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Edition 217



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EU Tax Alert

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

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

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1. Highlights in this edition



EU Customs Reform enters into force

Following its publication in the European Official Journal on 19 September 2026, the EU Customs Reform has entered into force, introducing a new Union Customs Code, a new EU Customs Authority and the EU Customs Data Hub, with the importer becoming the central customs actor and implementation phased in through 2034.

EDPS issues opinion on the DAC Recast proposal

The EDPS supports consolidating the DAC framework into a single instrument but calls for stronger data protection safeguards, including retaining the ‘foreseeable relevance’ principle, clearer residence-identification rules, data minimisation, retention limits and stronger taxpayer rights, particularly regarding access to anti-money laundering and pension databases.

Belgian Constitutional Court allows landmark UTPR case (Pillar Two) to continue before the CJEU, despite SbS package

The Belgian Constitutional Court confirmed that, despite the adoption of the Side-by-Side package, the American Free Chamber of Commerce retains a sufficient interest in pursuing its annulment action against the Belgian implementation of the Undertaxed Profits Rule, so that the preliminary reference to the CJEU on the validity of the UTPR provisions in the Pillar Two Directive can proceed.

CJ judgment on referral on denial of tax credit for services provided in Switzerland (*BT and CY v Finanzamt Siegburg*, Case C-223/25)

The CJ held that the EU-Switzerland Agreement on the Free Movement of Persons precludes Germany from denying an income tax reduction for household and craftsperson’s services solely because the taxpayer’s household is located in Switzerland rather than in the EU or EEA.

CJ judgment on taxation of dividends received by non-resident investment funds and the neutralising effect of tax treaties (*Administración General del Estado v iShares Europe ETF*, C-139/25)

The CJ ruled that a bilateral tax treaty can only neutralise a restriction on the free movement of capital arising from less favourable taxation of dividends paid to a non-resident fund where the resulting disadvantage is fully and effectively offset in practice, not merely theoretically available.

2. Direct Taxation



Case law

Belgian Constitutional Court allows landmark UTPR case (Pillar Two) to continue before the CJEU, despite SbS package

On 24 September 2026, the Belgian Constitutional Court held that, notwithstanding the adoption of the Side-by-Side package ('SbS'), the American Free Chamber of Commerce ('AmFree') retains a sufficient interest in pursuing its annulment action against the Belgian implementation of the Undertaxed Profits Rule ('UTPR') laid down in the EU Pillar Two Directive. As a result, the Court's earlier request for a preliminary ruling remains in place and the proceedings before the Court of Justice of the European Union ('CJ') can, in principle, resume. The decision is significant because it clears the way for the CJ to examine, for the first time, the compatibility of the UTPR provisions in the EU Pillar Two Directive with primary EU law and customary international law.

The proceedings began on 27 June 2024, when AmFree filed an application with the Belgian Constitutional Court seeking the annulment of the UTPR as implemented in Belgian law by the Act of 19 December 2023, which transposes the EU Pillar Two Directive. AmFree argued that the UTPR infringes the Belgian Constitution, read in conjunction with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, on the following grounds: (i) a Belgian entity may become liable for top-up tax on profits realised by another entity located outside Belgium over which it has no direct or indirect control and from which it will never receive those profits, which infringes the principle of fiscal territoriality; (ii) the top-up tax may be imposed on group entities that have no ownership interest in, and therefore no control over, the low-taxed entity, exposing

a Belgian entity to tax liability that could prevent it from earning a reasonable profit or even jeopardise its continued existence, without any corrective mechanism being available, which infringes the right to property; (iii) because a Belgian entity may become liable for top-up tax on profits realised by entities it does not control, and because its own financial position is not taken into account, it may be prevented from freely using its economic, technical and financial resources, which infringes the freedom to conduct a business and the general principle of legal certainty; and (iv) the UTPR disregards the Belgian entity's own financial capacity and thereby treats entities with materially different financial capacities in the same manner, which is incompatible with the principle of equality and non-discrimination.

