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EU Tax Law

Highlights of 2025

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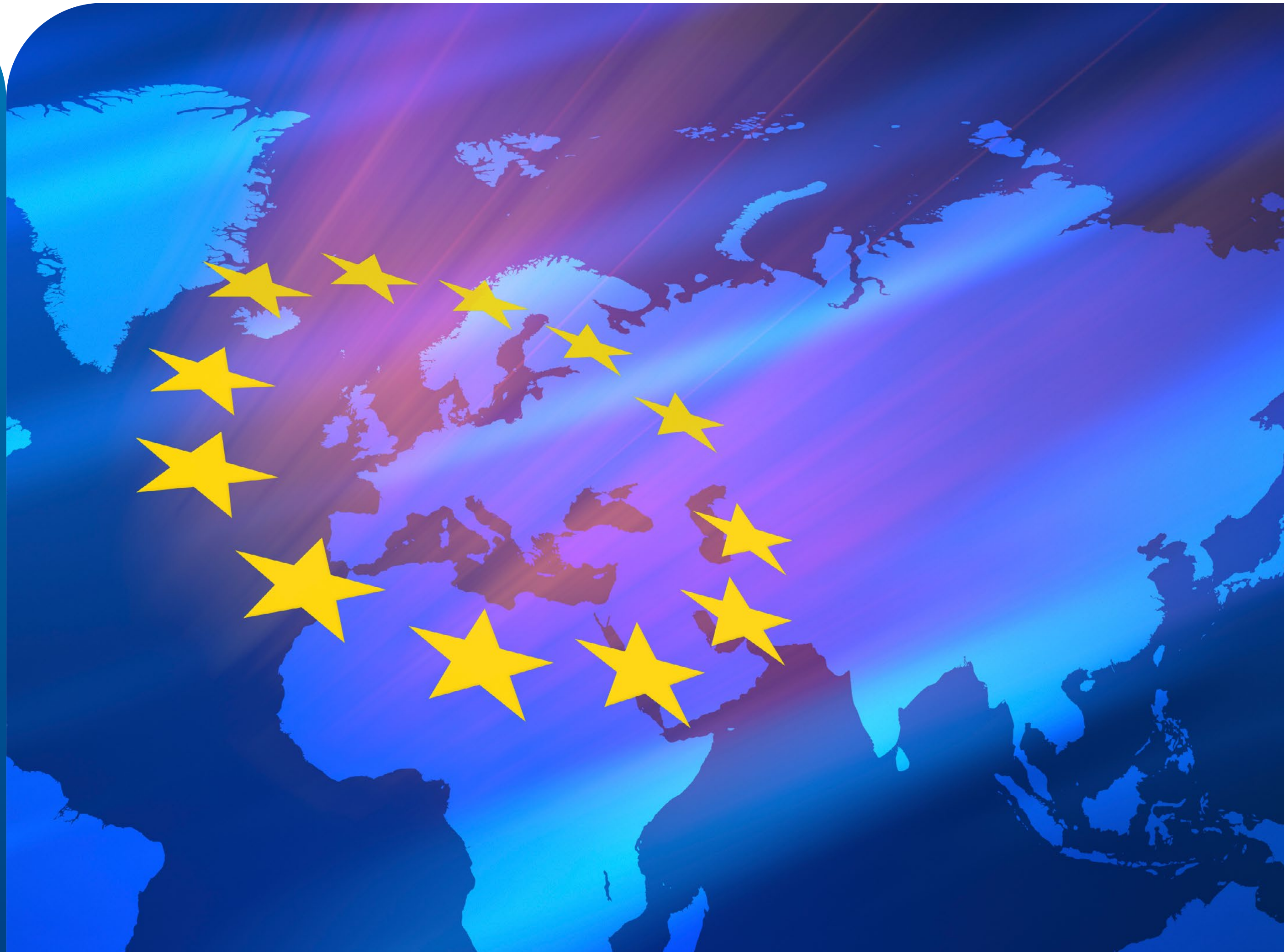

In the course of 2025, there have been several important developments in the field of EU tax law. This annual edition of the EU Tax Alert provides an overview of those developments.

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EU Tax Alert

In this publication, we look back at the most important tax law developments within the European Union during 2025. We discuss, amongst other things, relevant legislation adopted at the EU level, case law of the Court of Justice of the European Union (CJ) and Opinions of its Advocate Generals (AG). Furthermore, we set out important tax plans and developments of the European Commission, the Council of the European Union (Council) and the European Parliament. If you are interested in other tax law developments within the European Union during 2025, please see the by-monthly editions of the EU Tax Alert available in our website (see EUTA 209, 210, 211, 212, and 213).

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1. Highlights in this edition

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

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

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

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

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

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

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

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

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

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

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

CJ judgment on the application of the GAAR under the PSD to national participation exemptions (*Nordcurrent group*, C-228/24)

On 3 April 2025, the CJ delivered its judgment in the case *Nordcurrent Group* (C-228/24), which deals with the question of whether national participation exemptions can be denied under the General Anti-Avoidance Rule of Article 1(2) and (3) of the Parent- Subsidiary Directive (GAAR PSD), in the case of abuse.

The case involves a Lithuanian taxpayer (Nordcurrent), which develops and publishes video games. In 2009, Nordcurrent established a subsidiary in the United Kingdom (UK Subsidiary) for the sale and distribution of games, because of restrictions to sell video games via app stores directly from Lithuania. The UK Subsidiary realized profits in the UK which were regularly subject to UK corporate income tax. In 2017-2018, Nordcurrent relocated the functions and risks from the UK Subsidiary to the parent company in Lithuania, and the UK Subsidiary was liquidated a few years later. Nordcurrent applied the national participation exemption to dividends received from the UK Subsidiary in 2018 and 2019. Following an audit for the years 2018 and 2019, the Lithuanian tax authorities found that the UK Subsidiary had no 'substance' in these years. They deemed the UK Subsidiary to be a 'non-genuine arrangement' created to obtain a tax advantage, refusing the application of the participation exemption to dividends received from the UK Subsidiary. Nordcurrent contested this before the Lithuanian Tax Dispute Commission, leading to a referral to the CJ. The referring court asked the CJ: (i) whether the GAAR PSD must be interpreted as precluding the denial of a national participation exemption on the basis of a non-conduit subsidiary being qualified a 'non-genuine arrangement'?; (ii) whether the qualification of an arrangement as 'non-genuine' requires taking into account all the facts and circumstances of the case, or only those that existed at the time of the dividend distribution?; and (iii) whether the qualification of an arrangement as 'non-genuine' under the GAAR PSD alone is sufficient to conclude that, by benefiting from a participation exemption, a parent company obtained a 'tax advantage' that defeats the object and purpose of the PSD?

With respect to the first question the CJ held that the GAAR PSD must be interpreted as not only being applicable to specific situations or types of arrangements (e.g., arrangements involving conduit companies). Moreover, the scheme and objective of the PSD entail that the GAAR PSD is cross-cutting in nature, which militates in favour of an interpretation that permits its application irrespective of the circumstances in which abuse occurs. Consequently, the CJ held that the GAAR PSD does not preclude a national practice pursuant to which a parent company is denied an exemption from corporate income tax in its Member State of residence in respect of dividend received from a subsidiary established in another Member State on the basis that such subsidiary is a non-genuine arrangement, while that subsidiary is not an intermediate company and the profits that were distributed by way of dividend distributions were generated in the course of activities carried out in name of the subsidiary.

