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EU Tax Alert

Recent developments for tax specialists

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Edition 207

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EU Tax Alert

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

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

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1. Highlights in this edition

CJ judgment on whether Dutch interest deduction limitation rule is in line with EU law (*X BV v Staatssecretaris van Financiën*, Case C-585/22)

On 4 October 2024, the CJ delivered its judgment in the case *X BV v Staatssecretaris van Financiën* (Case C-585/22) where it found that the Dutch interest deduction limitation rule of Article 10a Corporate Income Tax Act 1969 (CITA) is not in breach of EU law, as it pursues the legitimate objective of combatting tax fraud and tax evasion.

In its judgment, the Court found that: (i) Article 10a CITA creates a restriction to the freedom of establishment which can be justified because the legislation pursues the goal of combatting tax avoidance and its application is limited to wholly artificial arrangements; (ii) EU law does not preclude Article 10a CITA refusing the deduction of the whole interest of a loan that is devoid of economic justification and would have never been contracted, absent the intragroup relationship between the parties to the loan and the tax advantage sought; and (iii) Article 10a CITA is not similar to the Swedish interest deduction limitation rule in the *Lexel* case (C-484/19), as the purpose of the legislation is not the same and the practical application of the former rule was not limited to artificial arrangements.

For more information on the CJ judgment please see our recent web post on this topic.

CJ judgment in the landmark Apple State aid case (*Commission v Ireland and Others*, Case C-465/20 P)

On 10 September 2024, the CJ delivered its final judgment in the case *Commission v Ireland and Others* (Case C-465/20 P). In its judgment, the Court set aside the 2020 ruling of the General Court and confirmed the 2016 decision of the European Commission, which had concluded that two Irish subsidiaries of the Apple group had received unlawful State aid from Ireland from 1991 to 2014.

Siding with the EU Commission, the CJ found that: (i) The Commission's decision contained an appropriate functional analysis of Apple's Irish branches and did not rely on a presumption that the activities had to be performed in the Irish branches because of the lack of substance in the offshore head offices; (ii) Under its interpretation of Irish law, the functions of Apple Inc. are irrelevant to the functional analysis for purposes of splitting the two subsidiaries' profits between the Irish branches and the offshore head offices. Also, Apple and Ireland should have provided proof during the administrative procedure of the role played by Apple Inc. employees on behalf of the two Irish subsidiaries; (iii) If board minutes do not mention certain decisions or topics, the Commission is entitled to use this fact as argument to support a finding that the functions allegedly performed by the board of directors did not exist; (iv) The Commission was entitled to rely on the Authorised OECD Approach when interpreting Irish law provisions on the taxation of Irish incorporated, non-Irish-resident companies, in particular as regards the allocation of profits between the Irish branch and the foreign head office; and (v) The two tax rulings provided a selective

advantage as they reduced the tax burden of the two Irish subsidiaries of the Apple group compared to Irish standalone companies (which are taxed on their profits reflecting 'prices determined on the market and negotiated arm's length').

This judgment is final and consequently, Ireland will have recover more than EUR 13 billion. This judgment may boost the Commission's investigations in other pending cases after it had suffered several losses in the *Fiat*, *Amazon* and *ENGIE* cases, all concerning Luxembourg. Taxpayers should pay attention to the CJ's approach to the functional analysis and supporting documentation.

For more information on the CJ judgment in this landmark Apple State aid case, please see our web post on this topic.

CJ judgment regarding legal professional privilege in the context of an EoIR under the DAC (*Ordre des avocats du Barreau de Luxembourg*, Case C-432/23)

On 26 September 2024, the CJ delivered its judgment in the case *Ordre des avocats du Barreau de Luxembourg* (C432/23). The case concerns the issue of whether and, if so, under what conditions, a tax administration may seek disclosure of information from a lawyer in relation to its client in the context of an exchange of information on request (EoIR) under Council Directive 2011/16/EU (DAC). In particular, the case deals with the question of whether such request for information is compatible with the legal professional privilege (LPP) protected by Article 7 of the Charter of Fundamental Rights of the European Union (Charter). The judgment follows the Opinion of AG Kokott issued on 30 May 2024 and included in our EU Tax Law Alert 206.

This case involves an injunction order to provide information issued by the tax administration of Luxembourg to a law firm named F in relation to one of its clients, a Spanish legal entity called K. This order was issued because of a previous request for information submitted by the Spanish tax administration to its Luxembourg equivalent under the DAC. The data and documents requested under the injunction order concerned the services provided by F to K in connection with the acquisition of two shareholdings. F refused to comply with the order and provide the requested information/documents on the basis that it had acted as lawyer/legal counsel for the group to which K belongs and that, therefore, such information was covered by its LPP. Furthermore, F asserted that the services were not related to taxation but exclusively concerned corporate law. Under Luxembourg law, LPP does not apply to tax advisory or representation matters unless the disclosure of information would expose lawyers' clients to the risk of criminal prosecution. Disagreeing with F's views, the Luxembourg tax administration imposed a fine for failing to comply with the information order. After two appeals, the case reached the Luxembourg High Administrative Court, which decided to stay the proceedings and refer several questions to the CJ.

The questions addressed by the CJ essentially concerned whether: (i) communications concerning corporate law advice between a lawyer and his client are covered by article 7 of the Charter, and whether or not the injunction order of the Luxemburg tax authority constitutes an interference with the LPP guaranteed by such article; (ii) the DAC would be invalid in so far as it does not include provisions relating to the protection of the confidentiality of communications between lawyers and their clients in the context of information to be collected by Member States as a consequence of an EoIR; and (iii) EU law precludes an injunction order based on national legislation under which advice and representation by a lawyer in tax matters do not benefit (except where there is a risk of criminal prosecution for the client) from the enhanced LPP protection guaranteed by Article 7 of the Charter.

Regarding the first question above, the CJ found that, legal advice from a lawyer enjoys, whatever the field of law to which it relates (e.g. corporate law), the enhanced protection guaranteed by Article 7 of the Charter. On such basis, the Court considered that an injunction decision ordering a lawyer to nonetheless provide information based on the DAC is an interference of the LLP guaranteed by such article.