Since the Belgian UTPR provisions derive from the EU Pillar Two Directive, the proceedings also raised questions as to the validity of the Directive itself, and AmFree requested the Belgian Constitutional Court to refer questions to the CJ for a preliminary ruling. In its judgment of 17 July 2025, the Belgian Constitutional Court accepted that request and referred questions to the CJ concerning the compatibility, and by extension the validity, of the UTPR provisions with primary EU law and customary international law, including the principles of equality and non-discrimination under Articles 20 and 21 of the EU Charter, the right to property under Article 17 of the EU Charter, the freedom to conduct a business under Articles 15 and 16 of the EU Charter, the freedom of establishment under Article 49 TFEU, the freedom to provide services under Article 56 TFEU, the principle of legal certainty, and the principle of fiscal territoriality.

On 12 May 2026, the Belgian Constitutional Court informed the parties that the proceedings had been reopened, following a request from the CJ asking it to clarify whether the Side-by-Side regime and the transitional UTPR Safe Harbour would affect

the Court's earlier finding that AmFree has a sufficient interest in bringing the action. After reopening the proceedings and hearing the parties, the Belgian Constitutional Court held that these subsequent developments do not remove AmFree's interest in obtaining a ruling on the validity of the Belgian UTPR provisions. The Court noted that Belgium has not yet implemented the Side-by-Side regime and that, in any event, that regime would only apply where the ultimate parent entity is located in a jurisdiction that has adopted a qualified Side-by-Side regime, such as the United States. A Belgian subsidiary of a US group whose ultimate parent entity is established elsewhere would therefore not benefit from that regime and could still become subject to the UTPR, so that the UTPR may still affect the interests of the US companies represented by AmFree.

The preliminary ruling proceedings before the CJ may now resume, enabling the CJ to address the substantive EU-law questions raised and to provide guidance on the legal boundaries of a key component of the Pillar Two framework.

CJ judgment on referral on denial of tax credit for services provided in Switzerland (*BT and CY v Finanzamt Siegburg*, Case C-223/25)

On 28 August 2026, the CJ delivered its judgment in the case *BT and CY v Finanzamt Siegburg* (C-223/25). The case concerned the compatibility of German income tax legislation with the Agreement on the Free Movement of Persons between the EU and Switzerland ('AFMP'). The CJ held that Germany may not deny a tax reduction for household and craftsperson's services solely because the taxpayer's household is located in Switzerland rather than in the EU or EEA.

The applicants, spouses BT and CY, held both German and Swiss nationality and lived in Switzerland. During 2019, they incurred costs for gardening and renovation services performed at their Swiss home. BT worked in Germany and, as a cross-border worker, spent weekdays there while returning to Switzerland on a regular basis. Under German

law, taxpayers may claim an income tax reduction equal to 20% of certain household-service and craftsperson costs, subject to statutory ceilings. However, the relief is available only where the services are performed in a household located within the EU or EEA. As the services in question were supplied at the applicants' Swiss residence, the German tax authorities denied the relief.

The referring court requesting a preliminary ruling of the CJ asked whether that territorial limitation was compatible with Articles 1, 2, 7 and 15 AFMP, read together with Article 9(2) of Annex I, which guarantees equal treatment in respect of tax concessions for employed persons and their family members.

In its judgment, the CJ confirmed the applicability of the AFMP to the underlying situation. Although BT also held German nationality, he qualified as an employed frontier worker because he resided in Switzerland, worked in Germany and returned to his Swiss residence at least once a week. The CJ reiterated that rights under the AFMP may, in certain circumstances, also be invoked by dual nationals against their own Member State.