With respect to the second question, the CJ held that although the application of the GAAR PSD appears to be limited to the putting into place of an arrangement due to the wording of the provision, it is important to take into account that an arrangement may comprise more than one step or part. As a result, it cannot be ruled out that an arrangement, initially considered as genuine, has to be regarded as not genuine from a certain point onwards due to the fact that it has been maintained despite a change in circumstances. The possibility of applying the GAAR PSD to non-genuine steps of an arrangement should be understood as meaning that circumstances subsequent to the formation of the arrangement may be considered for purposes of assessing whether or not a step is genuine. Accordingly, the Court noted that when an arrangement consists of more than one step, all relevant facts and circumstances must be taken into account. Consequently, it held that the GAAR PSD must be interpreted as precluding a national practice pursuant to which merely the situation existing as per the dates the dividends were paid are to be taken into account in order to classify a subsidiary established and residing in a Member State as a non-genuine arrangement, while that subsidiary was established for valid commercial reasons and the genuine nature prior to the dividend payment dates were not questioned.

With respect to the third question, the CJ held that in light of the wording of the GAAR PSD, two conditions must be met in order for the benefits of the PSD to be denied. First, a 'non-genuine arrangement' within the meaning of Article 1 (3) of the PSD must be present. Second, the non-genuine arrangement must have been put in place with the main purpose or one of its main purposes being that of obtaining a 'tax advantage' that defeats the object and purpose of the PSD. Hence, the CJ held that the classification of a subsidiary as a 'non-genuine arrangement' in itself is not sufficient to conclude that, by enjoying an exemption from corporate income tax in respect of those dividends, the parent company obtained a 'tax advantage' that defeats the object of the PSD. In addition, the CJ noted that the existence of a 'tax advantage' must not be assessed in isolation and demands considering the overall tax position of the arrangement.

For further information about this judgment and its impact, please see our dedicated web post.

CJ judgment on the circumstances in which tax exemptions may be prohibited by EU law (*Prezydent Miasta Mielca*, C-453/23)

On 29 April 2025, the CJ delivered its judgment in the case *Prezydent Miasta Mielca* (C-453/23) where it specified the circumstances in which tax exemptions may be prohibited by State Aid rules under EU law.

The case concerns a Polish undertaking which owns an individual railway siding on its land and decided to make that siding available to a rail carrier to avail itself of a property tax exemption. To that end, it applied for an advance tax ruling confirming its right to that exemption. Although that undertaking satisfied all the conditions laid down by Polish law, it was refused the exemption on the ground that, under EU law, such exemption would constitute unlawful State aid because it had not been notified to the European Commission beforehand. The undertaking contested that refusal before the Polish courts. Having doubts as to whether that property tax exemption may be classified as State aid in the light of EU law, the Polish Supreme Administrative Court refer the case to the CJ asking whether such exemption confers a selective advantage on its beneficiaries, and whether it distorts or threatens to distort competition.

In its judgment, the Court found that the property tax exemption in question does not appear to confer a selective advantage and, thus, does not appear to constitute State aid. However, the CJ notes that it is for the national court to give a definitive ruling in that regard.

In its analysis, the Court starts from the premise that the legal property tax regime, as provided for by Polish law, represents the 'normal' tax regime, in the light of which the possible selectiveness of the exemption must be assessed. That regime applies to all those who own or hold immovable property and defines the constituent elements of the property tax, including the exemption in question. Pursuant to the Court, a general and abstract exemption to which a direct tax is subject, such as that established by Polish law, cannot, in principle, be regarded as State aid. In the CJ's view, in so far as the exemption is presumed to be inherent in the 'normal' tax regime, it does not, as a general rule, confer a selective advantage.

However, the Court highlighted that there are two situations in which such an exemption could be selective. The first is where that exemption forms part of a tax regime configured according to manifestly discriminatory parameters. The second is where the conditions set by the relevant legislation for benefiting from that exemption relate to one or more specific characteristics of the undertakings benefiting therefrom, those characteristics being inextricably linked to the nature of those undertakings or the nature of their activities, with the result that those undertakings form a consistent category.

In this instance, the Polish exemption is granted to persons subject to property tax on the condition that they own, *inter alia*, land forming part of railway infrastructure which is made available to rail carriers. Subject to verification by the national court, the CJ found that such condition therefore does not appear to be connected, in law or in fact, with specific characteristics of the undertakings benefiting from that exemption. Nor does it appear to form part of a tax regime configured according to manifestly discriminatory parameters. Thus, in the Court's view, that exemption appears to be capable of being obtained by a heterogeneous group of beneficiaries, including non-economic operators and undertakings of very different sizes in very different sectors. The CJ further noted that the fact that only undertakings satisfying the conditions of an exemption can benefit from that exemption is not sufficient, in itself, for the exemption to be regarded as selective.

In addition, the CJ found that the Polish exemption pursues an objective which is not only budgetary, but also environmental, encouraging the restoration of disused railway sidings and the use of rail transport. In this regard, the Court noted that - in the context of its fiscal autonomy - a Member State may legitimately pursue, through direct taxation, in addition to a purely budgetary objective, one or more other objectives which constitute, when taken together, the objective of the relevant reference framework. However, it also noted that - if the national court were to consider that the exemption in question confers a selective advantage - it would then be necessary to examine whether, in view of its general characteristics, that exemption distorts or threatens to distort competition. Regarding this matter, the CJ emphasizes that, in principle, the act of releasing an undertaking from the costs which it would normally have had to pay, in an economic sector which has been the subject of liberalization at EU level, distorts the conditions of competition.

CJ judgment on the compatibility of Polish tax exemption applicable only to externally managed collective investment funds with the free movement of capital (*F S.A. v Dyrektor Krajowej Informacji*, Case C18/23)

On 27 February 2025, the CJ delivered its judgment in the case *F S.A. v Dyrektor Krajowej Informacji* (C-18/23). The case deals with the question of whether the free movement of capital must be interpreted as precluding the legislation of a Member State which grants a tax exemption only to externally managed non-resident investment funds while not granting such exemption to internally managed investment funds.

The case concerned F S.A. (F Fund), a closed-end investment fund established in Luxembourg and managed internally by a board of directors. F Fund sent a request for an advanced tax ruling to the Polish tax authority regarding its qualification for an exemption provided for under Polish domestic law. F Fund was of the opinion that the income which it generated in Poland would benefit from such exemption. However, the Polish tax authority considered that such exemption was not applicable because the applicant was an internally managed investment fund and that, under Polish national law, only externally managed investment funds can take advantage of the tax exemption. This on the basis that an essential condition for benefiting from the aforementioned tax exemption is that the investment fund is established in accordance with the Polish Law on investment funds, which foresees that no investment funds managed internally can be established. F Fund brought an action against this decision before a Polish Regional Administrative Court. Having doubts as to whether the Polish law is compatible with the fundamental freedoms and the Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS), this domestic court referred the case to the CJ. In essence, it asked the Court whether Article 63 TFEU must be interpreted as precluding the aforementioned national legislation under which resident externally managed investment funds are exempt from corporate tax and non-resident internally managed investment funds are not.

In its judgment, the CJ assessed whether the Polish rules lead to a discrimination with regard to the free movement of capital. It is therefore relevant to note that, under Polish law on investment tax, no investment funds managed internally (that is to say, by their own bodies) can be established and, consequently, the Polish tax exemption on corporation tax applies only to externally managed investment funds (e.g., managed by an independent management company). As a result, all Polish investment funds benefit from the tax exemption and only externally managed collective investment undertakings from other Member States do not meet this condition and thus are ineligible for the tax exemption.

In the Court's view, the condition of being externally managed establishes a difference in treatment, not on the basis of the State of residence of the collective investment undertaking, but on the basis of its management form. Relying on its case law and understanding that even a differentiation based on objective criteria may de facto place cross-border situations at a disadvantage, the CJ found that the free movement of capital would be rendered ineffective if a non-resident collective investment undertaking (which adopted a management form authorised by the legislation of the Member State in which it is established and which operates in accordance with that legislation), were to be deprived of a tax advantage applicable to income derived from its investment in Poland solely on the ground that its management form does not correspond to the form required for collective investment undertakings established in that latter Member State. On such basis, the CJ concluded that the Polish legislation introduces a condition which is liable to deter non-resident collective investment undertakings from investing in Polish shares and bonds, thus restricting the free movement of capital.