In relation to the second question, the Court found that the fact that the system for EoIR provided by the DAC does not include provisions relating to the protection of the confidentiality of communications between a lawyer and his or her client, in the context of the collection of information for which the requested Member State is responsible, does not imply that that Directive infringes Article 7 and Article 52(1) of the Charter. The Court noted that it is for each Member State to ensure, in the context of the national procedures implemented for the purposes of that collection, the enhanced protection of these communications guaranteed by the Charter. Thus, the CJ found no factor that could affect the validity of the DAC.

When it comes to the third question, the Court held that the Luxembourgish legislation (as well as its application in the present case by means of the injunction order) is not limited to exceptional situations but, on the contrary, removes almost entirely from the enhanced protection afforded to LPP the content of lawyers' consultations provided in tax matters. On such basis, the Court found that this entails an infringement of the essence of the right to respect for communications between lawyer and client, and therefore, is an interference which cannot be justified.

CJ judgment on the compatibility of DAC6 reporting regime for cross-border arrangements with the EU law (Belgian Association of Tax Lawyers and Others v Premier ministre/Eerste Minister, Case C-623/22)

On 29 July 2024, the CJ delivered its judgment in the case *Belgian Association of Tax Lawyers and Others v Premier ministre/Eerste Minister* (Case C-623/22). The case concerns the compatibility of the mandatory reporting regime for cross-border arrangements introduced under DAC6, with various EU law principles, including equality, non-discrimination, legality in criminal matters, legal certainty, and the right to respect for private life. In its judgment, the CJ upheld the validity of DAC6 in line with AG Emiliou's Opinion. The conclusion of the AG in this case was included in the EU Tax Law Alert 204.

The applicants, comprising several legal and tax professional bodies, challenged Belgium's national law implementing DAC6. They argued that the law infringed multiple provisions of the Charter and general principles of EU law. The Belgian Constitutional Court referred five questions to the CJ for a preliminary ruling.

The first question referred to the CJ concerned whether DAC6 violates the principles of equality and non-discrimination under Articles 20 and 21 of the Charter, in so far as it does not limit the reporting obligation to corporation tax, but makes it applicable to all taxes falling within its scope. Acknowledging that it is not apparent how the application without distinction of the reporting obligation at issue with regard to the various tax types concerned could reveal the existence of a difference in treatment, the CJ found no evidence that DAC6 violates the aforementioned principles. It emphasized that the Directive applies broadly to all taxes within its scope, noting that aggressive tax planning cannot only occur in the field of corporate tax but also in other direct taxation areas such as, for example, income tax applicable to natural persons. The CJ, therefore, concluded that DAC6 is not manifestly inappropriate and that its broad application beyond the field of corporate taxation is justified to meet its objectives of combating tax avoidance.

The second and third questions addressed by the Court refer to whether certain DAC6 concepts (i.e., 'arrangement', 'cross-border', 'marketable' and 'bespoke' arrangement, 'intermediary', 'participant' and 'associated enterprise', the different hallmarks, the 'main benefit test' and the 30-day rule) are sufficiently clear and precise to comply with the principle of legal certainty, legality in criminal matters and the right to respect for private life. The principles of legal certainty and legality (which is a specific expression of the former general principle) require laws to be clear and foreseeable, especially where penalties are involved. The applicants argued that the aforementioned DAC6's concepts were too vague, making it difficult for intermediaries and taxpayers to understand their legal obligations.

When addressing these questions, the Court first noted that: (i) the fact that legislation refers to broad concepts which must be clarified gradually does not, in principle, preclude that legislation from being regarded as laying down clear and precise rules; (ii) what matters is whether any ambiguity or vagueness in those concepts may be dispelled by using the ordinary methods of interpretation of the law' (including the possibility of relying on relevant international agreements and practices whenever they correspond to the vague EU concepts); and (iii) the degree of foreseeability required depends to a considerable extent on the content of the text in question, the field it covers and the number and status of those to whom it is addressed (e.g., persons carrying out a professional activity or not). In the light of the foregoing considerations, the CJ examined each of DAC6's concepts mentioned above and found that these are sufficiently clear and precise. On such basis, the Court consider that DAC6 complies with the requirements imposed by the principles of legal certainty and legality in criminal matters.

As regards compliance with Article 7 of the Charter, the Court noted that such article does not impose any obligation that is stricter than Article 49 of the Charter (Principle of legality in criminal matters) in terms of the requirement for clarity or precision of the concepts used and the time limits laid down. Thus, the Court held that the interference with the private life of the intermediary and relevant taxpayer entailed by the DAC6 reporting obligation is itself defined in a sufficiently precise manner in view of the information that that reporting must contain. Consequently, the CJ found no infringement of the Charter with such article.

The fourth question addressed by the CJ concerned whether the exemption from DAC6's reporting obligation, based on legal professional privilege (LPP) applies only to lawyers or whether it also extends to other professionals who are also subjected to LPP under the applicable national law (e.g., tax advisers, notaries, auditors, accountants, bankers or university professors). The applicants argued that limiting the exemption to lawyers unfairly discriminated against other tax professionals who also have confidentiality obligations. The CJ, however, ruled that the exemption applies only to lawyers. It reasoned that lawyers occupy a unique position in the administration of justice, with a special role in defending clients and ensuring the proper functioning of the legal system. This role justifies their exclusion from DAC6's reporting obligation. The CJ added that applying the exemption to other professionals, could undermine the effectiveness of DAC6's reporting regime by allowing too many actors to evade their obligations under the guise of professional confidentiality.

The fifth and final question the CJ addressed was whether DAC6 infringes the right to respect for private life protected by Article 7 of the Charter in so far as the reporting regime covers cross-border arrangements that are lawful, genuine, non-abusive and the main advantage of which is not fiscal in nature. In this regard, the CJ first found that DAC6's reporting obligation does create an interference with the right to privacy of taxpayers and intermediaries, as the reporting of lawful arrangements is liable to deter both those taxpayers and their advisers from designing and implementing them. However, the Court found this interference to be justified and proportionate. The CJ based its reasoning on three key points. First, the Court considered that the identified interference is provided by law and, thus, it meets the requirement that limitations on fundamental rights must be established by clear and foreseeable rules. Second, the Court considered that the interference created by the DAC6 reporting obligation does not impinge on the essence of the right to privacy, as it relates solely to the communication of data revealing the design and implementation of a potentially aggressive tax arrangement without even directly affecting the possibility of such design or such implementation. Third, the CJ found that the interference created by the DAC6 reporting obligation is proportionate, as it is a suitable, strictly necessary measure to achieve the Directive's objectives (i.e., combating aggressive tax planning, preventing the risks of tax avoidance and evasion). The Court also found that, while the interference created by DAC6 application to lawful cross-border arrangements is certainly not negligible, it does not outweigh the public interest objectives pursued by the Directive which are important and legitimate objectives.