The CJ further held that the German tax reduction constitutes a 'tax concession' within the meaning of Article 9(2) of Annex I AFMP. While the legislation formally distinguished taxpayers based on the location of the household rather than on nationality or residence, the CJ found that the rule operated in practice to the disadvantage of frontier workers residing in Switzerland. Such workers would generally be unable to satisfy the EU/EEA household location requirement and, therefore, were treated less favourably than comparable taxpayers.

The CJ rejected Germany's argument that the situations were not objectively comparable. The tax relief was not linked to the taxpayer's personal ability to pay or family circumstances but instead, was granted as a fixed percentage of qualifying expenditure. Moreover, the incentive effect of the measure, namely encouraging the use of declared

household services rather than undeclared work, could arise equally where services are performed in Switzerland.

The proposed justifications were also dismissed by the Court. Although combating undeclared work may constitute an overriding reason in the public interest, excluding households located in Switzerland was not necessary to achieve that objective. Nor could the restriction be justified by the need to preserve the cohesion of the tax system, since no direct link was demonstrated between the tax advantage and a corresponding tax levy.

Ultimately, the CJ therefore concluded that the AFMP precludes a Member State from restricting income tax relief for certain household and craftsperson services to households located within the EU/EEA, thereby excluding comparable services performed in a frontier worker's household in Switzerland.

CJ judgment on taxation of dividends received by non-resident investment funds and the neutralising effect of tax treaties (*Administración General del Estado v iShares Europe ETF*, C139/25)

On 17 September 2026, the CJ delivered its judgment in *Administración General del Estado v iShares Europe ETF* (C-139/25), concerning the taxation of dividends received by a non-resident investment fund and the extent to which a bilateral tax treaty may neutralise a restriction on the free movement of capital. The case concerned a US regulated investment company ('RIC') that received dividends from Spanish companies and was subject to a 15% withholding tax under the Spain-US tax treaty. By contrast, comparable Spanish collective investment undertakings were subject to tax at a rate of 1%.

The fund sought a refund of the difference between the 15% withholding tax and the 1% rate applicable to resident funds. The Spanish tax authorities rejected the claim, arguing that any restriction on the free movement of capital was neutralised by the tax credit mechanism provided for under the Spain-US tax treaty. The referring court therefore

asked, in essence, whether a difference in treatment may be regarded as neutralised where the relevant tax treaty provides a mechanism allowing the foreign tax to be credited in the State of residence.

The CJ first recalled that subjecting dividends paid to non-resident investment funds to a higher tax burden than dividends paid to resident funds constitutes a restriction on the free movement of capital within the meaning of Article 63 of the Treaty on the Functioning of the European Union ('TFEU'). The Court further noted that such a restriction may, in principle, be neutralised by a double tax treaty, provided that the treaty fully offsets the disadvantage resulting from the less favourable treatment in the source State.

The Court then examined the operation of the Spain-US tax treaty in the specific circumstances of the case. In that regard, it observed that the fund had elected to operate under a fiscally transparent regime and was not itself taxed in the United States on the dividends received. Consequently, the possibility for the fund to obtain a tax credit at entity level remained merely theoretical. The CJ held that a restriction cannot be regarded as neutralised on the basis of a credit mechanism that is not effectively available to the taxpayer concerned.

However, the Court did not exclude the possibility that the restriction could be neutralised at the level of the unit holders. It therefore left it to the national court to verify whether, under the applicable treaty provisions and domestic US rules, the investors in the fund were able to obtain a full credit corresponding to the additional Spanish tax burden. According to the CJ, only a complete and effective offset of the disadvantage can neutralise a restriction on the free movement of capital.

Accordingly, the CJ held that a bilateral tax treaty may neutralise a restriction arising from the less favourable taxation of dividends paid to a non-resident investment fund only where the difference in treatment is fully compensated in practice. The mere theoretical availability of a tax credit is insufficient for that purpose.