The CJ continued by noting that differences in treatment are allowed only if they do not constitute arbitrary discrimination or a disguised restriction and concern situations that are not objectively comparable or are justified by an overriding public interest.

Reflecting on the objectives of the Polish legislation, and the requirement of an external management form (which the Polish government asserted is to mitigate the risk associated with the investments), the Court focused on determining the specific objective of the corporate tax exemption. In this regard, it noted that the referring court did not describe such objective and should determine it. Furthermore, it stated that - although the referring court reaches the conclusion that that exemption is intended to avoid double taxation of income derived from investments - the management form (internal or external) does not affect this objective, as it depends on the tax regime applied to the income received and distributed. The CJ further argued that the different levels of risk associated with the management forms of collective investment undertakings do not justify treating them differently for tax exemption purposes. Thus, the Court found that both internally and externally managed funds are in objectively comparable situations regarding the tax exemption.

Finally, the CJ assessed whether there may be an overriding reason in the public interest to justify the restriction to the free movement of capital. In this regard, the Court first noted that an objective of protecting investors may, in principle, constitute an overriding reason in the public interest, capable of justifying a restriction on the free movement of capital. However, when ascertaining whether the identified restriction on the free movement of capital is suitable for securing, in a consistent and systematic manner, the attainment of the objective which is pursued by the Polish legislation, the Court found that, first, the Polish Government failed to explain how granting the tax exemption to a non-resident internally managed fund would jeopardise the objective of protecting investors as pursued by the national authorities. Second, the Court considered that it cannot be inferred that a less favourable tax treatment of internally managed funds (in the form of a refusal to grant a tax exemption) makes it possible to protect investors against investments made in such funds. On such basis, the Court concluded that the Polish tax measure cannot be considered appropriate (suitable) for attaining the intended objective of protecting investors. The Court rejected the argument which claimed that the Polish legislation was also intended to prevent abuse on the basis that no explanation nor link was explained by the Polish government between the management form of a collective investment fund and a possible risk of abuse.

On such basis, the CJ concluded that Article 63(1) TFEU must be interpreted as precluding legislation of a Member State which provides that only a collective investment undertaking managed by an external entity which carries on its business on the basis of an authorisation issued by the competent financial market supervisory authorities of the State in which that entity has its registered office, may benefit from the exemption from corporation tax in respect of income derived from investments made by that undertaking, and which, therefore, does not grant such an exemption to internally managed collective investment undertakings constituted in accordance with the legislation of another Member State, where the law of the first Member State authorises only the creation of externally managed collective investment undertakings.

Member States raise concerns about implementing Pillar 2 Side-by-Side System without amending the EU Directive

On 24 September, during the discussions regarding the state of play on Pillar 2 at a meeting of the EU Council's high-level working party on tax questions, nine EU Member States voiced legal doubts or questions about the possibility of implementing the Side-by-Side (SbS) system agreed by the G7 and the OECD's Inclusive Framework (IF) via the mechanism foreseen under Article 32 of the EU Minimum Tax Directive and without the need of amending such Directive.

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

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

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

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

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

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

It should be noted that several Member States have expressed criticism on the 2028-2034 budget, indicating that in view of the challenges faced by the EU, it was 'simply not enough'. Regarding the CORE, Member States have specifically raised several objections. They argue that the proposal could undermine the competitiveness of European companies and question the accuracy of the data used as well as the use of net turnover as the key parameter. Concerns were also expressed about the administrative burden on national authorities and the potential negative impact on SMEs. Additionally, there is scepticism about excluding the financial sector and about the EU Commission's authority to introduce such a levy. France and Germany have strongly criticized the proposal, and no Member State seems to currently support the proposal it in its present form.

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

EU Council adopts DAC9 to facilitate the filing and exchange of Pillar Two-related information in the EU

On 14 April 2025, the Economic and Financial Affairs Council (ECOFIN) formally adopted the proposed amendment to the Directive on Administrative Cooperation to facilitate the filing and exchange of Pillar Two-related information in the EU (DAC9).

The OECD's Pillar Two global minimum taxation model rules (GloBE Rules) have been harmonized in the EU through Council Directive (EU) 2022/2523 (Pillar Two Directive). Article 44 of the Pillar Two Directive sets out the filing requirements for constituent entities of in-scope groups. By default, each constituent entity must file a top-up tax information return (TTIR) in the EU Member State where it is located. However, there is a derogation to that filing obligation if the in-scope group's ultimate parent entity (UPE), or a designated filing entity files the TTIR on behalf of the entire group, provided certain conditions are met (i.e., first, a qualifying agreement to exchange information is in effect between the jurisdiction of the UPE or the entity designated to file the TTIR on behalf of the group, and the jurisdiction of the relevant constituent entity; and, second, the UPE or the designated filing entity has actually done the filing). DAC9 enabled meeting the first condition within the EU. For more information about DAC9 and its main elements, please see our dedicated web post on this topic.

DAC9 was published in the Official Journal of the European Union on 6 May 2025, and entered into force on 7 May 2025. EU Member States had until 31 December 2025 to implement the national laws, regulations, and administrative provisions necessary to comply with DAC9. In-scope groups are expected to file their first GIR/TTIR by 30 June 2026, as required under the Pillar Two Directive. The relevant tax authorities must exchange appropriate information from the GIR/TTIR with each other by 31 December 2026, at the latest.

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

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

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

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

VAT in the Digital Age adopted

On March 11, 2025, the Council of the European Union completed the ViDA reform package, following prior approval by the European Parliament and consensus among the ECOFIN Finance Ministers. The ViDA package was published in the EU Official Journal on 25 March 2025 and entered into force on 14 April 2025.

The ViDA proposal focuses on improving VAT efficiency, minimising VAT fraud and reducing foreign VAT registration obligations. Thereto, the new rules will introduce digital reporting requirements for cross-border transactions, require platforms to pay VAT on short-term accommodation rental and passenger transport services and will expand existing VAT simplification schemes to minimise foreign VAT registration obligations for businesses.

The measures introduced in the ViDA proposal will impact all businesses, particularly those carrying out cross-border transactions and platform companies. Businesses will have to amend their invoicing and VAT reporting processes. Businesses will further have to assess whether their foreign VAT registrations are still required after the implementation of ViDA proposal. The ViDA proposal also introduces new obligations and liabilities for platforms that facilitate supplies of goods. Businesses offering passenger transport by road and short-term accommodation rental through platforms and platforms that facilitate these services will also have to apply new VAT rules.

For more information about ViDA and its main elements, please see our dedicated web post on this topic.

Regulation simplifying CBAM adopted

On 29 September 2025, the Council of the European Union adopted a regulation introducing changes to the Carbon Border Adjustment Mechanism (CBAM) as part of the EU Omnibus simplification package, which also includes proposals for legislative changes to other EU sustainability legislation such as the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). The Regulation was published in the Official Journal of the EU on 17 October 2025.

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

To import CBAM products after 31 December 2025, importers or indirect customs representatives should obtain the status of authorised CBAM declarant. The regulation introduces a derogation to this requirement, by which imports of CBAM products may continue provided that an application for the status of authorised CBAM declarant has been submitted to the competent authorities by 31 March 2026. Further changes include simplifications such as to the authorisation procedure, the calculation of embedded emissions, and the verification rules. The regulation is expected to be published in the Official Journal of the EU shortly.

Finally, on December 2025, the European Commission released several legal and technical documents on CBAM, further specifying the framework for its definitive phase starting from 1 January 2026. The documents released include several implementing and delegated acts with annexes addressing key operational aspects of CBAM's scope to downstream goods, strengthen anti-circumvention measures and support decarbonization objectives.