In conclusion, the CJ ruled that the examination of the five questions referred did not reveal any factors affecting the validity of DAC6.

EU Commission initiates infringement procedure against the Netherlands on taxation of foreign investment funds

On July 2024, the EU Commission initiated an infringement procedure against the Netherlands for failing to extend a dividend tax reduction scheme to foreign investment funds, which are comparable to Dutch investment funds. The Commission considers that the relevant remittance reduction scheme (*afdrachtsvermindering*) restricts the free movement of capital by a discriminatory treatment of investment funds of other EU/EEA States.

The EU Commission initiated this infringement procedure against the Netherlands by issuing a formal notice. This is the first step in the procedure. The Netherlands had a two-month window to address the concerns raised in the Commission's letter. If these issues are not resolved, the Commission may advance to the second stage, which involves issuing a reasoned opinion. Please refer to our website post for a more detailed analysis of the infringement procedure.

CJ judgment regarding VAT exemption for management 'special investment funds' in relation to defined benefit pension funds (Joint cases *X*, C-639/22 and others)

On 5 September 2024, the CJ issued its judgment in the joint cases *X* (C-639/22), *Fiscale Eenheid Achmea BV* (C-640/22), *Y* (C-641/22), *Stichting Pensioenfonds voor Fysiotherapeuten* (C-642/22), *Stichting BPL Pensioen* (C-643/22) and *Stichting Bedrijfstakpensioensfonds voor het levensmiddelenbedrijf* (C-644/22). The cases concern the VAT exemption for the management of 'special investment funds' in relation to pension fund management services.

Five applicants are Dutch pension funds and one applicant is a provider of asset management services for the benefit of a pension fund. All cases concern pension funds that operate pension plans based on a 'collective defined benefit pension scheme'. These pension schemes aim to provide pension benefits to employees. The amount of the pension benefits depends on the number of years of service and the salary. There is no guarantee that the target pension benefits will be achieved. The rights and benefits provided to members are not directly linked to the fund's investment performances. The question put before the CJ was whether the management of such pension funds qualifies for the fund management exemption. An important condition for this is that the pension participants bear the investment risks.

The CJ considered that regulated UCITS funds ('undertaking for collective investment in transferable securities') in any case qualify as 'special investment funds'. A pension fund may, therefore, qualify as a 'special investment funds' if the investment risk of a pension fund participant is comparable to that of a UCITS participant. This is not the case when the amount of pension entitlements or retirement benefits pension fund's investments should significantly affect the pension entitlements and retirement benefits due under the pension agreement.

A pension fund could qualify as a 'special investment funds' if the situation of a participant in the pension fund is comparable to that of participants in other collective investment funds recognized by the Member State. In the Dutch context, these include the pension funds that operate a defined contribution pension scheme. This comparison should be made from the viewpoint of the legal and financial situation of the participant in the pension fund. It is now up to the Dutch courts to assess whether the pension entitlements and benefits are primarily dependent on the results of the investments.

2. Direct Taxation

Case Law

CJ judgment on whether the application of tax and social security benefits only to employees working within a Member State is compatible with EU law (*Nord Vest Pro Sani Pro*, Case C-387/22)

On 26 September 2024, the CJ delivered its judgment in the case *Nord Vest Pro Sani Pro* (C387/22), which deals with the question of whether the application of certain tax and social security benefits only to employees working within a Member State is compatible with the freedom to provide services as laid down in Article 56 TFEU.

The case concerns a Romanian company named Nord Vest Pro Sani Pro SRL (Nord Vest Pro) which is active in the construction sector and, amongst other services, provides (Romanian) labour to construction sites in Germany and Austria. Romanian tax law provides certain tax and social security advantages to employees working in the construction sector, provided that they carry out their duties in Romania. These advantages consist in, first, an exemption from income tax of those employees, second, a reduction of their social security contributions, and third, an exemption from their health insurance contributions However, under Romanian law, such advantages are not applicable if the company's employees work abroad, as was the case for the employees of Nord Vest Pro. In the case referred to the CJ, the Romanian tax authority argued that Nord Vest Pro had unrightfully applied the aforementioned benefits and carried out financial corrections. Nord Vest Pro argued that the measure was discriminatory and therefore, incompatible with EU law. Following an action brought by Nord Vest Pro against a decision of the Romanian tax authorities rejecting its claim, the Regional Court of Romania referred the case to the CJ.

The referring court asked, in essence, whether Articles 26 and 56 TFEU must be interpreted as precluding legislation of a Member State that restricts the benefit of tax and social security advantages solely to employees of undertakings in the construction sector who carry on their activities in the territory of that Member State.

In its judgment, the CJ first found that since the free movement of workers and the freedom to provide services have been implemented by Articles 45 and 56 TFEU, it is not necessary to interpret Article 26 TFEU. Second, it considered that the case must be analysed in the light of Article 56 TFEU alone since national legislation governing the temporary movement of workers who are sent to another Member State to carry out work there in the framework of the provision of services by their employer and who return to their country of origin after the completion of their work, without at any time gaining access to the labour market of the host Member State, falls within the scope of the freedom to provide services.

When assessing whether the Romanian legislation creates a restriction on the freedom to provide services, the CJ found that such rules are capable of dissuading Romanian undertakings from providing construction services in another Member State by the posting of workers to the territory of that Member State. The Court noted that such measures in favour of employees are also liable, subject to verification by the referring court, to reduce labour costs and thus confer an advantage on undertakings in so far as their activities are carried out on Romanian territory, by making the provision of services in another Member

State less attractive. Thus, the CJ found that the Romanian legislation creates a restriction on the freedom of services.

When assessing whether the difference in treatment provided by the Romanian legislation concerns situations which are not objectively comparable, the CJ found that the difference in treatment arising from the legislation at issue in the main proceedings does not appear to reflect an objective difference in situations. However, since the comparability of a cross-border situation with an internal situation must be examined having regard to the aim, purpose and content of the national provisions at issue, the Court considered that it is for the referring court (which alone has jurisdiction to interpret national law) to do so and determine whether the situations are objectively comparable.