AG Opinion on refund mechanism for private foundations and the free movement of capital (*Finanzamt für Großbetriebe*, C475/25)

On 10 September 2026, AG Kokott delivered her Opinion in *Finanzamt für Großbetriebe* (C475/25), concerning the compatibility of the Austrian corporation tax regime applicable to private foundations with the free movement of capital under Article 63 TFEU. The case concerns a resident private foundation that is subject to corporation tax on certain types of income, including interest income and gains derived from the disposal of shareholdings and immovable property.

Under Austrian law, the corporation tax paid by a private foundation may be refunded where the foundation makes distributions to beneficiaries and those distributions are subject to Austrian capital income tax. However, no refund is granted where the beneficiaries are exempt from such tax, including situations where the exemption results from a double taxation convention. The dispute arose because the beneficiaries of the foundation were not subject to Austrian capital income tax on the distributions received and, consequently, the foundation was denied the refund of the corporation tax previously paid.

The referring Austrian court asked, in essence, whether Article 63 TFEU precludes such a regime where the availability of the corporation tax refund depends on the tax treatment of the beneficiaries. More specifically, the question is whether a resident foundation is placed at a disadvantage where the beneficiaries are not subject to domestic capital income tax, including by virtue of a tax treaty, resulting in the definitive taxation of income at the level of the foundation.

In assessing the issue, the AG first examined the functioning and objective of the Austrian regime. According to the Opinion, the refund mechanism forms part of a system intended to avoid economic double taxation by ensuring that the income is ultimately taxed once, either at the level of the foundation or at the level of the beneficiaries. The AG considered

that the decisive element is not the residence of the beneficiaries as such, but whether a subsequent taxation of the distribution takes place.

The AG further analysed whether the different treatment is liable to discourage cross-border capital movements and therefore constitutes a restriction on the free movement of capital. In that regard, the Opinion notes that the denial of the refund may result in a higher overall tax burden where beneficiaries are not subject to Austrian capital income tax. However, the AG considered that such treatment reflects the internal logic of the Austrian system, under which the refund is conditional upon taxation of the distribution at beneficiary level.

Accordingly, the AG proposes that Article 63 TFEU does not preclude a national regime under which a resident private foundation is entitled to a refund of corporation tax only where distributions to beneficiaries are subject to domestic capital income tax, even if no refund is granted because the beneficiaries benefit from a tax exemption or a double taxation convention.

Developments

Belgian Court Refers Application of Interest Deduction Limitation Rules to the CJ (*Shopping Cora La Louvière*, Case C-415/26)

The Tribunal de première instance du Brabant Wallon (Belgium) has referred questions to the CJ in the case *Shopping Cora La Louvière* (C-415/26) concerning the application of interest deduction limitation rules in a group context.

The proceedings concern national legislation implementing the interest limitation rule of Article 4 Directive (EU) 2016/1164 (the Anti-Tax Avoidance Directive, **ATAD**). Under the legislation at issue, the EBITDA of group members is effectively consolidated, meaning that the negative EBITDA of certain group entities reduces the positive EBITDA of other group entities. By contrast, the consolidation of exceeding borrowing costs is only partial.

In particular, exceeding borrowing costs incurred by one group member cannot be offset against the surplus interest income, or 'negative' exceeding borrowing costs, realised by another group member. The referring court questions whether such an asymmetric approach is compatible with the third subparagraph of Article 4(1) ATAD.

The forthcoming judgment may provide important guidance on the degree of flexibility available to Member States when implementing the ATAD group interest limitation mechanism. In particular, the CJ may be required to clarify whether Member States that opt for a group-based approach must ensure a fully symmetrical treatment of both EBITDA and exceeding borrowing costs and whether taxpayers may rely directly on Article 4(1) ATAD before national courts where domestic legislation is alleged to be inconsistent with the Directive.

EDPS issues opinion on the DAC Recast proposal

On 24 August 2026, the European Data Protection Supervisor (EDPS) published its opinion on the European Commission's proposal for a recast of the Directive on Administrative Cooperation (DAC Recast). The EDPS broadly supports the initiative to consolidate the existing DAC framework into a single legal instrument, while emphasising that the recast should further strengthen data protection safeguards and provide greater legal certainty for taxpayers and tax authorities.