2. Direct Taxation

Case Law

CJ judgment on the whether certain proof requirements for the exemption and refund of withholding taxes on dividends received by non-resident pension funds is compatible with EU law (*Santander Renta Variable España Pensiones*, C525/24)

On 27 November 2025, the CJ delivered its judgment in the case *Santander Renta Variable España Pensiones, Fondo de Pensiones* (C525/24). The case concerned the question of whether Portuguese legislation requiring non-resident pension funds to provide a declaration certified by their home State's supervisory authority as a condition for obtaining an exemption or refund of withholding tax on dividends received from Portuguese companies is compatible with the free movement of capital under Article 63 TFEU.

Santander, a Spanish pension fund, received dividends from Portuguese companies in 2020 and 2021. These dividends were subject to a final withholding tax at a rate of 25%. Under Portuguese law, pension funds established in another Member State may benefit from an exemption from corporation tax on such dividends, provided that they satisfy certain substantive conditions and, for immediate exemption at source, submit a declaration confirmed and certified by the authorities responsible for supervision in their Member State of residence. Santander claimed that it was unable to obtain the required declaration from the Spanish authorities and challenged the withholding, seeking annulment of the withholding acts and a full refund of the tax withheld, arguing that the proof requirements imposed only on non-resident pension funds were incompatible with the free movement of capital.

The CJ first recalled that Article 63 TFEU prohibits all restrictions on the movement of capital between Member States. It noted that measures which subject non-resident pension funds to additional administrative burdens, such as the requirement to provide a supervisory declaration not imposed on resident funds, are liable to deter non-residents from investing in Portuguese companies and therefore, constitute a restriction on the free movement of capital. The CJ observed that, under Portuguese law, resident and non-resident pension funds are subject to the same substantive conditions for exemption, but only non-resident funds are required to provide the additional proof in the form of a supervisory declaration.

The CJ then examined whether this restriction could be justified. It accepted that the need to guarantee the effectiveness of fiscal supervision and the effective collection of tax constitute overriding reasons in the public interest capable of justifying a restriction on the free movement of capital, provided that the measure is suitable and does not go beyond what is necessary.

While ultimately it is for the referring court to assess whether, and to what extent, the Portuguese legislation meets the specified conditions mentioned above, the CJ observed that the proof requirement (i.e., the certified declaration) applicable only to non-resident pension funds is suitable for securing the effectiveness of fiscal supervision and the effective collection of tax only if the authorities of another Member State have the necessary powers and competences to issue such a declaration, and if that declaration may be issued to the pension fund concerned within a reasonable period of time. If these two conditions are not met, the Court noted that the requirement to submit such a certified declaration would not be suitable for securing the effectiveness of fiscal supervision and the effective collection of taxes.

In considering whether such a requirement goes beyond what is necessary, the Court emphasized that two distinct scenarios must be assessed separately: first, the immediate exemption from withholding at source of corporation tax; and second, the subsequent refund of the withholding tax already levied.

First, concerning the immediate exemption at source, the CJ noted that, in such cases, the dividend-paying company must be certain that the conditions for exemption are met before deciding not to withhold tax. On such basis and assuming that the measure is found suitable, the CJ found that the obligation for a non-resident pension fund to provide the Portuguese companies paying the dividends with a certified declaration does not go beyond what is necessary for achieving the measure's objectives. The Court then left to the referring court the question of whether the legislation at issue in the main proceedings observes the principle of proportionality in the strict sense.

Second, regarding the refund procedure, where tax has already been withheld and the tax authority itself decides on the refund, the Court found that requiring the certified declaration as the sole means of proof goes beyond what is necessary. This because, in such cases, the tax authority can verify compliance with the substantive conditions for the reimbursement by relying on administrative cooperation tools provided by Directive 2011/16. Consequently, as regards the refund, the Court found that the requirement to submit a certified declaration as the sole means of proof, goes beyond what is necessary to attain the objectives pursued.

Accordingly, the CJ held that Article 63 TFEU does not preclude a Member State from requiring a non-resident pension fund to provide, for immediate exemption at source, a declaration confirmed and certified by the authorities responsible for supervision in the fund's Member State of residence, provided those authorities have the necessary powers and competences, the declaration can be obtained within a reasonable period, and there are no equally effective but less restrictive measures. However, the Court found that Article 63 TFEU precludes a Member State from requiring, for refunds, that the non-resident pension fund provide such a supervisory declaration as the sole means of proof of the substantive conditions.

CJ judgment upholds General Court's dismissal of action seeking partial annulment of EU Minimum Tax Directive (*Fugro NV v Council*, C146/24 P)

On 30 October 2025, the CJ delivered its judgment in the case *Fugro NV v Council* (C146/24 P) where it dismissed an appeal against the order of the General Court of 15 December 2023, which found inadmissible an action seeking the partial annulment of the EU Minimum Tax Directive (Council Directive (EU) 2022/2523).

Fugro NV, a company established in the Netherlands and taxed under the Dutch tonnage tax scheme, brought an action before the General Court seeking partial annulment of Directive 2022/2523. Fugro claimed that the Directive, by subjecting certain shipping income to top-up tax, undermined the benefit of the national tonnage tax scheme, which had previously been approved by the European Commission as compatible State aid. On 15 December 2023, the General Court dismissed the action as inadmissible, holding that Fugro was not individually concerned by the Directive within the meaning of Article 263 TFEU.

On appeal before the CJ, Fugro argued that the General Court had erred in law in its interpretation of the concept of 'individual concern' within the meaning of the second limb of the fourth paragraph of Article 263 TFEU. Fugro submitted that it formed part of a limited class of operators - those benefiting from Commission-approved tonnage tax schemes—whose acquired rights would be affected by the Directive.

In its judgment, the CJ upheld the General Court's order and rejected Fugro's appeal. To arrive at such conclusion the CJ first held that the General Court had correctly carried out a two-step analysis (determining, first, that Fugro was concerned by the Minimum Tax Directive only in its objective capacity and in the same way as any other economic operator and, second, that it did not belong to a 'limited class of persons'), while basing its assessments on relevant case law. On such basis, the CJ found that the General Court cannot be accused of having inferred, only from the fact that the Directive 2022/2523 is of general application, that Fugro is not individually concerned by that directive.

Second, the CJ rejected the argument that the General Court had adopted an incorrect definition of the concept of 'limited class of operators'. This on the basis that, in its assessment, that Court took account of the definition of that concept, as relied on before it (i.e., a class composed of the persons benefiting from the Dutch tonnage tax scheme under decisions of the Netherlands tax authorities, validated by the Commission), and established that the beneficiaries of a favourable tax scheme, such as that Dutch tonnage tax scheme, did not form such a 'limited class of operators'.

Third, the CJ rejected the arguments according to which the General Court erred in law in holding that Fugro did not form part of a 'limited class of operators' at the date of adoption of Directive 2022/2523. This on the understanding that persons benefiting from the Dutch tonnage tax scheme, and the appellant in particular, were not specifically targeted by Directive 2022/2523, and that the class of persons that benefited from the tonnage scheme and where potentially affected by Directive 2022/2523 was not made up exclusively of persons identified or identifiable at the date of adoption of that directive and could yet be extended after that date.

Accordingly, the Court found that Fugro had not shown that it formed part of a 'limited class of persons' for the purposes of the relevant case law. On such grounds, the CJ rejected Fugro's appeal in its entirely, upholding the General Court's order of 15 December 2023.

CJ judgment on whether the denial of tax refunds to non-resident investment funds is compatible with the free movement of capital (*Austria v. Franklin Mutual Series Funds – Franklin Mutual European Fund*, C-602/23)

On 30 April 2025, the CJ delivered its judgment in the case *Austria v. Franklin Mutual Series Funds – Franklin Mutual European Fund*, (C-602/23). The case deals with the question of whether the denial of tax refunds to non-resident investment funds that are comparable to EU-regulated funds is compatible with the free movement of capital.

