notes that the scope of the TMD no longer aligns with more recent EU company law, in particular, the cross-border operations introduced by the Mobility Directive. The following main amendments are proposed:

- The scope and definitions of the TMD are aligned with the Mobility Directive to include a 'simplified merger' and 'division by separation', which have not yet been covered. The aim is to ensure coherence between the tax framework and company law and to remove the legal uncertainty that the mismatch created.
- A new chapter is added covering cross-border conversions, i.e., the cross-border transfer of a company's registered office and conversion into a legal form of the destination Member State. In line with the neutrality principle, taxation of capital gains arising on the assets of a company undergoing such conversion is deferred until actual disposal, provided that the company remains tax resident in the departure Member State or keeps a permanent establishment there with which the assets remain connected. The cross-border conversion may not, as such, give rise to an exit tax in the hands of the shareholders of the converted company.
- Finally, the annex to the TMD listing the company forms that can benefit from the Directive is updated, and the Commission is empowered to adopt delegated acts.

Anti-Tax Avoidance Directive: R&D support, easing earnings stripping rules, and Pillar Two alignment

The Anti-Tax Avoidance Directive (ATAD) sets a common minimum level of protection against base erosion and profit shifting through rules on interest limitation, exit taxation, controlled foreign companies ('CFCs'), hybrid mismatches and a general anti-abuse rule. The Commission's evaluation concludes that several of these rules are no longer up to date, have become overly complex, in part overlap with Pillar Two, create disproportionate compliance burdens or legal uncertainty and the risk of not targeting base erosion and profit shifting in a proportionate manner.

The Taxation Omnibus reworks them and - notably - adds a new framework for the tax treatment of research and development (R&D) expenditure.

Dispute Resolution Mechanisms Directive: faster and more accessible procedures

The Dispute Resolution Mechanisms Directive (the 'DRM') provides mechanisms for resolving cross-border disputes between States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation. The Commission introduces targeted amendments to address interpretative divergences identified in practice, streamline procedures and improve taxpayers' access. The following main amendments are proposed:

- The Proposal clarifies that where the taxation of more than one person is directly affected by the same question, each person qualifies as an affected person. This should remove uncertainty in multi-entity cases. In these cases, each affected person may submit the complaint only to the competent authority of its Member State of residence, thereby avoiding multiple filings.
- To enhance legal certainty, the notion of 'simultaneous submission' is replaced by a clear 30-calendar-day submission window, responding to divergent national interpretations.

- Procedural failures may lead to rejection of the complaint. However, affected persons will now be allowed to remedy deficiencies regarding the complaint within 30 days and may resubmit a rejected complaint within the overall three-year time limit.
- Where competent authorities agree that no agreement can be reached, they must inform the taxpayer without delay rather than waiting for the two-year MAP period to expire.
- Other ongoing procedures no longer need to be ended. Instead, these are suspended once a DRM complaint has been submitted and terminated only once the complaint has been accepted by all competent authorities or it is withdrawn by the affected person. This should ensure that taxpayers are not left without protection while avoiding overlapping procedures.
- A new provision empowers the Council to adopt implementing acts laying down binding technical and procedural rules. A harmonised statistical reporting framework is introduced, aligned with the OECD framework.

European Commission proposal for a recast of the Directive on Administrative Cooperation (DAC Recast)

On 24 June 2026, the European Commission published a proposal to codify the Directive on Administrative Cooperation, and its eight amendments (i.e., DAC1 through DAC9), into one single legal act (the 'DAC Recast'). The main objective of the DAC Recast is to simplify, clarify and enhance the EU legal framework for administrative cooperation in the field of direct taxation. We will elaborate on the proposed changes for DAC6 and briefly mention other relevant proposed amendments below.

DAC 6

General

DAC6 imposes an obligation on intermediaries and - under certain circumstances - relevant taxpayers to report specific cross-border arrangements with an EU nexus to the tax authorities. A central objective is the simplification of DAC6, which is currently estimated to cost businesses up to EUR 340 million annually. The DAC6 changes are to be adopted by 31 December 2027, with the most relevant provisions applying from 1 January 2028.