In particular, the EDPS recommends retaining the concept of 'foreseeable relevance' as an overarching principle governing the exchange of information between Member States. It also calls for clearer rules on the identification of the taxpayer's Member State of residence to avoid unnecessary exchanges of personal data with jurisdictions that lack a legitimate tax interest. Furthermore, the EDPS stresses the importance of strict data minimisation, enhanced feedback mechanisms between tax authorities and clearer limitations on the use of information exchanged under the DAC framework.

The opinion also raises concerns regarding the proposed access by tax authorities to anti-money laundering databases and pension-payment registers. According to the EDPS, access should be limited to what is necessary and proportionate for specified tax purposes and should be subject to appropriate safeguards. In addition, it recommends introducing clear retention periods for data exchanged under the DAC and strengthening taxpayers' rights to information, access and judicial redress in the context of cross-border information exchanges.

The EDPS opinion will now form part of the ongoing legislative discussions on the DAC Recast proposal.

Commission Approves Italian Aid Scheme to Offset Increased Fuel and Fertilizer Costs

On 14 September 2026, the European Commission approved an Italian State aid scheme intended to compensate undertakings in the agricultural, fisheries and aquaculture sectors for increased fuel and fertilizer costs.

The aid will take the form of direct grants and tax benefits, based on estimated fuel and fertilizer consumption. The scheme was assessed under EU State aid rules, in particular Article 107(3)(c) of the TFEU, which enables Member States to support the development of certain economic activities subject to certain conditions, as well as the Middle East Crisis Temporary State Aid Framework ('METSAF'; adopted by the Commission on 29 April 2026).

The Commission found the scheme in line with the conditions set out in the METSAF. In particular, the aid will be granted based on a scheme with a clear estimated budget and will be provided to temporarily support the development of companies active in primary production of agricultural products. Once confidentiality issues are resolved, a non-confidential version of the decision will become available under number SA.123714 in the State aid Register.

European Parliament's FISC Subcommittee discusses tax simplification, competitiveness and compliance

On 7 September 2026, the European Parliament's Subcommittee on Tax Matters ('FISC') held a public hearing on tax policy, tax compliance and the role of taxation in supporting EU competitiveness. The discussion brought together representatives of the European Commission, academia and taxpayer organisations and focused on the challenges of balancing revenue collection, competitiveness and regulatory simplification.

A recurring theme throughout the hearing was the need to reduce tax complexity and compliance burdens for businesses. Representatives of the European Commission highlighted recent initiatives, including the Taxation Omnibus and the DAC Recast, as key elements of the EU's broader competitiveness agenda. In that context, it was stressed that improving tax systems is not necessarily a question of lowering taxes, but rather of reducing administrative burdens, improving the effectiveness of tax collection and facilitating cross-border business activities.

Speakers also discussed the changing international tax landscape. Attention was drawn to the increasing policy focus on competitiveness and economic growth following a decade marked by anti-avoidance initiatives such as BEPS, the DAC amendments and Pillar Two. While simplification efforts were broadly welcomed, concerns were expressed that a relaxation of certain anti-abuse measures could create new opportunities for tax planning, highlighting the need to strike an appropriate balance between competitiveness and the protection of tax revenues.

Finally, representatives of taxpayers emphasised the importance of legal certainty, proportionality and administrative simplicity in promoting voluntary compliance. While digitalisation initiatives were generally supported, concerns were raised that new reporting and compliance obligations may disproportionately affect smaller businesses if not accompanied by adequate simplification measures and impact assessments.

