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EU Tax Alert

Recent developments for tax specialists

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Highlights in this edition

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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 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.

VAT in the Digital Age: EU Parliament approval

In plenary session on 12 February 2025, the European Parliament approved the ViDA proposal. The formal adoption of the ViDA proposal by the European Council is expected to take place in March 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.

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.

The recommendations to Member States regarding tax incentives and measures are scheduled to be issued in the second quarter of 2025.

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, the Commission will present a strategy on a Savings and Investments Union, 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.

European Commission publishes its Work Programme for 2025

On 11 February 2025, the European Commission published its Work Programme (WP) for 2025 which lists the most important legislative initiatives that the Commission plans to take in the course of the current year. The WP also includes plans to withdraw pending legislative proposals, to review existing EU legislation and to maintain and allow the due course of the legislative procedures for certain proposals.

Regarding initiatives in the field of (direct) taxation, the following elements are worth mentioning. According to its Annual plan for evaluations and fitness checks, the Commission is planning to finalize the evaluation of the Anti-Tax Avoidance Directive (ATAD) by the fourth quarter of 2025. The goal of the evaluations and fitness checks is to simplify, consolidate and codify the EU *acquis* and find opportunities to cut costs.

Furthermore, the Commission has withdrawn: (i) the Directive on taxation of interest and royalty payments between associated companies in different Member States, (which was deemed obsolete due to the adoption of the Minimum Taxation Directive); and (ii) the proposed Codification of the Directive on administrative cooperation in taxation (DAC) (as a new codified proposal will be tabled).

Conversely, the Commission decided to keep and continue advancing the legislative procedure for the following Directive proposals: DAC9, BEFIT, HOT, DEBRA, Unshell, Digital Taxation package (i.e., Digital Services Tax and taxation based on Significant Digital Presence and Financial Transaction Tax (FFT). Finally, the WP includes a Communication on Implementation and Simplification, which sets out how the Commission plans, over the next five years, to make implementation of EU rules easier in practice, and to reduce administrative burdens and simplify EU rules. No specific taxation measures are mentioned in this Communication.

Hoekstra's views on key priorities and measures of the European Commission in the field of taxation

On 6 February 2025, the subcommittee on Tax Matters (FISC) of the European Parliament hosted an exchange of views with the EU Commissioner responsible for taxation, Wopke Hoekstra. During this exchange of views, Hoekstra discussed key priorities of the EU Commission in the field of taxation, with a focus on upcoming initiatives and strategic goals. The first topic of discussion was the recent announcement that the United States will pull out of the OECD's Pillar Two agreement. In this respect, Hoekstra emphasized that global tax issues require global solutions, and that the European Union remains committed to the obligations it has undertaken. Hoekstra remarked that it is regrettable that the United States denounced the OECD Global Tax Deal. However, he noted that the European Union will not deviate from its course. Furthermore, he indicated that, by April 2025, the European Union will meet with OECD representatives to discuss a coordinated response, and that consultations with Member States are also envisaged in this respect. In addition, he highlighted that the European Union will seek opportunities to engage with the US administration on Pillar One and Pillar Two. Regarding the question of whether the EU would support a permanent safe harbour for Pillar 2, Hoekstra reportedly noted that 'Our approach and our line forward is clear, but we're open-mindedly going to have that conversation.'

In addition, Hoekstra stated that while the EU wants to avoid trade wars, it will not remain passive. He further stated that the EU's stance on digital services taxes (DSTs) is unchanged, viewing it as a fairness issue as digital platforms are highly profitable and part of a growing economy. Hoekstra further noted that he is uncertain whether bringing those companies into the scope of taxation will succeed at the international level, the European level, or the Member State level. He is also uncertain whether there is enough room for a European-level solution or if Member States will implement their own DST regimes with national variations.