Pillar 2 carve-out

Entities within the scope of the Pillar 2 Directive are carved out from DAC6 reporting. This carve-out does not apply where the ultimate parent entity is located in a jurisdiction with a qualified side-by-side regime, unless (i) the relevant entity is subject to a qualified domestic top-up tax (QDTT) for the relevant tax period; and (ii) no refund or direct or indirect financial benefit is granted in relation to that tax. The rationale is that the 15% global minimum tax is expected to neutralise the aggressive tax planning incentives targeted by DAC6, and that tax administrations already receive substantial information on in-scope MNE groups through Country-by-Country Reporting (DAC4) and the Globe Information Return (DAC9).

Arrangements which can be implemented only and extension of the reporting deadline

The DAC Recast proposes that the reporting period commences when the first step in the implementation has been taken. This entails replacing the current three-limb trigger - i.e., when an arrangement is made available for implementation, is ready for implementation, or when the first step has been taken - with a single trigger. The term 'first step in the implementation' refers to concrete measures that make the arrangement's execution irreversible or legally binding. An example is the signing of contracts that enable the implementation. Accordingly, the definition of 'reportable cross-border arrangement' is streamlined to cover only arrangements that can be implemented and the definition of 'relevant taxpayer' is narrowed to include only the person who has implemented the first step of a reportable arrangement.

A further change is the extension of the reporting deadline from 30 to 90 days, with the aim of improving the quality and completeness of the reported information.

Amendment legal professional privilege
Following the relevant CJ judgments, the DAC Recast proposes an amendment to the legal professional privilege waiver. The definition of legal professional privilege should be understood to apply only to intermediaries who are lawyers and other professionals who are legally authorised to ensure legal representation. Where an intermediary has invoked the legal professional privilege waiver on the basis of pursuing its professional activities under one of the professional titles referred to in Article 1(2)(a) of Directive 98/5 (for example, the professional titles of '*advocaat*', '*avocat*', or '*rechtsanwalt*'), the intermediary should notify its client without delay of the client's reporting obligation. Other legal professionals authorised to ensure legal representation, but who fall outside the scope of the above directive, must notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations.

Changes to hallmarks & guidance on the main benefit test
Removing the generic Category A hallmarks in their entirety is proposed. The generic nature of these hallmarks has been proven to have little value in fighting tax fraud, evasion and avoidance. Furthermore, with respect to Hallmark C1 (deductible payments to associated enterprises in certain jurisdictions), the reference to the OECD list of non-cooperative jurisdictions is replaced with a reference to the work of the EU Code of Conduct Group.

The Commission states that it will issue guidance on a more harmonised application of the main benefit test, ensuring that DAC6 reporting obligations remain proportionate and effective. However, such guidance is lacking in the current proposal.

Further deferral of Unshell criteria
The Unshell proposal, also referred to as ATAD3, was introduced to combat tax abuse by EU 'shell companies'. However, Member States have been unable to reach consensus on the Unshell proposal. The Council, therefore, proposed to integrate the Unshell proposal into the DAC Recast.

Thereto, the DAC Recast proposes to further develop the substance criteria in Hallmark D2 in a Council implementing act within five years, thereby allowing the DAC Recast to proceed without delay. Although the proposal does not explicitly determine the applicable voting procedure for the Council implementing act, the adoption of such measures would, in all likelihood, require unanimity in the Council. This is because the implementing act would effectively establish substantive tax rules and, measures of such significance in the field of taxation are, under EU law, generally adopted by unanimous agreement of the Member States.

Disclosure third country jurisdictions
Not only must the Member State(s) of the relevant taxpayer(s) and any other Member States likely to be concerned by the reportable cross-border arrangement be disclosed in the DAC6 report but also any third country jurisdictions involved must be identified. In addition, any other person likely to be affected by the reportable cross-border arrangement must be included in the DAC6 report, including those located in third country jurisdictions.

Implications for your business
Pillar 2 MNE groups may benefit from a targeted carve-out from DAC6. In addition, the scope of reporting is limited to arrangements that are actually implemented, while the extended reporting deadline reduces pressure on the reporting process.