Regarding the question of whether the restriction created by the Romanian legislation is justified by an overriding reason in the public interest, the Court arrived at the following conclusions. First, it found that the referring court should ascertain whether that legislation is appropriate (and if so, proportionate) for the purpose of ensuring, in a consistent and systematic manner, the social security protection of employees in the construction sector by reducing the pay gap existing at EU level. Second, it considered that the fight against concealed employment and tax fraud cannot justify depriving, exclusively, undertakings whose employees carry out their work in another Member State of the tax and social security advantages at issue in the main proceedings. Finally, the Court found that purely economic grounds (such as, the promotion of the national economy or its proper functioning) cannot serve as justification for obstacles prohibited by the Treaty. However, it considered that combatting systemic risks faced by a Member State in a sector of particular importance for its development (such as, in the present case, the construction sector, in order to ensure the viability, even the continuity, of that sector), do appear to be overriding reasons in the public interest capable of justifying a restriction on the fundamental freedoms.

On such basis, the Court concluded that Article 56 TFEU must be interpreted as not precluding legislation of a Member State which restricts the benefit of tax and social security advantages solely to employees of undertakings in the construction sector which carry out their activities in the territory of that Member State and which are in a situation comparable to that of undertakings in the construction sector whose employees are posted to other Member States, provided that that national legislation is justified by overriding reasons in the public interest and complies with the principle of proportionality.

CJ judgment on whether a withholding tax exemption applicable only to resident public pension institutions is compatible with the free movement of capital (*Keva, Landskapet Ålands pensionsfond, Kyrkans Centralfond v Skatteverket*)

On 29 July 2024, the CJ delivered its judgment in case *Keva, Landskapet Ålands pensionsfond, Kyrkans Centralfond v Skatteverket* (C-39/23). The case concerned the issue of whether Swedish legislation under which dividends distributed by resident companies to non-resident pension institutions governed by public law are subjected to a withholding tax (whereas dividends distributed to resident pension funds are exempted) is compatible with the free movement of capital. The Opinion of AG Collins in this case was included in our EU Tax Law Alert 205.

This case involves *Keva, Landskapet Ålands pensionsfond and Kyrkans Centralfond* (the Finnish pension funds), which received dividend payments from Swedish companies. Sweden has so-called general pension funds (GP), which manage capital to protect the income-based pension system. Such funds aim to balance any surpluses and deficits between pension contributions and pension payments in a given year, and to contribute to the long-term performance of the Swedish pension system. These GP funds are part of the Swedish government and, therefore, are exempt from taxation in Sweden.

However, Sweden levies a withholding tax of 15% on dividends received by analogous foreign pension funds in Finland. Since these foreign pension funds are exempted from tax in Finland, they cannot offset the tax withheld against any tax liability in Sweden. As a consequence of this situation, the Finnish pension funds requested a refund of the tax withheld in Sweden. They claimed that, due to being analogous to Swedish GP funds, they should also be entitled to an exemption from taxation in Sweden.

In its judgment, the CJ first reiterated that, according to established case law, measures that may deter non-residents from investing in a Member State or discourage residents from investing abroad restrict the free movement of capital. It also reaffirmed that this freedom applies equally to both private and public undertakings, meaning public entities are also covered under its scope.

The CJ then observed that the difference in tax treatment between Swedish public pension institutions and their foreign counterparts results in unfavourable treatment for non-resident pension institutions, potentially discouraging them from investing in Swedish companies. Following this reasoning and in line with the AG's Opinion, the CJ concluded that the contested Swedish legislation constitutes a restriction on the free movement of capital.

However, the CJ noted that such differential treatment might be permissible if the situations are not objectively comparable or if the restriction is justified by an overriding reason of public interest.

In examining comparability, the CJ reiterated that, based on established case law, cross-border and domestic situations should be assessed in terms of: (i) the objectives and purpose of the national legislation in question; and (ii) the relevant distinguishing criteria established by that legislation. As regards, in the first place, the objectives and purpose of the Swedish scheme on the taxation of dividends, the CJ ruled that Sweden's exemption for domestic public pension funds is intended to avoid a circular flow of public resources within the Swedish State. However, the CJ found that the fact that such funds are part of the Swedish State does not necessarily place them in a different position from foreign public pension institutions. The CJ reasoned that this goal could still be achieved by extending the tax exemption to non-resident pension institutions. Moreover, the Court rejected the argument alleging that non-resident funds are not covered by the exemption because they are not intended to promote the financial stability and viability of the Swedish social security system. In this regard, the CJ found that although, by definition, the objective of each fund is to protect the stability and viability of a separate national pension system, that cannot render impossible the cross-border comparison of pension funds.

In the second place, as regards the relevant distinguishing criteria established by the Swedish legislation, the CJ held that both Swedish and Finnish pension funds share the same social objectives, tasks and type of legal organization.

While acknowledging certain differences between resident and non-resident funds (i.e., collection of pension contribution, payment of pensions and legal form of the fund concerned), the Court concluded that these distinctions do not seem directly linked to the tax treatment of dividends received from Swedish companies. Therefore, it ruled that, under the Swedish legislation, the only true distinction between Swedish and foreign public pension funds is their place of residence, which is why foreign funds are denied the exemption. Therefore, the CJ held that the different tax treatment applies to objectively comparable situations.

Lastly, the CJ assessed whether the Swedish government's justifications (i.e., protecting Swedish social policy and ensuring a balanced allocation of taxing powers) could justify the identified restriction. While the CJ recognized the need to safeguard the objective pursued by the Swedish social policy (i.e., avoiding a costly circular flow of resources and ensuring the autonomy of Sweden's pension system), it found that administrative inconvenience alone is insufficient to justify the restriction.

Regarding the need to preserve a balanced allocation of taxing rights between Member States, the Court noted that this justification may be accepted where a scheme seeks to prevent risks posed to a Member State's taxing powers in relation to activities carried out within its territory. However, it found that where a Member State has chosen not to tax resident funds on their domestic income, it cannot rely on such justification to tax non-resident funds which receive such income. On such basis, the Court also rejected the justification based on the preservation of a balanced allocation of taxing rights.

Based on the above, the CJ ruled that the Swedish legislation constitutes a restriction on the free movement of capital which cannot be justified by an overriding reason of public interest.