ECON Committee Adopts Recommendations on EU Corporate Tax Policy

On 26 August 2026, the European Parliament's Committee on Economic and Monetary Affairs ('ECON') adopted recommendations concerning future EU corporate tax policy. The recommendations form part of the European Parliament's broader efforts to strengthen the competitiveness of the EU economy while preserving an effective, coherent and robust corporate tax framework. They address a range of topics, including the implementation of the OECD Pillar Two rules, the OECD-US Side-by-Side system, tax simplification initiatives, administrative burden reduction, digital taxation and the interaction between EU and international tax developments.

While the recommendations are not legally binding, they provide insight into the policy priorities currently being discussed within the European Parliament and may inform future legislative initiatives of the European Commission, as well as policy discussions among the Member States in the Council.

The recommendations are expected to contribute to the continuing debate on the future direction of EU corporate taxation and the development of a more streamlined tax framework for cross-border business activities.

3. VAT



Case law

GC judgment on VAT adjustment following the lease of business premises after a transfer of a going concern (*A&P Deco*)

On 2 September 2026, the General Court of the EU ('GC') delivered its judgment in case T397/25 (*A&P Deco*).

The case concerned a garden centre operator that transferred its business to another taxable person. At the same time, the transferor retained ownership of the business premises and leased those premises to the transferee under a VAT exempt lease, while the transferee continued operating the garden centre from the same location. The transferor had previously deducted the input VAT incurred on the construction, renovation and improvement of the buildings.

The dispute concerned whether the transferor is obliged to adjust the previously deducted input VAT. The transferor argued that, because the business transfer qualified as a transfer of a going concern and the transferee continued to use the buildings for taxable activities, the adjustment obligation should effectively pass to the transferee.

The GC rejected that argument. It held that the lease of the buildings was a separate transaction from the transfer of the business and did not form part of the transfer of a going concern. According to the Court, the lease created a new right between the parties

rather than transferring a pre-existing element of the business. As a result, the transferor remained responsible for any VAT adjustment relating to the buildings. The GC further held that the VAT exempt lease altered the factors relevant to the original VAT deduction. Consequently, the transferor was required to adjust the previously deducted input VAT, notwithstanding that the transferee continued to use the premises for taxable activities.

GC judgment on national restrictions to the VAT treatment of business transfers (*Peckeger*)

On 2 September 2026, the GC delivered its judgment in case T413/25 (*Peckeger*).

The case concerned a sole proprietor who contributed VAT taxed rental properties to a company of which he was the sole shareholder and manager. The Austrian tax authorities treated the transaction as subject to VAT and took the position that the special VAT treatment for business transfers did not apply because the transferred assets generated income from letting activities.

The dispute concerned whether a Member State may restrict the application of the rule under which the transfer of an entire business or an independently operational part of a business falls outside the scope of VAT.

The GC held that a Member State may not limit that rule to businesses generating particular categories of income. Such a restriction is incompatible with EU law unless it can be justified by the specific grounds permitted under the business-transfer regime.

The Court further held that taxpayers may rely directly on that rule before national courts where national legislation unlawfully restricts its scope. The GC further held that the contribution was not a supply for consideration, as no new shares had been issued to the transferor in return for the properties. However, this did not automatically place the transaction outside the scope of VAT. The Court noted that, in order to prevent assets on which input VAT has been deducted from leaving the business free of VAT, EU VAT law treats certain free transfers of business assets as taxable transactions (a so-called ‘deemed or fictitious supply’).

GC judgment on the transfer of an undertaking in equal shares to two recipients (*Szytelbiecka*)

On 9 September 2026, the GC delivered its judgment in case T366/25 (*Szytelbiecka*).

The case concerned an entrepreneur who intended to donate her entire undertaking to her two daughters, each of whom would receive a 50% share. The daughters intended subsequently to contribute those shares to a general partnership through which the business would continue.

The dispute concerned whether the donation could benefit from the rule under which the transfer of an entire business or an independently operational part of a business falls outside the scope of VAT. The Polish tax authorities argued that neither daughter acquired an undertaking capable of carrying on an independent economic activity.