Other proposed changes in the DAC Recast

DAC7
DAC7 introduced reporting obligations for digital platform operators, requiring them to collect and report personal and financial information in respect of certain sellers using their platforms for the supply of goods, the rental of immovable property, the provision of personal services or the rental of means of transport.

The DAC Recast includes the following amendments, intended to apply as from 1 January 2028:

- **Platform operator definition**: Clarification that entities, acting as intermediaries between a platform and sellers, qualify as platform operators (e.g., certain aggregator and merchant of record structures).
- **Exemption for small and medium-sized platform operators**: Introduction of an exemption for platform operators facilitating relevant activities with an annual value of less than EUR 50,000.
- **Reporting threshold for sales of goods**: Removal of the current transaction count threshold and increase of the monetary threshold from EUR 2,000 to EUR 3,000.
- **Group situations**: Exclusion from reporting of sellers that are related to the platform operator, for example, where activities are performed by a company via a group company's platform or website.

Streamlining the notification obligations for Country-by-Country Reporting and Pillar 2

Currently, MNE groups in the scope of Country-by Country Reporting ('CbCR') and Pillar 2 are faced with separate notification obligations for CbCR and Pillar 2 purposes, with different deadlines. It is proposed to allow MNE groups to file a single, central notification within the EU covering both CbCR and Pillar 2.

Introduction of a TIN verification tool

The Commission intends to develop an automated tax identification number ('TIN') verification tool. This tool is to be made available to both tax authorities and reporting entities by no later than 31 December 2030.

Additional information to be automatically exchanged

Currently, information is automatically exchanged in respect of income from employment, director's fees, pensions, royalties, life insurance products, non-custodial dividends, and ownership and income from immovable property. It is proposed to remove the exchange of information on income from life insurance products and to include beneficial ownership of immovable property.

Final remarks

The proposal for the DAC Recast requires Council unanimity and may evolve during negotiations. We are closely monitoring the legislative process and will keep you informed.

Commission introduces temporary State aid framework to address Middle East crisis impact

On 29 April 2026, the European Commission adopted the Middle East Crisis Temporary State Aid Framework ('METSAF'), enabling Member States to provide targeted support to sectors most affected by the economic consequences of the ongoing Middle East crisis. The Framework will remain in force until 31 December 2026 and is intended to address the impact of rising energy prices, supply chain disruptions and increased costs for fuel and fertilisers.

The Commission noted that developments in the Middle East have resulted in significant volatility in global energy markets, affecting businesses across the European Union. In response, the METSAF allows Member States to grant aid to undertakings active in the agriculture, fisheries and transport sectors to compensate part of the additional costs resulting from increases in fuel and fertiliser prices caused by the crisis.

Under the Framework, Member States may compensate up to 70% of the additional fuel and fertiliser costs incurred by eligible beneficiaries. In addition, a simplified support mechanism allows aid of up to EUR 50,000 per undertaking on the basis of estimated sector-specific fuel consumption and other relevant proxies.

The Framework also provides additional flexibility for electricity price relief schemes approved under the Clean Industrial Deal State Aid Framework ('CISAF'). In particular, Member States may increase the aid intensity for eligible electricity consumption from 50% to up to 70%. The Commission stated that it will keep the scope and duration of the METSAF under review in light of further developments in the Middle East and the wider economic situation.

Commission calls on Germany, France and Italy to align its legislation on the taxation of dividends received from subsidiaries in other Member States

The EC has decided to open infringement procedures against Germany, France and Italy regarding their tax treatment of dividends received from subsidiaries in other Member States. The three States tax dividends received from other Member States multiple times, according to the European Commission.

The Commission has concluded that the additional taxation negatively impacts the competitiveness and investment for mid-sized and larger companies. In line with their renewed intention to remove barriers for the internal market in the Communication 'A simpler, clearer and better enforced EU Rulebook', Annex II they have now sent letters of formal notice to Germany, France and Italy.

These Member States now have two months to address the concerns raised by the EC. They will have the opportunity to declare why their local regimes regarding the taxation of dividends received from subsidiaries are in line with the Parent-Subsidiary Directive.