Dutch Supreme Court rulings regarding taxation of foreign investment funds

On 6 and 13 September 2024, the Dutch Supreme Court issued two rulings denying relief from Dutch dividend tax for foreign investment funds. These cases addressed the compatibility of the special Dutch tax regime for resident investment funds with the EU's free movement of capital, following earlier preliminary rulings issued by the Supreme Court. The judgments in these cases reaffirm the Supreme Court's stance that foreign investment funds do not qualify for the same tax benefits as domestic investment funds under the special Dutch Fiscal Investment Institution (FBI) regime. The rulings highlight the view that, from an EU law perspective, foreign funds are not objectively comparable to domestic funds as it relates to their tax position. The Supreme Court upheld its previous judgments, ignoring developments in EU case law and rejecting the plea for a (second) referral to the CJ.

For a more detailed analysis of these ruling, please see our dedicated website post.

Developments

ECOFIN approves EU position regarding the UN Framework Convention on Tax Cooperation for the 79th session of the UN General Assembly

On 8 October 2024, the Economic and Financial Affairs Council (ECOFIN) approved the position of the EU and its Member States for the 79th session of the United Nations (UN) General Assembly on the draft Terms of Reference (TOR) for a UN Framework Convention on international tax cooperation (FC).

It should be recalled that in early 2024, an *ad hoc* Member-State-led intergovernmental committee was set up to draft the TOR for the new UN FC, which would basically consist of some general guidelines to negotiate said multilateral convention. The *ad hoc* committee met to discuss and draft the TOR over the spring and summer of 2024. Considering the input received as part of a public consultation on the so-called 'Zero Draft' TOR, a revised draft of the TOR was published on 19 July 2024.

On 16 August 2024, although sharply divided, the *ad hoc* committee voted in favour of the final draft TOR. In total, 110 countries (mostly of the African, Asian and Latin American continents) voted in favour of this document, while 8 countries (including the US and seven of its allies) voted against it and 44 countries (including EU Member States) abstained. The US openly attributed its rejection to the TOR to the absence of a commitment to achieve broad-based support. For its part, the EU block clarified that it abstained on the grounds that the drafting process lacked inclusiveness, transparency, and common understanding to reach consensus.

In a nutshell, the adopted TOR provides a set of guidelines to negotiate the envisioned FC. In particular, the TOR delineates the structural elements of the convention (which include a Preamble, Objectives, Principles, Commitments, Capacity Building, and other elements), its protocols, the approaches and time frame for negotiations, and the resources to support the work of the negotiating committee.

The TOR will be submitted to a vote by the UN General Assembly at the end of its 79th session in November/December 2024. The EU position approved by the ECOFIN on 8 October concerns the latter vote. Despite the adverse EU position, it seems likely that the General Assembly vote will closely resemble the committee vote. In such scenario, UN Member States will then have three years to draft a multilateral FC, which will include a protocol on taxation of cross-border digital services (along with one other protocol). However, with such a sharp divide in support between developed and developing countries, it is uncertain whether meaningful results will follow. It seems unlikely that developed countries would sign a convention that was drafted through a process in which their substantive input seems to have been rejected.

Update to the EU list of non-cooperative jurisdictions for tax purposes

On 8 October 2024, the Economic and Financial Affairs Council (ECOFIN) removed Antigua and Barbuda from the EU list of non-cooperative jurisdictions for tax purposes. With these updates, the list now consists of 11 jurisdictions (i.e. American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu) which are not yet cooperative on tax matters and need to improve their legal framework.

Antigua and Barbuda was included in the EU list of non-cooperative jurisdictions for tax purposes in October 2023, after a negative assessment from the OECD Global Forum with regard to exchange of information on request. Following changes to the applicable rules in Antigua and Barbuda, the Global Forum has granted it a supplementary review, which will be undertaken in the near future. Pending the outcome of this review, Antigua and Barbuda has been included in the relevant section of Annex II.

In addition, two jurisdictions that have been listed for an extended period of time, namely Fiji and Palau, have made promising steps towards compliance with the listing criteria, and this has been reflected in their entries in the list.

In addition to the list of non-cooperative tax jurisdictions, the Council approved the usual state of play document (Annex II) which reflects the ongoing EU cooperation with its international partners and the commitments of these countries to reform their legislation to adhere to agreed tax good governance standards. In this case, two jurisdictions, Armenia and Malaysia, fulfilled their commitments by amending a harmful tax regime, and will be removed from the state of play document.

In the light of recent reassurances, Vietnam has been given more time to comply with its commitment on country-by-country reporting and will be reassessed in the next update, planned in February 2025.

Following this latest revision of the list, and considering that Council updates it twice a year, the next revision of the EU list of non-cooperative jurisdictions is scheduled for February 2025.

Four Member States referred to the CJ for failure to notify their transposition of Pillar 2 Directive

On 3 October 2024, and after the reasoned opinions sent in May 2024, the European Commission has decided to refer Spain, Cyprus, Poland, and Portugal to the CJ for failing to notify measures for the transposition into national law of Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (Pillar 2 Directive).

All EU Member States were required to bring into force the laws necessary to comply with the Pillar 2 Directive by 31 December 2023, and communicate the text of those measures to the Commission immediately.

These measures are applicable in respect of the fiscal years starting from 31 December 2023. To date, almost all EU Member States have met these obligations, however, the national implementing measures have still not been notified by Spain, Cyprus, Poland, and Portugal.

Publication of OECD's materials relevant for DAC8

On 2 October 2024, the OECD published a series of materials which are relevant for the reporting obligation foreseen for Crypto Assets Service Providers (CASPs) under Council Directive (EU) 2023/2226 of 17 October 2023 (DAC8). These materials include: (i) the specific IT format requirements for transmitting information between tax authorities pursuant to the Crypto-Asset Reporting Framework (CARF) and the amended Common Reporting Standard (CRS); and (ii) a first set of frequently asked questions (FAQs) to provide interpretative guidance on the CARF.

Based on experiences with previous DACs and, since the reporting regime introduced under DAC8 is consistent with the CARF, it is expected that the materials released by the OECD will be used by EU Member States for transmitting information between tax authorities and interpreting many provisions of DAC8. For more information on this development, please see the OECD's official publication.

Member States highlight their priorities for the new EU Commission

On 23 September 2024, twenty Member States (i.e., Austria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden) released a short note concerning the priorities of the new Commission in the Single Market.

First and foremost, the note highlights the need to strengthen the EU's global competitiveness and encourages the Commission to make securing a competitive Union a top priority. The note stresses that the Single Market is the most fundamental competitive advantage of the EU and must be at the centre of any new measures on increasing competitiveness.