The GC first held that the donations to the daughters and the subsequent contributions to the partnership constituted separate transactions. The VAT treatment, therefore, had to be assessed at the level of each donation individually.

According to the GC, the transferred assets must be sufficient to allow the transferee independently to continue the economic activity. A 50% co-ownership share in an

undertaking did not satisfy that requirement because neither daughter could carry on the business on her own. The daughters’ intention subsequently to contribute their shares to a partnership that would continue the activity was irrelevant, since each transfer had to be assessed separately.

GC judgment on the allocation of transport in a chain transaction involving excise goods (*AS Trading 4*)

On 9 September 2026, the GC delivered its judgment in case T614/25 (*AS Trading 4*).

The case concerned supplies of petroleum products by a Latvian supplier to intermediaries established in other Member States. The intermediaries immediately resold the goods to customers in other Member States, while the goods were transported directly from Latvia to those customers under an excise duty suspension arrangement. The Latvian supplier treated its supplies as VAT exempt intra-Community supplies.

The dispute concerned whether the supplier was entitled to apply the intra-Community supply exemption. In particular, the referring court asked whether the exemption could be established by the fact that the goods moved under an excise duty suspension arrangement, that the final customer accounted for VAT under the triangular transaction simplification, and that the goods had demonstrably left Latvia and arrived in another Member State.

The GC reiterated that, in a chain transaction involving a single intra-Community transport, that transport can be attributed to only one supply. Determining which supply benefits from the exemption requires an overall assessment of the commercial arrangements, including the point at which the right to dispose of the goods as owner passed to the final customer. The Court emphasised that the right to dispose of goods as owner is determined by economic and commercial reality rather than by the formal transfer of legal ownership. Relevant factors include the parties’ control over the transport and their ability to determine the commercial fate of the goods.

The GC held that the use of an excise duty suspension arrangement, the physical movement of the goods to another Member State and the designation of the final customer as liable for VAT under the triangular transaction simplification do not, in themselves, establish that the first supply is VAT exempt. Those circumstances do not replace the factual assessment required to determine to which supply the transport must be allocated.

Opinion AG Kokott on the timing of VAT deduction where invoices are received late (*I. S.A.* – Review procedure)

On 10 September 2026, AG Kokott published her Opinion in case C167/26 RX (*I. S.A.*).

The case forms part of the exceptional review procedure before the CJ, under which the Court may review a GC preliminary ruling where there is a risk that it affects the unity or consistency of EU law. The review concerns a GC judgment on the timing of the right to deduct input VAT.

The underlying dispute concerned a Polish taxable person that received invoices only after the end of the tax period in which the relevant supplies had taken place but before the VAT return for that period had been submitted. The GC had previously ruled that the taxable person could deduct the VAT in the earlier tax period because the substantive conditions for deduction had already been satisfied.

AG Kokott considered that the GC had departed from established CJ case law and thereby affected the unity and consistency of EU law. According to the Opinion, the relevant question is not only when the substantive conditions for deduction are met, but also when the taxable person is first in possession of the relevant invoice.

The AG emphasised that a taxable person may exercise the right to deduct input VAT only in the period in which both conditions are satisfied for the first time, namely when the underlying supply has taken place and the taxable person holds the corresponding invoice.

The AG therefore proposed that the CJ should find that the GC's judgment affects the unity and consistency of EU law and should confirm that Member States may require taxable persons to deduct VAT only in the period in which the relevant invoice is first held, even where the invoice is received before the VAT return for the earlier period is submitted.

CJ judgment on application of the travel agent margin scheme to loss-making excursions (*P-GmbH*)

On 10 September 2026, the CJ delivered its judgment in case C-565/24 (*P-GmbH & Co. KG*).

The case concerned a German company that organised excursions during which participants were offered goods for sale. The company purchased transport services from third parties and supplied the excursions in its own name. Participation fees covered only part of the transport costs, while the remaining costs were financed through the sale of goods.