3. VAT

Case law

GC judgment on VAT grouping and the 100% ownership requirement (*Sampension Livsforsikring*)

On 15 July 2026, the GC delivered its judgment in Case T268/25 (*Sampension Livsforsikring*).

The case concerned a Danish VAT grouping rule imposing a 100% ownership requirement where the group included persons carrying out VAT-exempt activities or persons not engaged in economic activities. Under that rule, one group member was required to own, directly or indirectly, the entire capital of the other members.

The GC held that such a requirement goes beyond the concept of 'close financial links' under the VAT Directive. Although a 100% shareholding may demonstrate the existence of close financial links, those links may also exist where the ownership interest is lower, provided that the entities remain closely linked financially, economically and organisationally.

The GC, therefore, concluded that the VAT Directive precludes a national 100% ownership requirement unless that requirement is necessary and proportionate to prevent tax evasion or avoidance. It further confirmed that the relevant provision of the VAT Directive does not have direct effect, with the result that taxpayers cannot invoke it directly against a Member State.

CJ judgment on directors' liability for unpaid VAT and the right to an effective remedy (*QJ*)

On 16 July 2026, the CJ delivered its judgment in Case C158/25 (*QJ*).

The case concerned a Luxembourg regime under which company directors could be held jointly and severally liable for the company's unpaid VAT where they failed to comply with their VAT-related obligations.

The CJ held that such a regime falls within the scope of the VAT Directive and must therefore comply with the fundamental right to an effective remedy. A director held liable for a company's unpaid VAT must be able to challenge the factual and legal findings underlying the VAT assessment on which that liability is based, even where the assessment issued to the company has become final.

Accordingly, national legislation is incompatible with EU law if it prevents directors from effectively contesting their joint and several liability, including the underlying VAT assessment and the amount of unpaid VAT for which they are held liable.

CJ judgment on VAT exemptions as State aid (*Schoger II*)

On 9 July 2026, the CJ delivered its judgment in Case C360/25 (*Schoger II*).

The case concerned an Austrian VAT exemption for services supplied between undertakings operating primarily in the banking, insurance and pension fund sectors.

The referring court asked whether that exemption constituted prohibited State aid under EU law.

The CJ held that the exemption had no basis in the VAT Directive and, therefore, was attributable to the Austrian State. It conferred a selective advantage on the undertakings benefiting from it by relieving them of VAT that would otherwise have been due. The Court further found that the measure was liable to distort competition and affect trade between Member States. It therefore concluded that the exemption constituted State aid within the meaning of EU law. The Court also rejected Austria's request to limit the temporal effects of the judgment.

GC judgment on the liability of tax representatives for VAT debts (*Rapera*)

On 8 July 2026, the GC delivered its judgment in Case T356/25 (*Rapera*).

The case concerned the Greek tax representative of an Italian company, who was held liable for unpaid VAT and made subject to precautionary recovery measures.

The GC held that a tax representative may be designated as the person liable for VAT under the VAT Directive, even if the representative is not involved in the represented taxpayer's taxable transactions, provided that the representative has been validly appointed.

However, the Court held that the VAT Directive and the principle of proportionality preclude national legislation that automatically imposes joint and several liability on a tax representative who merely performs VAT compliance obligations, without allowing the tax authorities or courts to assess whether that person was involved in the taxpayer's activities, knew or ought to have known that the VAT would remain unpaid, or acted in good faith.

4. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ judgment on tax-marking and the simplified justification of destruction (*Swedish Match*)

On 13 May 2026, the CJ delivered its judgment in case C-322/25 (*Swedish Match - Fósforos de Portugal*).

The case concerned a Portuguese tax-marking regime under which the destruction of tax markings used in the manufacturing process was automatically justified, without any verification by the tax authorities, within the 2% annual threshold (representing 'foreseeable losses'), but only where the destruction occurred in a warehouse located on Portuguese territory. Where the same destruction occurred in another Member State, the taxpayer had to provide an appropriate declaration from the competent authorities of that other State.