Franklin, a US investment company, is one of seven series (independent sub-funds) of a trust established in Delaware. As a freely negotiable fund open to the public, Franklin invests mainly in European-listed shares, and is subject, in its State of residence, to financial market supervision in accordance with a set of rules comparable to EU and Austrian prudential regulations. Furthermore, Franklin's activity corresponds in all its essential aspects to an Austrian investment fund and to an Undertaking for collective investment in transferable securities (UCITS) within the meaning of Directive 2009/65. As a corporate entity, Franklin is taxable under US law.

In 2013, Franklin received dividends from two Austrian public limited companies which were subject to a 25% withholding tax. Following an application lodged by Franklin in the name and on behalf of its US unitholders, the Austrian tax authority applied the Austro-American tax treaty, reduced the withholding tax rate to 15%, and issued a refund. Later, Franklin applied for an additional refund of the remaining 10% withheld arguing that, pursuant to Article 63 TFEU, the Austrian provision allowing for such a refund should be extended to legal entities of non-Member States. Based on another national provision which would preclude such a refund, the Austrian tax authority rejected Franklin's application, reasoning that it was not resident in another Member State or in a State party to the EEA Agreement.

In disagreement, Franklin brought an action against such rejection, which ultimately led to an appeal by the tax authorities before the Austrian's Supreme Administrative Court, the referring court. In essence, the court asked the CJ whether a national legislation which has the effect of precluding a refund of tax on income from capital to a non-resident entity (which, on the one hand, has the same characteristics as a UCITS within the meaning of Directive 2009/65 but, on the other, has legal personality and is, in that regard, comparable to a resident legal person, even though, under that national legislation, a resident UCITS is considered to be transparent for tax purposes and cannot operate as a legal person), constitutes a restriction on the free movement of capital.

In its judgment, the CJ found that the national legislation in the proceedings, which has the effect of precluding a refund of tax on income from capital to a non-resident entity, does not constitute a restriction on the free movement of capital, provided that the income received by the non-resident entity is attributed to its unit-holders and is taxed, in its State of residence, not at the level of the non-resident entity but at the level of its unit-holders.

CJ judgment on whether Maltese investor citizenship scheme is compatible with EU law (*Commission v Malta*, C-181/23)

On 29 April 2025, the CJ delivered its judgment in the case *Commission v Malta* (C-181/23), which deals with the question of whether the Maltese investor citizenship scheme is in line with EU law. The Court found the Maltese investor citizenship scheme to constitute a breach of the principle of sincere cooperation under EU law, based on the understanding that the acquisition of Union citizenship cannot result from a commercial transaction.

Following an amendment to the Maltese Citizenship Act in July 2020, Malta adopted Regulation 1 which established detailed rules for the acquisition of 'Maltese Citizenship by Naturalization for Exceptional Services by Direct Investment' ('the 2020 investor citizenship scheme'). Under that scheme, foreign investors could apply to be naturalized where they fulfilled a certain number of conditions, principally of a financial nature. The Commission asserted that that scheme, which granted naturalization in return for predetermined payments or investments to persons without a genuine link with Malta, constitutes an infringement of the rules relating to Union citizenship 3 and of the principle of sincere cooperation. It therefore brought an action against Malta before the CJ.

In its judgment, the Court held that by establishing and operating the 2020 investor citizenship scheme, which amounts to the commercialization of the grant of the nationality of a Member State and, by extension, of Union citizenship, Malta has infringed EU law. The Court recalled that each Member State is free to lay down the conditions under which it grants or withdraws its nationality. That freedom must, however, be exercised in compliance with EU law. Neither the wording of the Treaties nor their scheme can support the inference that their authors intended to lay down, as regards the grant of the nationality of a Member State, an exception to the obligation to comply with EU law. The CJ further noted that European citizenship guarantees free movement within a common area of freedom, security and justice. That common area is based on two essential principles: mutual trust between Member States and mutual recognition of national decisions. European citizenship embodies fundamental solidarity between Member States, based on a set of reciprocal commitments. Each Member State must therefore refrain from any measure that could undermine the EU common objectives, in accordance with the principle of sincere cooperation.

As a result, the Court found that a Member State cannot grant its nationality - and indeed European citizenship - in exchange for predetermined payments or investments, as this essentially amounts to rendering the acquisition of nationality a mere commercial transaction. Such a practice does not make it possible to establish the necessary bond of solidarity and good faith between a Member State and its citizens, or to ensure mutual trust between the Member States and, thus, constitutes a breach of the principle of sincere cooperation.

Developments

European Commission opens public consultation on possible recast of the DAC

On 16 December 2025, the European Commission opened a public consultation on a possible legislative proposal to recast the Directive on Administrative Cooperation (2011/16) (DAC). The consultation targets a broad range of stakeholders and is open until 10 February 2026.

With the aim of making business easier and faster in Europe by cutting red tape and reducing burdens associated with reporting requirements, the European Commission is currently working on a possible legislative proposal to recast the DAC and its eight legislative amendments (DAC1-DAC9). The objectives of this initiative are two-fold. First, it aims to simplify and clarify reporting obligations under the DAC, with the aim of reducing the associated burdens for business stakeholders. Second, it aims to implement targeted improvements, with the aim of improving the overall functioning of the DAC.

The Commission will assess whether these objectives can be achieved by consolidating the DAC and all its amendments into a single legal instrument. This will make the text more coherent and clearer for all stakeholders. The Commission will also assess several policy options to simplify and streamline the legal framework. This will involve eliminating possible duplications of reporting elements and addressing possible inconsistent and/or inefficient reporting obligations. As regards DAC6, the Commission will carefully analyse and consider the need for possible amendments to the reporting hallmarks. To improve the identification of taxpayers reported under the DAC, the Commission's policy options will be informed by the outcomes of the current study on the feasibility of introducing a common identifier and its associated verification mechanisms. The Commission will also assess the need to revise the current reporting thresholds for the sale of goods under DAC7. Lastly, the Commission will consider policy options to improve the scope and completeness of information exchanged under DAC1, by introducing certain mandatory requirements.

The possible recast of the DAC aims to tackle some of the problems already identified in: (i) the findings of the recent evaluation of the DAC; (ii) the consultations carried out by the Commission on the simplification of the EU *acquis* on direct taxation (i.e. corporate tax Directives, the Anti-Tax Avoidance Directive and the DAC); and (iii) the recommendations arising from the 2021 and 2024 special reports of the European Court of Auditors. By focusing on specific issues that have not been sufficiently covered in these previous instances, the present consultation specifically looks for stakeholders' input on: (i) some of the policy options to simplify, clarify and improve the current functioning of the DAC; (ii) the compliance costs associated with some existing reporting obligations; (ii) the potential savings stemming from some of the policy options.

The call for evidence and the public consultation are open until 10 February 2026 and feedback can be submitted via the Commission's website.

European Commission unveils its 2026 Work Programme

On 23 October 2025, the European Commission published its 2026 Work Programme outlining its legislative priorities for the coming year including plans to launch new legislative initiatives, withdraw pending proposals, and review existing EU legislation.

Relevant to the area of direct taxation, the Commission announced two new initiatives aimed at reducing administrative burdens: the '28th Regime for Innovative Companies' which is expected in the first quarter of 2026, and the 'Omnibus on Taxation' scheduled for the second quarter of 2026. While both initiatives are intended to simplify tax rules and legislation for businesses operating across the EU, they have different specific purposes. The '28th Regime for Innovative Companies' would introduce, at EU level, an optional legal framework operating in parallel with national law, allowing companies opting for this regime to incorporate and operate under a single set of European rules rather than navigating twenty-seven different national systems. Differently, the 'Omnibus on taxation package' would introduce simplifications to existing EU legislation such as the ATAD and the DAC.