The dispute concerned whether the special VAT scheme for travel agents applies where travel services systematically generate losses and are subsidised through a separate trading activity. The referring court also asked whether a negative margin may give rise to a right to recover input VAT.

The CJ held that the excursions constituted independent travel services and were not merely ancillary to the sale of goods. Although intended partly to promote product sales, participants were under no obligation to purchase goods and the participation fee represented genuine consideration for the transport services. The travel agent margin scheme, therefore, applied notwithstanding that the excursions were systematically loss-making. Finally, the CJ held that the margin must be calculated separately for each travel service. Accordingly, profitable excursions cannot offset losses on other excursions and a negative margin does not give rise to a right to deduct or recover the VAT incurred on travel services purchased for the direct benefit of travellers.

4. Customs Duties, Excises and other Indirect Taxes



Case law

CJ judgment on classification of fish and fit for human consumption (*Skatteministeriet v FF Skagen A/S*)

On 10 September 2026, the CJ delivered its judgment in C-406/25, *Skatteministeriet v FF Skagen A/S*.

The case concerned the tariff classification of fish and fish waste imported for the production of fishmeal, fish oil and other animal-feed products. The dispute concerned whether the goods should be classified under CN heading 0302 (fresh or chilled fish) or CN heading 0511 (animal products and dead animals unfit for human consumption).

The Court recalled that tariff classification must generally be based on the objective characteristics and properties of the goods. Under Note 1(c) to Chapter 3, the decisive question was whether the goods were fit for human consumption at the time of customs clearance. In making that assessment, account must be taken of all relevant factors, including storage conditions, the addition of acid, TVB-N levels, compliance with EU food-hygiene requirements and evidence of contamination, decomposition or other health risks. While EU food legislation is not decisive for tariff-classification purposes, it constitutes a relevant factor in determining whether goods are fit for human consumption.

The Court further held that commercial documentation indicating that the goods were caught, produced and sold for animal-feed production, as well as their classification as

category 3 animal by-products under Regulation 1069/2009, may constitute relevant evidence of their objective characteristics and properties.

The Court concluded that fish and fish waste stored, handled and documented under the circumstances described in the reference for a preliminary ruling fall within CN heading 0511 and are excluded from Chapter 3 as being unfit for human consumption.

Developments

EU Customs Reform enters into force

Following its publication in the European Official Journal on 19 September 2026, the long-awaited EU Customs Reform has officially entered into force, marking the most significant overhaul of the EU Customs Union in decades. The reform aims to create a simpler, smarter and more integrated customs framework through a new Union Customs Code ('New UCC'), a new EU Customs Authority ('EUCA') and the EU Customs Data Hub.

A key shift is the move from declarations to data in the EU Customs Data Hub and the importer becomes the central customs actor, assuming greater responsibility not only for customs duties but also for compliance with non-fiscal requirements, such as product safety, environmental standards and intellectual property rules. Indirect customs representatives will face expanded liability and compliance obligations, which may translate into a review of current contractual relationships and fee structure arrangements, as well as enhanced customer due diligence. Separately, the New UCC introduces a European handling fee of EUR 2 per e-commerce consignment.

Implementation of the New UCC will take place in phases. EUCA is now legally established and is expected to become operational in 2027. The substantive provisions of the New UCC will apply as from October 2027. The EU Customs Data Hub will first go live for e-commerce on 1 July 2028, become available to other operators from 2031 and ultimately replace national customs systems as the single customs environment by March 2034.

European handling fee

With the introduction of the New UCC, a European handling fee will be levied on e-commerce consignments as from 1 November 2026 (irrespective of the value of the consignment). The fee is intended to cover the additional costs incurred by customs authorities in processing the growing volume of e-commerce imports. It will be charged in addition to the EUR 3 import duty applicable to e-commerce consignments with an intrinsic value not exceeding EUR 150, which has applied since 1 July 2026.

Get in contact

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