Swedish Match, which had ceased its activity and could not present tax markings that had been destroyed or rendered unusable during production processes carried out in other Member States, was issued two recovery notices for tobacco excise duty for the years 2008 and 2009, on the ground that it had failed to justify the destruction under the stricter, non-simplified regime.

The Portuguese Supreme Administrative Court questioned whether this territorial limitation was compatible with the EU rules on the free movement of goods and services. The CJ, however, held that the matter was harmonised at EU level and, therefore, examined the case exclusively under the second subparagraph of Article 21(2) of Directive 92/12, which requires Member States to ensure that tax markings do not create obstacles to the free movement of excise goods. As a result, the Court did not separately assess the Portuguese rules under the fundamental freedoms of the TFEU.

The Court held that the territorial limitation constituted an obstacle to the free movement of excise goods. Because the simplified 2% justification regime applied only to losses occurring in Portugal, operators manufacturing in other Member States remained subject to stricter evidential requirements. The Court considered that this difference in treatment was liable to discourage sourcing from other Member States and could not be justified by a general presumption of fraud. The measure, therefore, was neither appropriate nor necessary to prevent fraud, evasion or abuse.

CJ judgment on authorisation conditions for tax warehouse under the Excise Directive (*Centro Petroli Roma*)

On 11 June 2026, the CJ (Fourth Chamber) delivered judgment in case C-386/24 (*Centro Petroli Roma*).

The case concerned an Italian company whose authorisation to operate a small commercial warehouse (below the statutory capacity threshold) under the tax warehouse regime was suspended by the Italian customs authority for failing to meet additional conditions imposed on small warehouses beyond the general 'actual operational and supply needs' test, namely, a requirement that at least 30% of withdrawals over a two-year period consist of duty-exempt/reduced-rate supplies or intra-EU/export transfers, or that the warehouse be a dependent 'satellite' of another tax warehouse.

The referring Italian Consiglio di Stato asked whether such additional, capacity-based conditions were compatible with Article 16(1) of Directive 2008/118, which allows Member States to subject the opening and operation of a tax warehouse authorisation to conditions Member States may lay down 'for the purpose of preventing any possible evasion or abuse'.

The Court held that Article 16(1) leaves Member States a genuine margin of discretion to set authorisation conditions, provided these pursue the objective of preventing evasion and abuse and comply with the principle of proportionality. It found that the criteria at issue aimed at verifying the genuineness of the economic activity carried out in the warehouse were suitable in principle to achieving that objective, but noted that the 'actual operational and supply needs' criterion is imprecise and confers broad discretion on customs authorities; it is for the national court to verify that this criterion is not used to refuse authorisation on grounds unrelated to the reliability of the warehouse keeper or the economic reality of the storage activity, and that the overall regime does not go beyond what is necessary.

The Court ruled that Article 16(1) of Directive 2008/118 does not preclude such national legislation, subject to compliance with the principle of proportionality, as verified by the referring court.

GC judgment on the retroactive effect of judicial decisions correcting BTI decisions (*G GmbH*)

On 13 May 2026, the GC delivered its judgment in Case T-150/25 (*Zollamt Österreich v G GmbH*).

The case concerned a company that had obtained a binding tariff information ('BTI') decision classifying single-use tourniquets under a particular tariff code. The company challenged that classification, and the Bundesfinanzgericht (Federal Finance Court, Austria) upheld the appeal, amending the BTI decision with retroactive effect from the date of its original issuance.

The Customs Office appealed, arguing that such retroactive correction was not permitted under Article 34 of the Union Customs Code ('UCC'). In particular, it relied on Article 34(3) UCC, which provides that BTI decisions do not cease to be valid with retroactive effect and on Article 34(6) UCC, which states that BTI decisions may not be amended.

The General Court rejected that argument, finding that judicial appeals against BTI decisions fall within the scope of Article 44 UCC, rather than Articles 33 and 34 UCC. It further held that effective judicial protection requires restoring the economic operator to the position it would have been in had the unlawful BTI never been issued. Accordingly, the Court concluded that Article 44(4) UCC does not preclude national rules granting retroactive effect from the date of its issuance to a judicial decision correcting a BTI decision on appeal.