Furthermore, in its 2026 Work Program, the European Commission withdrew several pending proposals, including the Directive on preventing the misuse of shell entities for tax purposes (the 'Unshell' proposal), the Directive on a debt-equity bias reduction allowance (DEBRA), and the Directive on harmonizing transfer pricing rules (TP Directive). In addition, other legislative proposals remained in the Commission's programme, including the proposal on Business in Europe: Framework for Income Taxation (BEFIT), the Head Office Tax system for SMEs (HOT), a common system of digital services tax (DSTs), and rules on the corporate taxation of a significant digital presence.

Finally, it should be noted that the 2026 Work Programme is complemented by the Commission's report '2025 Overview Report on Simplification, Implementation and Enforcement' which highlights ongoing efforts to reduce administrative burdens and simplify EU rules, including in the field of taxation.

EU Commission recommends boosting savings and investment accounts with simplified tax compliance and incentives

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

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

In turn, in Article 8 (Beneficial tax treatment), the Commission encourages the uptake of SIAs, recommending Member States to introduce tax incentives and ensure that SIAs and assets held in SIAs are given at least the most favourable tax treatment available that is given to income from any asset class or given to an investment product or account. Without prejudice to the above, the recommendation states that Member States may consider incentivising SIAs through measures such as, but not limited to: (a) deductions from the taxable base, including allowing an amount invested in an SIA to be deducted from the taxable income; (b) tax exemptions, including providing an exemption from tax on the taxable income generated by the assets in an SIA; (c) tax deferrals, including deferring the taxation of the income generated through an SIA until it is withdrawn from the SIA; or (d) applying a uniform tax rate to the income generated by or the value of assets held in an SIA.

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

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

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

EU Commission's public consultation on the 28th Regime

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

Following the launch of this consultation (10 July 2025), the European Parliament published a report providing an in-depth analysis identifying persistent barriers faced by companies - particularly innovative start-ups and scale-ups - across the EU, which may justify the introduction of the 28th Regime. The analysis, prepared by the Centre for European Policy Studies, highlights tax fragmentation, divergent VAT systems, and incompatible tax compliance requirements as significant obstacles to cross-border business activity and scaling within the Single Market. These issues are noted to disproportionately affect smaller businesses and hinder the EU's competitiveness and attractiveness for global investment.

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

European Commission adopts new State aid framework accompanying Clean Industrial Deal

On 25 June 2025, the European Commission adopted a new State aid framework supporting the Clean Industrial Deal (CISAF), to enable Member States to push forward the development of clean energy, industrial decarbonisation and clean technology.
The CISAF sets out the conditions under which Member States can grant support for certain investments and objectives in line with EU State aid rules. Under the Framework, the Commission will authorise aid schemes introduced by Member States to boost clean industry, enabling the swift rollout of individual aid. The CISAF will be in place until 31 December 2030, giving Member States and businesses long-term predictability.

The CISAF replaces the Temporary Crisis and Transition Framework (TCTF), which has been in place since 2022. The framework simplifies State aid rules in five main areas: (i) the roll-out of renewable energy and low-carbon fuels; (ii) temporary electricity price relief for energy-intensive users to ensure the transition to low-cost clean electricity; (iii) decarbonisation of existing production facilities; (iv) the development of clean tech manufacturing capacity in the EU; and; (v) the de-risking of investments in clean energy, decarbonisation, clean tech, energy infrastructure projects and projects supporting the circular economy. For more information on this CISAF please click here.

European Commission publishes Clean Industrial Deal

On 26 February 2025, the European Commission published its Communication on the Clean Industrial Deal. The aim of the initiative is to boost European industrial competitiveness and support decarbonization. According to the Commission's work programme, this includes the development of a new State Aid Framework to accelerate the roll-out of renewable energy, strengthen industrial decarbonisation and ensure sufficient manufacturing capacities for clean tech.

In the Communication, the European Commission notes that tax policies are a key incentive to reach the objectives of the Clean Industrial Deal and they should not give fossil fuels an advantage over clean energy. It further notes that the Commission will recommend that Member States support a clean business case by means of their corporate tax systems. In this regard, it mentions that concrete measures could include: (i) shorter depreciation periods for clean technology assets, allowing businesses to quickly write off costs and benefit from tax incentives that offset high initial investments; and (ii) the use of tax credits for businesses in strategic sectors for the clean transition, to make it more financially attractive to invest in decarbonised practices.

The Communication further mentions that, to the extent such measures involve State aid, the new State aid framework will integrate these instruments in its compatibility rules. Moreover, it mentions that the Commission will simultaneously take further actions to scale down and phase out fossil fuel subsidies (e.g., in the context of the European Semester 2025). Finally, it notes that the Commission will propose a 28th legal regime, which will simplify applicable rules and facilitate growth and investment in new innovative companies.

European Commission publishes EU Competitiveness Compass

On 29 January 2025, the European Commission published a Communication presenting the EU Competitiveness Compass, which is the first major initiative of this Commission's mandate providing a strategic framework aimed at enhancing the EU's economic dynamism and competitiveness.

The Competitiveness Compass outlines the EU's strategy to enhance competitiveness through three main pillars: (i) closing the innovation gap, (ii) creating a joint roadmap for decarbonisation and competitiveness, and (iii) reducing excessive dependencies while increasing security. The three pillars are further complemented by five horizontal enablers to reinforce competitiveness across all sectors. This includes a proposal for a harmonized set of EU-wide rules (i.e. the 28th legal regime), covering aspects of corporate law, insolvency, labour, and tax law, to create a more favourable business environment for innovative companies.

The Commission also emphasizes the importance of a flexible and supportive State Aid framework to encourage investment in decarbonization, while avoiding market distortions. Member States are encouraged to ensure that their tax systems, including depreciation rules and tax credits, support investments in clean production technologies. In addition, the review of the CBAM will analyse the possible extension of its scope to further sectors and downstream products, aiming to prevent carbon leakage and promote global carbon pricing.

To mobilize private investment, on 19 March 2025 the Commission presented a strategy on a Savings and Investments Union (SIU), which includes measures to remove taxation barriers to cross-border investment and promote the EU's securitization market.

The Competitiveness Compass also highlights the need for better coordination of policies at both EU and national levels to maximize impact and ensure sustained economic growth. This comprehensive approach aims to position the EU as a leading global investment destination, fostering innovation, competitiveness, and sustainable prosperity.

3. State Aid

Case Law

CJ judgment on Spanish goodwill tax scheme (*Spain v Commission*, Case C-776/23)

On 26 June 2025, the CJ delivered its judgment in the case *Spain v Commission* (Joined Cases C-776/23 P to C-780/23 P), on the Spanish tax amortization regime for financial goodwill arising from non-resident shareholding acquisitions. In 2014, the European Commission held that Spain's tax deduction for goodwill from indirect non-resident shareholdings constituted unlawful State aid and ordered its recovery. In 2023, the General Court annulled the Commission's decision, finding that it had misinterpreted earlier rulings covering direct and indirect shareholdings. On appeal, the CJ upheld the General Court's judgment.

In 2002, Spain introduced a corporate tax provision allowing companies acquiring a shareholding in a foreign company to deduct the resulting financial goodwill via amortization. Initially, the European Commission indicated in 2006 that this scheme did not fall within EU State aid rules. However, in 2007, the Commission opened a formal investigation. It issued decisions in October 2009 (for intra-EU acquisitions) and January 2011 (for non-EU acquisitions), declaring the measure a selective tax advantage constituting State aid incompatible with the internal market and ordered Spain to recover the aid (2009/2011 decisions). Both decisions required recovery of the unapproved tax advantages, subject only to limited carveouts for legitimate expectations of taxpayers. They provided that deductions already granted for shareholdings held by December 2007 could remain in place for their full amortisation period.