Second, the note sets out a timeline for new ideas to be published as part of the new horizontal Single Market Strategy by the Commission by June 2025. According to the note, the Strategy should set out concrete short-term and medium-term actions to facilitate cross-border trade. The Commission and the Competitiveness Council should be given centre stage in facilitating these discussions. As part of the Strategy, there should be a dedicated roadmap for further harmonisation of services within the EU. Furthermore, other EU rules and the application of the principle of mutual recognition should be extended, simplified, and harmonised. According to the note, this will create conditions for European businesses to scale up and compete on international markets, fragmentation and regulatory complexity for businesses will be further reduced.

Thirds, the note sets out that the new Commission should simplify the conditions for doing business and reduce the administrative burden on business by digitalising procedures. The Commission must go further than the already announced 25% reduction of reporting requirements.

In summary, the note can best be described as a call-to-arms for the Commission to set out to significantly harmonise the Single Market further and reduce the administrative burden on business in the EU with the goal of promoting its competitiveness.

Member States discuss options for a new EU Transfer Pricing Forum

Reportedly, EU Member States are currently evaluating three proposals put forward by the Hungarian Presidency of the Council of the EU to create a new Transfer Pricing (TP) forum. This initiative is intended to replace the draft TP Directive proposed by the EU Commission in December 2023. The current TP proposal has faced opposition from Member States due to concerns about potential TP double standards and the loss of flexibility in applying the OECD's guidelines. However, there is support for a forum similar to the old Joint TP Forum (JTPF).

In a nutshell, the three options under consideration consist of: (i) setting up a platform such as the one for Tax Good Governance by means of a decision of the EU Commission; (ii) a similar measure but providing for stakeholder discussions and Council format discussions; or (iii) adopting a model based on the intergovernmental Code of Conduct Group (Business Taxation) to be established through a Council decision.

Entry into force of amendments to the CJ's Rules of Procedure

On 30 August 2024, the CJ announced the entry into force of important updates to the Rules of Procedure for both the CJ and the General Court. These changes, which became effective as of 1 September 2024, align with the amendments introduced to the Court's Statute by the European Parliament and the Council of the European Union and aim to modernize the procedures before the two courts.

Key updates include the partial transfer of jurisdiction for preliminary rulings on VAT, excise duties, customs, transport, and greenhouse gas emissions from the CJ to the General Court, effective 1 October 2024.

In particular, the revised Rules of Procedure of the CJ include: (i) handling of preliminary ruling references to determine the competent court, (ii) expedited processing of references between the courts, and (iii) online publication of written observations in certain cases. In turn, the General Court's amendments include new organizational structures and the creation of an intermediate chamber of nine judges. The General Court has also updated its Practice Rules to clarify procedural guidelines for submitting documents and conducting hearings.

Lastly, the CJ also highlighted the updated Practice Directions from 1 September 2024. These guidelines help parties understand the Statute and Rules of Procedure, covering document handling, translation, and interpretation during hearings to improve case efficiency.

EU Commission requests feedback on template and electronic formats for Country-by-Country Reports

During August 2024, the EU Commission accepted feedback on a draft regulation that sets a common template and electronic format for reporting under the Accounting Directive (2013/34), specifically Article 48c(4) introduced by the Public country-by-country reporting Directive (2021/2101) (CbCR).This regulation requires large EU multinationals to disclose corporate tax details, including contextual information, through annual country-by-country reports, standardizing the format across the EU.

The consultation period expired on 29 August 2024 and a total amount of 33 stakeholders submitted input. The input provided will be considered in finalizing the regulation and has been published on the EU Commission's website.

EU Commission’s public consultation on the ATAD

On 31 July 2024, the European Commission made a call for evidence to review the implementation of the Anti-Tax Avoidance Directive (2016/1164) (ATAD), as updated by the 2017 Amending Directive (ATAD 2). This public consultation was launched to comply with Article 10 of such Directive, which provides that the Commission must first evaluate the implementation of the ATAD and then report to the Council. As part of this consultation, stakeholders had the opportunity to submit their feedback to the Commission by 11 September 2024.

This evaluation will result in a report that examines the achievement of ATAD’s objectives and considers potential future amendments. Specifically, the Commission asked for input on the implementation of ATAD across Member States, the effectiveness of ATAD’s measures in addressing aggressive tax planning, and the ongoing relevance of ATAD in light of the Minimum Taxation Directive (2022/2523).

In total, 49 stakeholders provided their input on the ATAD. Loyens & Loeff submitted its own feedback which can be consulted here.

EU Commission publishes annual report on the application of EU Law

On 25 July 2024, the European Commission released its 2023 Annual Report on Monitoring the Application of EU Law. This report provides an overview of the Commission’s efforts to ensure proper implementation of EU legislation. In the area of direct taxation, the report highlights that in 2023, the Commission referred Belgium and Luxembourg to the CJ for incorrect transposition of the ATAD. In addition, Belgium was referred regarding the tax deductibility of alimony payments for non-residents. The report also notes that many Member States have aligned their national laws with EU regulations due to infringement procedures or informal exchanges.

EU signs UN Convention on Transparency in Treaty-based Investor-State Arbitration

On 2 July 2024, the EU signed the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, also known as the ‘Mauritius Convention on Transparency.’ This permits EU Member States to ratify, accede to, or approve the Convention. The Convention aids in implementing the United Nations Commission on International Trade Law (UNCITRAL) Transparency Rules for investment treaties signed before 1 April 2014. These rules mandate the public disclosure of all documents, including tribunal decisions and party submissions, the openness of hearings to the public, and the allowance for interested parties, such as civil society organizations, to make submissions to the tribunal. For treaties signed on or after 14 April 2014, the transparency rules are automatically applicable.

3. State Aid

CJ judgment on UK's CFC Group Financing Exemption (*United Kingdom v Commission and Others*, Joined Cases C 555/22 P, C-C 556/22 P and C 564/22 P)

On 19 September 2024, the CJ delivered its judgment in the case *United Kingdom v Commission and Others* (Joined Cases C 555/22 P, C-C 556/22 P and C 564/22 P) on whether United Kingdom's Controlled Foreign Company (CFC) Group Financing Exemption (GFE) constitutes illegal State aid. The CJ set aside the judgment of the General Court that concluded the GFE constituted of illegal State aid and annulled the Commission's decision in the same line.