GC judgment on the concept of smoking tobacco and home processing (*Scrap-Transporteur*)

On 29 April 2026, the GC delivered its judgement in the case T-194/25 (*Hauptzollamt A v Scrap-Transporteur*).

The case concerned scraps of raw, unflavoured tobacco leaves seized in Germany, intended to be processed into water-pipe tobacco by the end consumer through boiling with water, glycerine and sugar and mixing with flavouring, using instructions available online. The German customs office assessed tobacco tax on the goods as 'smoking tobacco', while the transporter argued the goods were raw tobacco requiring industrial processing and thus not taxable.

The General Court held: first, that whether a product is 'capable of being smoked' under Article 5(1)(a) of the Tobacco Excise Directive must not be assessed by reference to consumer perception, since the wording contains no such criterion (unlike the cigars/cigarillos definition) and a narrow, perception-based reading would undermine the directive's harmonisation and health-protection objectives.

Second, the Court held that the concept of 'without further industrial processing' covers multi-stage methods that consumers nonetheless can carry out at home. Industrial processing implies large-scale, standardised transformation of raw materials; home preparation steps, even where relatively complex, do not meet that threshold. Since the tobacco at issue could be made smokable by consumers without large-scale or standardised industrial processing, it was capable, subject to verification by the referring court, of falling within the concept of 'smoking tobacco' under Article 5(1)(a) of the Tobacco Excise directive and therefore, of being subject to tobacco excise duty.

GC judgment on the concept of 'own use' and passing on excise goods free of charge (*A and B v Hauptzollamt*)

On 20 May 2026, the GC delivered its judgment in joined Cases T-685/24 and T-686/24 (*Jelgratz and Buchgint*).

The case concerned two private individuals stopped at the German border while transporting tobacco products (cigarettes and heated tobacco) bearing Polish tax marks, acquired in Poland with a view to giving them, free of charge, to a family member residing in Germany. The German customs authorities refused to treat these acquisitions as being for 'own use' under Article 32 of Directives 2008/118 and 2020/262 and levied German excise duty on the basis that any intended passing on, even as a gift, excluded that qualification, regardless of quantity.

The General Court held that the concept of 'own use' is an autonomous concept of EU law, to be interpreted strictly since it constitutes an exception to the general rule that excise duty is levied in the Member State of destination. It found that a broad interpretation covering the free passing-on to another private individual would create a substantial risk of tax avoidance, given the lack of documentary follow-up for a private individual's transport of goods and the difficulty for authorities to verify whether any consideration had in fact been exchanged. Such a broad reading would also undermine Member States' fiscal and public-health policies, regarding tobacco consumption.

The Court concluded that the concept of a private individual's 'own use' does not cover the acquisition and transport of excise goods with the view to passing them on, free of charge, to another private individual, irrespective of the quantity involved.

AG Opinion on the General Rule 2(a) and split-consignment imports (*Prestige Rijwielen*)

On 10 June 2026, Advocate General Martín y Pérez de Nanclares delivered his Opinion in Case T-529/25 (*EPPO and Belgian State v Prestige Rijwielen and Others*).

The case arose from criminal proceedings against a Belgian bicycle importer accused of evading conventional customs duties, anti-dumping duties and countervailing duties by declaring electric bicycle parts rather than complete bicycles through separate customs declarations spread over several months. According to the referring court, the imported parts collectively corresponded to thousands of complete electric bicycles.

The Antwerp Court of Appeal asked whether General Rule 2(a) of the Combined Nomenclature ('CN') can be applied to the facts in the case at hand.

Under General Rule 2(a) CN, a complete article imported in an unassembled or disassembled state may nevertheless be classified as the finished product for customs purposes. In the present case, this means that electric bicycle parts classified under CN heading 8714 could, in certain circumstances, be classified as complete electric bicycles under CN heading 8711. If Rule 2(a) applies, the imports become subject to the conventional customs duties, anti-dumping duties and countervailing duties applicable to electric bicycles, rather than the generally more favourable tariff treatment available for individual parts.