In 2012, the Spanish authorities issued a binding interpretation effectively extending the goodwill deduction to indirect acquisitions, where a Spanish company acquires a foreign holding company that owns a target. The relief scheme had to be applied to indirect acquisitions retrospectively. This extension had no EU Commission approval. The Commission later opened a new investigation and ultimately deemed the indirect-acquisition extension a new independent, unlawful aid scheme. Spain and several affected multinationals challenged the Commission's decision before the EU's General Court. In September 2023, the General Court annulled the Commission's 2014 decision, siding with Spain and the companies. The Commission then appealed to the CJ.

The core issue in front of the CJ was whether the goodwill amortization for indirect acquisitions was a separate new aid scheme (as the Commission argued) or merely part of the existing scheme already addressed in the initial 2009/2011 decisions (as Spain argued). This determination was crucial for whether companies could invoke protection of legitimate expectations and apply it also to indirect shareholdings held by December 2007. The dispute raised several legal sub-issues:

- Whether the Commission's 2009/2011 decisions implicitly cover indirect acquisitions. Spain contended that those decisions (and their grandfathering exceptions) covered *all* foreign acquisitions, direct or indirect, whereas the Commission claimed it only considered direct acquisitions (since at the time Spain had not explicitly applied the law to indirect structures).
- Whether companies had a legitimate expectation that indirect acquisition goodwill would receive the same transitional protection as direct acquisitions, given the Commission's earlier decisions and the principle of legal certainty.

The case thus tested the limits of the Commission's enforcement: can it treat an *interpretative* extension of a scheme as 'new aid' and retroactively deny earlier protections? The CJ (Grand Chamber) dismissed the Commission's appeals in June 2025, thereby upholding the General Court's annulment of the 2014 decision. The Court confirmed that the Commission erred in law in its treatment of the indirect-shareholdings scheme. Key points in the Court's reasoning include:

- *Earlier decisions covered both direct and indirect acquisitions*: The CJ noted that the Commission's 2009/2011 decisions explicitly stated that their exceptions (allowing continued application for existing investments) applied to *both* direct and indirect share acquisitions. Those decisions, now final, defined the scope of the aid scheme. The General Court was correct to infer that indirect acquisitions were always within the scheme's ambit for purposes of the exceptions. Thus, companies engaging in indirect acquisitions had the same legitimate expectation of tax relief as those making direct acquisitions under the original scheme.
- *Legal certainty and no 'New' Aid*: The Court emphasized the EU law principle of legal certainty precluded the Commission from reclassifying the goodwill deduction for indirect acquisitions as a completely 'new' aid measure. Given the continuity with the original scheme, the Commission should have honoured the established framework, including any grandfathering clauses. The attempt to segregate indirect acquisitions as a novel aid scheme was incompatible with legal certainty.

The CJ's judgment means the Commission's 2014 decision is null, and Spain's tax amortization scheme (as it pertained to indirect acquisitions via foreign holdings) cannot be deemed unlawful State aid insofar as it fell under the originally allowed conditions. The result affirms that both direct and indirect foreign share acquisitions benefiting from the Spanish goodwill deduction are shielded by the legitimate-expectation protection recognized in the initial Commission decisions.

The judgment underscores that where a tax arrangement was initially accepted or conditionally tolerated by the Commission, businesses that relied on that framework may invoke legitimate expectations. Here, Spanish companies had planned acquisitions under an existing scheme with Commission-sanctioned exceptions, and the EU courts insisted that such reliance be respected.

CJ judgment on the application of State Aid rules to financial contributions for industrial rationalisation (*Flag Srl and Others v Ministero dello Sviluppo Economico*, C-746/23 & C-747/23)

On 13 March 2025, the CJ delivered its judgment in the case *Flag Srl and Others v Ministero dello Sviluppo Economico* (C-746/23 & C-747/23). The case concerns the application of EU State Aid rules under Article 107(1) TFEU to financial contributions granted by the Italian authorities in the context of a national rationalisation programme targeting the iron and steel foundry sector.

Flag Srl, a subsidiary of Cividale SpA, applied in 2004 for a compensation related to the dismantling of one of its production facilities due to sectoral overcapacity. The contribution was intended as a one-time payment to offset economic losses linked to the voluntary closure and demolition of obsolete production infrastructure. The facility in question had ceased operations due to structural inefficiencies, and the contribution reflected an estimated value of the dismantled assets. An initial valuation set the compensation at EUR 1.6 million. However, in 2013, only a payment of EUR 200,000 was authorised under the EU de minimis regulation. Flag Srl and its parent company disputed the classification of the contribution as State Aid, arguing that it merely constituted a reimbursement of the facility's intrinsic value and conferred no economic advantage. The referring Italian court sought clarification from the CJ as to whether such a contribution qualifies as State Aid under Article 107(1) TFEU.

In its judgment, the CJ held that such a financial contribution does constitute State Aid under Article 107(1) TFEU. The Court clarified that: (i) A State measure can be considered an economic advantage even if it is framed as compensation, provided it improves the financial position of a specific undertaking compared to others in the market; and (ii) Whether the contribution aligns with market terms must be assessed via the private market economy operator (PMEO) test (i.e., whether a private investor would have made such a payment under similar conditions).

On such basis, the Court found no sufficient indication that the Italian State had acted in the capacity of a private investor. In the Court's view, the contribution was part of a public policy-driven restructuring programme which purses public policy objectives and was not a market-based transaction with commercial objectives.

Developments

EU Commission makes recommendations on tax incentives to support clean industrial transition

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

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

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

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

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

European Commission approves EUR 1.2 Billion Dutch Plan to Drive Industrial Decarbonisation

In May 2025, the European Commission gave the green light to a Dutch State aid programme worth EUR 1.2 billion, known as 'NIKI,' under EU State aid regulations.
The programme is designed to help businesses reduce greenhouse gas (GHG) emissions throughout the entire life cycle of their products and services. This includes emissions from raw material extraction, production, transportation, and end-of-life disposal or recycling. Funding will go to projects offering the highest environmental gains for the lowest cost to taxpayers, taking the full product life cycle into account.

A key feature of the NIKI programme is that it creates competition between two types of projects for the first time in a State aid scheme: direct decarbonisation projects and those focused on resource efficiency and circularity. Direct decarbonisation reduces emissions mainly by changing production processes, while resource efficiency and circularity projects achieve cuts by substituting primary or fossil-based raw materials with recycled, secondary, or bio-based alternatives. This approach supports the Netherlands' climate targets and aligns with the European Commission's 2024-2029 policy goals, which include fostering a more circular and resilient economy.

The NIKI scheme is open to companies of any size operating in manufacturing, waste management, or environmental remediation in the Netherlands. To be eligible, projects must demonstrate the potential to reduce at least 100,000 tonnes of lifecycle GHG emissions.

Funding will be awarded through a competitive bidding process, prioritising projects that request the lowest amount of aid per tonne of CO2 equivalent emissions avoided. The scheme does not favour specific technologies, ensuring a level playing field for diverse solutions.

Over the next five years, the Dutch government intends to hold one tender round annually under the NIKI programme.

EU approves over EUR 8 billion in State aid to accelerate industrial decarbonization and energy transition

In 2025, the European Commission approved more than EUR 8 billion in State Aid schemes across several Member States, all aimed at facilitating the EU's climate objectives and enhancing industrial competitiveness.