By decision of 2 April 2019 (2019/1352), the European Commission found that between 2013 and 2018, the UK had granted illegal State aid to certain multinational groups by means of tax advantages. Specifically, the UK's CFC rules were intended to prevent UK companies from using subsidiaries in low or no tax jurisdictions to evade UK taxes. These rules allowed UK tax authorities to reallocate profits that were artificially shifted to offshore subsidiaries back to the UK parent company for taxation. However, from 2013 to 2018, the CFC rules included an exemption for certain financing income, such as interest payments from loans, for multinational groups operating in the UK. The Commission viewed this exemption as an illegal tax advantage and ordered the UK to recover the aid from the beneficiaries. The UK and the company ITV challenged the Commission decision before the General Court of the European Union. By judgment of 8 June 2022 (T-363/19 and T-456/19), the General Court dismissed their actions. The United Kingdom, ITV and two companies of the London Stock Exchange Group appealed the latter judgment taking the case to the CJ.

On 11 April 2024, AG Laila Medina issued her Opinion in this case. In her Opinion, AG Medina proposed that the CJ to set aside the judgment of the General Court and annul the Commission decision. Please refer to our EU Tax Law Alert 205 for a summary of this Opinion.

In its judgment, the CJ first dealt with the challenge of determining the reference framework. The Commission considered that the CFC rules constituted the correct reference framework considering these rules were severable from the GCTS. The appellants, however, argued that the CFC rules form part of the general UK corporate tax system and cannot be severed from it. They consider, therefore, that the General Court erred by abstracting one set of rules (the CFC rules) from their broader legislative framework (the general corporate tax system). In that regard, the CJ ruled that the CFC rules should not be considered severable from the GCTS. With regard to the tax base, taxable persons, taxable event, tax rate and specific provisions concerning the calculation of the CFC charge and the GCTS, the CJ concluded that the General Court was wrong to consider that there was a relevant distinction between the CFC rules and the GCTS.

Based on the above, the CJ concluded that the General Court erred in law when it confirmed that, as the Commission had found in the decision at issue, the reference framework for the purposes of examining the selectivity consisted solely of the rules applicable to CFCs. Consequently, in the Court's view, the error in law is sufficient to set aside the judgment under appeal. In accordance with Article 61 of the Statute of the CJ, the Court may itself give final judgment in the matter, where the state of proceedings so permit. On such basis, the CJ decided to set aside the General Court's judgment and annul the Commission's decision that the UK's CFC GFE constitutes illegal State aid.

4. VAT

CJ judgment regarding refund of incorrectly charged VAT (*H GmbH*, Case C-83/23)

On 5 September 2024, the CJ delivered its judgment in the case *H GmbH* (C-83/23). H GmbH conducted various sale-and-leaseback transactions with E GmbH. E GmbH purchased motorboats from an Italian supplier. E GmbH and H GmbH entered into a sale-and-leaseback agreement providing the sale of the boat by E GmbH to H GmbH at the net purchase price plus German VAT and the transfer of the right to use the boat from H GmbH to E GmbH. Throughout the transactions, the boat was physically located in Italy.

E GmbH informed H GmbH that it had incorrectly charged VAT to H GmbH in relation to the sale of the boat. The German tax authorities denied H GmbH the right to deduct the incorrectly charged VAT. E GmbH later became subject to insolvency proceedings. The insolvency administrator of E GmbH requested the German tax authorities to refund the VAT incorrectly charged to H GmbH. The German tax authorities refunded the corresponding VAT to E GmbH, while informing the insolvency administrator that it was required to declare the Italian VAT due in relation to the boat sale. H GmbH requested the German tax authorities to refund the non-deductible VAT that had incorrectly been charged by E GmbH. The German tax authorities did not honour this request.

The CJ ruled that H GmbH cannot apply directly to the German tax authorities for a refund of the German VAT incorrectly paid to E GmbH. In its judgment, the CJ deemed relevant that E GmbH had erroneously charged German VAT instead of Italian VAT and that the German tax authorities had already refunded the incorrectly charged VAT to E GmbH, whereas E GmbH is now in liquidation.

CJ judgment regarding extended revision period for renovation works (*Drebers*, Case C243/23)

On 12 September 2024, the CJ delivered its judgment in the case *Drebers* (C243/23).

L BV is a Belgian law firm that carried out significant renovation works to its office building. L BV initially did not reclaim the VAT paid in relation to these expenses because the services of lawyers were VAT exempt in Belgium. Following the abolition of this VAT exemption, L BV claimed a partial VAT credit for those renovation works under the VAT revision rules. Under Belgian VAT law, there is a 15-year VAT revision period for purchases of (new) immovable property. This 15-year period was used by L BV to calculate the VAT credit. The Belgian tax authorities did not agree with this and argued that the standard five-year VAT revision period had to be applied because the works did not result in the creation of a ‘new building’.

The CJ considered that the renovation works resulted in a substantial renovation of the building which had the same economic lifespan as a new building. The CJ, therefore, ruled that L BV could apply the 15-year period (which resulted in a higher VAT credit). According to the CJ, Belgium is acting contrary to EU law by not applying the extended VAT revision period for ‘construction services’ in relation to real estate assets.

If the Member State has used the option under the VAT Directive to treat certain services with characteristics similar to those normally attributed to capital goods, the taxpayer can rely directly on the VAT Directive before the courts.

CJ judgment regarding statutory payment obligations being considered as ‘price discounts’ (*Novo Nordisk AS*, Case C-248/23)

On 12 September 2024, the CJ delivered its judgment in the case *Novo Nordisk AS* (C-248/23).

Novo Nordisk AS is a Danish company that is engaged in the distribution of pharmaceutical products in Hungary. Novo Nordisk entered into an agreement with the NEAK, a Hungarian public health insurer. Under this agreement, Novo Nordisk pays an amount to NEAK that depends on the sales volume of government-funded pharmaceuticals. Novo Nordisk is also required to make a payment to the NEAK based on a statutory obligation. The amounts due under that statutory obligation are paid into the account of the Hungarian tax authority, which immediately transfers them to the NEAK. Novo Nordisk forfeits a proportion of the consideration obtained the medicines sold to its own customers due to complying with the statutory payment obligation.

Novo Nordisk considered both payments as ‘price discounts’ and requested a VAT refund for the VAT component included in those payments. The Hungarian Tax Authorities did not agree with this approach regarding the payments made under the statutory obligation.