The AG proposes a strict reading of the General Rule 2(a). In his view, the rule applies in principle only where the constituent parts are presented to customs simultaneously. Imports in split consignments fall within its scope only where the CN expressly provides for such treatment, notably for certain machinery under Section XVI and specific goods under Section XVII. Since electric bicycles and their parts fall outside those derogations, Rule 2(a) cannot be extended to them by analogy, although the EU legislature remains free to amend the CN accordingly. The AG further considers that the prohibition of abuse of rights cannot be used to extend the scope of Rule 2(a) *contra legem*, although abusive conduct may be a relevant objective factor where the rule is otherwise applicable.

The AG therefore proposes that the General Court rule that Rule 2(a) does not apply to electric bicycle parts imported in successive split consignments and that such imports cannot be classified as complete electric bicycles on that basis.

GC judgment on the taxation of energy product used for burner testing purposes (Case T-562/25 (*XXX v Hauptzollamt München*)

On 15 July 2026, the General Court delivered its judgment in case T-562/25 (*XXX v Hauptzollamt München*).

The case concerned a German energy technology company operating test benches for gas turbine burners, consuming around 51.5 tonnes of propane in 2021. The company applied for energy tax relief, arguing that the heat generated during combustion was merely dissipated and not exploited, as the purpose of the tests was to obtain measurement data rather than to produce or use heat. The German customs authorities rejected the claim, considering the propane to be used as a heating fuel.

The referring court (*Finanzgericht München*) asked whether the concept of use 'as heating fuels' under the first indent of Article 2(4)(b) of the Council Directive 2003/96 (the 'Energy Taxation Directive') constitutes use 'as heating fuel' where the resulting combustion heat is not subsequently recovered or used.

The General Court held that since the excise duty is a consumption tax, what matters is that the product is burnt and its thermal energy is used, regardless of the purpose of the heating or whether the heat is subsequently recovered, retained or otherwise exploited. Here, the thermal energy was used to recreate real-world thermal conditions necessary for obtaining reliable measurements, even though the heat was not recovered. In the case at hand, the propane was consumed for its thermal content to recreate the operating conditions of a gas turbine and generate meaningful test results. The resulting heat was therefore an essential element of the industrial testing process, and the propane was therefore consumed as heating fuel for the purposes of that process.

The Court therefore ruled that such use of propane in burner testing does constitute use 'as heating fuel', even where the combustion heat is not subsequently exploited. Consequently, it does not qualify as a non-fuel use excluded from the scope of the Energy Taxation Directive and remains subject to the harmonised excise duty regime.

Developments

EESC Opinion on the reform of tobacco duties

On 18 February 2026, the European Economic and Social Committee (the 'EESC') adopted its opinion on the Commission's proposals to recast the Tobacco Excise Directive and amend Directive (EU) 2020/262 [COM (2025) 580 and 581 final].

The proposals modernise the EU's tobacco tax framework to cover new product categories, notably heated tobacco and nicotine products while sharply raising minimum excise rates.

The EESC broadly supports the update but warns that a sudden, steep rate increase risks fuelling illicit trade (with estimated revenue losses of EUR 15.5 billion resulting from a 5% rise in illicit trade) and proposes a lower cigarette minimum (EUR 155 rather than EUR 215 per 1,000 cigarettes). It calls for clearer product definitions, consistency with the Combined Nomenclature, and continued Member State flexibility on taxation methods (unit vs. weight). Delegated powers should be strictly confined to inflation-linked adjustments (core HICP, capped at 6% over three years), leaving tax bases, definitions and minimum rates to the ordinary legislative procedure.

The Committee further recommends preserving tax differentials for cigars/cigarillos to protect SMEs, applying risk-proportionate taxation to reduced-risk products ('less harm, less tax'), and avoiding new EMCS obligations for raw tobacco, already monitored nationally.

Adopted with 198 votes in favour, 38 against and 19 abstentions.

New Union Customs Code: update timing

Following the political agreement reached between the Commission, the Parliament and the Council on the new Union Customs Code (the 'New UCC'), and the provisional agreement adopted by the Internal Market and Consumer Protection Committee, the vote on the final adoption of the New UCC by the Parliament will take place during the European Parliament Plenary session scheduled for 14 - 17 September 2026.

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