- **Germany**: A EUR 5 billion scheme was authorized to assist industries in decarbonizing their production processes, particularly those covered by the EU Emissions Trading System. The aid supports investments in low-carbon technologies, such as electrification and hydrogen use, aligning with the 2022 Guidelines on State aid for climate, environmental protection, and energy.
- **Finland**: A EUR 2.3 billion scheme was approved to support investments in strategic sectors and help industrial companies decarbonize their production processes. The scheme contributes to the achievement of the priorities of the European Commission for 2024-2029, based on the Political Guidelines, which call for investments in clean energy and technologies.
- **Portugal**: A EUR 612 million scheme was approved to lower electricity levy rates for energy-intensive companies. The measure aims to mitigate the risk of carbon leakage by reducing the financial burden on companies exposed to international competition, provided they commit to energy audits, renewable energy usage, or emissions reduction investments.
- **Spain**: The European Commission has approved a EUR 400 million scheme to support the production of renewable hydrogen. The aid will be administered through competitive bidding processes, ensuring cost-effective support for projects that contribute to the decarbonization of the economy.
- **Austria and Lithuania**: Austria's EUR 400 million scheme and Lithuania's EUR 36 million scheme were both approved to support the production of renewable hydrogen. These measures aim to foster the development of a hydrogen economy, contributing to the EU's energy transition goals.

These approvals underscore the EU's commitment to facilitating the green transition through targeted State Aid, ensuring that industries can adapt to climate objectives while maintaining competitiveness.

4. VAT

Case Law

CJ judgment on the VAT treatment of factoring fees (*Kosmiro*, C-232/24)

On 23 October 2025, the CJ delivered its judgment in the case *Kosmiro* (C-232/24), which deals with the VAT treatment of commission and fees arising from factoring services.

A Finnish company, A Oy (Kosmiro), provided factoring services through assignment of receivables (receivable transfers to factoring company) or factoring through pledge (receivable remains with principal). In the latter case, the receivable is used by the factoring company as collateral for the financing provided to the principal (the factoring company 'finances' the principal's invoices). The applicant charges a financing commission (depending on the payment term) and an arrangement fee for its services. The Finnish tax authorities initially treated parts of these fees as VAT exempt, but Kosmiro disputed this, prompting a preliminary ruling from the Finnish court. The main question was whether these fees fell within the VAT exemption for credit services or constituted VAT taxable debt collection services.

The CJ ruled that, for VAT purposes, the financing commission and the arrangement fee are to be seen as remuneration for one singly supply consisting of VAT taxed debt collection. For this purpose, it is not relevant if the factoring is executed through assignment of receivables or pledge. Regarding the latter, the CJ held that the financing - which on a standalone basis should be VAT exempt - should be seen as the consequence and extension of the debt collection.

Developments

ECOFIN reaches political agreement on the proposal to shift VAT liabilities to suppliers and marketplaces for low value consignments

On 13 May 2025, the Economic and Financial Affairs Council (ECOFIN) reached political agreement on a proposal that changes the rules for the levy of VAT on imports of consignments from outside the EU with an intrinsic value not exceeding EUR 150 (Low Value Consignments).

Under the proposed rules, suppliers and marketplaces will become liable for VAT on the import and sale of Low Value Consignments, also when the import is made on behalf of the consumer. The existing postal and courier arrangement will be abolished. The proposal aims to increase the use of the Import One Stop Shop (**IOSS**).

These proposed rules are intended to apply as of 1 July 2028. The European Parliament will now be consulted on the proposed changes. The proposal should, thereafter, be formally approved by the Council of the European Union. It is expected that this legislative process will take place in the coming months.

For more information about this new proposed rules and our thoughts, please see our dedicated web post on this topic.

5. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ judgment on the methodology of customs valuation for goods imported on the basis of a provisional purchase price (*Tauritus*, Case, C-782/23)

On 15 May 2025, the CJ delivered its judgment in the case of *Tauritus* (C-782/23). The case concerns the determination of the customs value of products released for free circulation into the EU customs territory on the basis of a provisional price, where the final price is determined on the basis of objective factors unknown at the time of the lodging of the customs declaration and beyond the control of the contracting parties.

Between 2015 and 2017, Tauritus UAB released diesel fuel and jet fuel for free circulation in Lithuania on the basis of a provisional price agreement, for which pro forma invoices were issued by the suppliers. In the customs declarations, Tauritus referred to the provisional price to determine the customs value in accordance with a secondary customs valuation method. After release, the provisional price would be adjusted on the basis of the average market price and the average exchange rate during a specified period, as a result of which, the final price could be higher or lower than the provisional price at the moment of the lodging of the customs declaration. Subsequently, final invoices were issued by the suppliers. Upon receiving these final invoices, Tauritus generally submitted requests to amend the customs value of the imported products.

During a post-release control carried out by the *Kauno teritorinė muitinė* (regional customs service, Lithuania), it was found that between 29 September 2016 and 1 February 2017, thirteen customs declarations had been lodged for which the final invoice price was higher than the provisional price, but no amendment of the customs value was requested by Tauritus, meaning that additional import VAT in respect of the imports was unpaid. Consequently, the regional customs service claimed additional sums of import VAT, as well as interest on arrears for the period between the date of acceptance of the customs declarations concerned and the date on which the control report was drawn up.

Tauritus brought an action against the decision of the regional customs service. During the national proceedings, the *Lietuvos vyriausiasis administracinis teismas* (Supreme Administrative Court, Lithuania) questioned whether the transaction value method could be used to determine the customs value upon release for free circulation, given that the price was provisional and subject to later adjustments, which could result in an arbitrary or fictitious customs value. The court also questioned whether Article 173(3) of Regulation (EU) No 952/2013 ('UCC') requires a declarant to submit a request to amend a customs declaration if the customs value had been established using another customs valuation method than the transaction value method. As such, the Supreme Administrative Court referred preliminary questions to the European Court of Justice.

The CJ considered that the customs value of imported goods must, in principle, be determined on the basis of the transaction value method. As such, since the revaluation of the provisional price depends on objective factors which are beyond the control of the parties to those contracts, the mere fact that the final price was not determined upon the release for free circulation does not rule out that the customs value may be established on the basis of the transaction value. Furthermore, the CJ considered that the UCC provides for, among others, a simplified customs declaration procedure. This modality makes it possible to take into account a contractual revaluation of the transaction value of the goods after the acceptance of the customs declaration of those goods by submitting a supplementary customs declaration.

In light of the above, the CJ ruled that where goods are imported into the EU customs territory where only a provisional price is known and where the sales contract stipulates that the final price will be adjusted on the basis of certain predetermined objective factors, the value of which is fixed by a final invoice, the customs value of those goods must be determined by applying the transaction value method by using, as a general rule, the simplified customs declaration procedure.

Developments

US-EU trade developments: Joint Statement and Proposal

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

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

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

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

Aside from tariff measures, the EU has committed to easing several non-tariff barriers affecting US-EU trade. This includes streamlining sanitary certificate requirements for pork and dairy products and offering greater flexibility in the implementation of CBAM for US SMEs. The EU also states that it will address concerns over the EU Deforestation Regulation. Furthermore, the EU aims to further minimize trade restrictions under the

1 COM(2025) 471 final.

CSDDD and CSRD by reducing administrative burdens and reconsidering certain liability provisions related to due diligence failures and climate transition obligations.

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

European Commission proposal for the revision of the Tobacco Taxation Directive

On 16 July 2025, the European Commission adopted a proposal for a revision of Directive 2011/64/EU, on the structure and rates of excise duty applied to manufactured tobacco (Tobacco Taxation Directive). The proposed revision of the Tobacco Taxation Directive aims to update the legal framework for the taxation of tobacco to ensure the proper functioning of the internal market and, at the same time, ensure a high level of health protection, promote the coherent fiscal treatment of tobacco and tobacco-related products, and mitigate the risk of fraud, such as the illicit manufacturing of cigarettes inside the EU.

The proposal contains an extension of the scope of the Tobacco Taxation Directive to other tobacco-related products which are currently outside the scope of EU excise legislation, such as liquids for electronic cigarettes, nicotine pouches and other nicotine products, thus harmonizing taxation of such tobacco-related products that are already subject to national tax regimes in some EU Member States.

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

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

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

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

Get in contact

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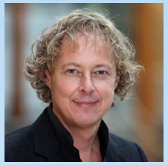

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