The CJ concluded that the payments made by Novo Nordisk under the statutory obligation meet the requirements to be taken into account as ‘price discounts’. The CJ took into consideration that a price reduction for VAT includes both price reductions resulting from agreements and reductions resulting from legal obligations. Further, the CJ pointed out that the payments under the Hungarian legal obligation have the same purpose as the payments under the price-volume agreements and that the amounts collected by the Hungarian tax authority were immediately transferred to NEAK. The judgment is based, inter alia, on the neutrality principle which requires that the taxable amount may not be higher than the amount ultimately received by a taxable person. Since Novo Nordisk forfeited part of its sales turnover by making the statutory payment and the NEAK was considered by the CJ as the final customer in the medicines supply chain, it ruled that Novo Nordisk should be entitled to a VAT credit for the VAT component included in the statutory payment.

CJ judgment on VAT exemption for gambling services (*Casino de Spa SA and Chaudfontaine Loisirs SA*, Cases C741/22 and C 73/23)

On 12 September 2024, the CJ delivered its judgments in the cases *Casino de Spa SA* (C741/22) and *Chaudfontaine Loisirs SA* (C73/23).

As of 1 July 2016, Belgium opted to no longer exempt online gambling from VAT (except for online lotteries). Other forms of gambling (including lotteries) remain VAT exempt in Belgium. Casino de Spa SA and Chaudfontaine Loisirs consider this selective scope of the VAT exemption to be an infringement of the principle of neutrality. These applicants wish to apply the VAT exemption for gambling to their activities through directly invoking the provisions of the EU VAT Directive.

The CJ ruled that Belgium is not in breach of EU law by abolishing the VAT exemption for online gambling and online money games other than lotteries. According to the CJ, the objective differences between these categories of games may significantly influence the average consumer’s decision to opt for one category or the other. This is to be validated by the referring Belgian court. The CJ does note that it appears at first glance that the services mentioned are not similar, so that a difference in VAT treatment should be compatible with the principle of fiscal neutrality.

5. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ judgment on the tariff classification of tags intended for the marking of fish and the concept of scientific instruments or apparatus imported exclusively for non-commercial purposes (*BIOR*, Case C-344/23)

On 5 September 2024, the CJ delivered its judgment in the case *BIOR*, concerning the tariff classification of tags intended for the marking of fish and the qualification of these tags as scientific instruments which are used exclusively for scientific and non-commercial purposes.

In June 2018, the Institute of Food Safety, Animal Health and Environment in Latvia ('BIOR'), imported tags intended to be attached to live fish in order to monitor their migration and growth in the context of scientific research. In the customs declaration, BIOR stated that these tags were to be classified under subheading 3926 90 92 of the Combined Nomenclature (CN) 'as other articles of plastics and articles of other materials of headings 3901 to 3914' which are 'made from sheet'. BIOR further claimed that these tags were intended for research activities and thus qualified as 'scientific instruments or apparatus' within the meaning of Article 46(a) of Regulation No 1186/2009 and, therefore, were exempt from import duties.

In November 2018, the Latvian State Tax Authority classified the tags under subheading 3926 90 97 of the CN as 'other articles of plastics and articles of other materials of headings 3901 to 3914' which are not 'made from sheet'. Furthermore, this authority took the position that the tags did not qualify as scientific instruments or apparatus within the meaning of Article 46(a) of Regulation No 1186/2009. Consequently, this authority imposed the payment of import duties and VAT as well as late payment penalties.

Following an action for annulment brought by BIOR, the CJ was asked by the referring court if the term 'scientific instrument or apparatus' must be interpreted as meaning that it can include objects which, by virtue of their technical structure and functioning, themselves serve directly as a means of scientific research. In addition, the CJ was asked whether the CN is to be interpreted as meaning that subheading 3926 90 92 of the CN may include fish tags made of plastic.

First, the CJ considered that the terms used to specify exemptions from import duties must be interpreted strictly, since the relief from import duties is justified only in certain circumstances subject to specific conditions where the usual need to protect the economy is absent. Therefore, the objective technical characteristics of the tags at issue must be such that, by virtue of those characteristics, they are more suited to the purpose of scientific activities than to industrial or commercial purposes. In other words, tags which are not primarily or exclusively suited to scientific activities do not fall within the concept of scientific instruments or apparatus within the meaning of Article 46(a) of Regulation No 1186/2009 and therefore, are not exempt from import duties under that provision.

Second, the CJ considered that there are no elements that give rise doubt as to the classification of the tags in heading 3926. Where the tag is composed of two different materials (a polyethylene band and a metal tip) the tags should be classified using General rule 3(b) for the interpretation of the CN. Thus, the CJ concluded that tags which are

plastic coated or made of polyethylene rods and which are attached to live fish for the purposes of scientific research fall within subheading 3926 90 97 of the CN, provided that such tags are either composed exclusively of plastics or that the plastic gives them their essential character if they are mixtures or composite goods consisting of different materials or made up of different components.

Developments

Reporting actual emissions in CBAM reports

On 1 October 2024, the European Commission published updated guidance documentation on the Carbon Border Adjustment Mechanism (CBAM). This update includes changes to the manuals and model files, as well as to the data requirements in the CBAM reports.

From the third quarter of 2024 (1 July 2024), reporting declarants are required to collect data on the embedded emissions of relevant products imported into the EU customs territory. Previously, reporting declarants were allowed to rely on default emission values published by the European Commission. Reporting declarants have until 31 October 2024 to submit the Q3-2024 CBAM report containing data on the actual embedded emissions of products imported into the EU customs territory.

For more information on the CBAM Regulation, please see our web post on this matter.

Update on the exchange of information under the EU CSW-CERTEX

On 6 September 2024, the European Commission issued Implementing Regulation (EU) 2024/2216 correcting and amending Implementing Regulation (EU) 2021/2248, which specifies the details of the electronic interface between national customs systems and the information and communication system for market surveillance (ICSMS), and the data to be transmitted via this interface. The details laid down in Implementing Regulation (EU) 2021/2248 also include rules on the processing of personal data and the confidentiality of data transmitted via the electronic interface.

Regulation (EU) 2022/2399 states that the ICSMS shall be connected to the European Union Customs Single Window Certificates Exchange System (EU CSW-CERTEX), which interconnects national single window environments for customs and Union non-customs systems and allows for the exchange of data such as certificates, licences and permits relevant for non-customs formalities.

Get in contact

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