Other topics (and the main takeaways) from Hoekstra's discussions at the EU Parliament were the following:

- The Commission has three (3) main priorities: green transition, competitiveness, and tax systems that are simple, equitable, and designed to prevent fraud.
- The Clean Industrial Deal, which the Commission presented on 26 February 2025, will include some tax measures. (e.g. immediate expensing and accelerated depreciation to encourage businesses to invest in clean tech production) and an update to the EU State Aid framework (see below),
- The Commission will explore ways of streamlining the VAT reporting scheme for payment service providers (PSPs)
- The Commission is working on a simplification of the Carbon Border Adjustment Mechanism (CBAM), which was published on 26 February 2025 (see below).
- The Commission will propose a 28th legal regime for corporate innovation and simplification, which – in Hoekstra's view - should be broader than taxation and broader than innovative companies.
- The Commission will propose further VAT reforms in key areas, including transport and tourism, to advance the green transition (e.g., revision of the special scheme for travel agents, aviation and maritime taxation and the circular economy tax treatment of second-hand goods and the destruction of recyclable goods).
- The Commission is reconsidering the draft proposal for a transfer pricing directive and working on a joint platform-based solution.
- The Commission will work on a more ambitious Energy Taxation Directive.
- Taxation of high-net-worth individuals: Despite being worthy of exploration, this measure is considered a long shot for Commissioner Hoekstra, who noted that his approach towards this topic would be European, and one firstly based on transparency.

European Commission publishes draft proposal to amend the CBAM Regulation

On 26 February 2025, the European Commission published a draft proposal to amend the Carbon Border Adjustment Mechanism (CBAM) Regulation (EU) 2023/956. This draft proposal is part of the Omnibus simplification package of the European Commission, which aims to simplify sustainability-related reporting requirements and also includes amendments to the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD). The draft regulation by the European Commission follows the ordinary legislative procedure. As such, the text of the proposal is subject to the approval of the European Parliament and of the Council.

The draft proposal contains several changes to the CBAM Regulation with the aim of simplifying the complex CBAM reporting requirements to ensure a more efficient and effective implementation. One of the key changes is the introduction of mass-based thresholds that will exempt importers of small quantities of CBAM products from the reporting requirements and the financial obligations of CBAM. Other key changes include simplifications of the calculation of embedded emissions and a delay of the obligation to purchase CBAM certificates for the embedded emissions of imported products in 2026.

2. Direct Taxation

Case Law

CJ judgment on the compatibility of including Erasmus+ Funds granted to a dependent child in the calculation of a taxpayer's personal income tax allowance with the free movement of citizens (*Bourse Erasmus* +, Case C-277/23)

On 16 January 2025, the CJ delivered its judgment in the *Bourse Erasmus*+ case (C-277/23). The case deals with the issue of whether the Croatian income tax system, under which the calculation of the personal allowance for a dependent child takes into account the support for learning mobility received by a dependent child in the context of the Erasmus+ programme is in line with the free movement of citizens.

The case involved a Croatian taxpayer (E.P), with a dependent child who received support for learning mobility under the Erasmus+ programme. Prior to the receipt of this support, E.P benefited from an increase in the basic personal allowance for a dependent child, which could be deducted from personal income tax. However, this increase was removed in the tax assessment for FY 2014 by the tax authority of Croatia on the ground that the dependent child had received support for learning mobility under the Erasmus+ programme (Regulation (EU) No 1288/2013). E.P. brought an action against this decision and brought several appeals which eventually led to a constitutional appeal being lodged before the Constitutional Court of Croatia. Among other things, E.P. claimed that she was placed in a disadvantage, in breach of Articles 20 and 21 TFEU (right to move and reside freely within the territory of the Member States) as a result of her dependent child exercising the right to move and reside in a Member State other than that child's Member State of origin for the purposes of education.

The Constitutional Court of Croatia referred the case to the CJ for a preliminary ruling asking whether Articles 20 and 21 TFEU, read in the light of the second indent of Article 165(2) TFEU, are to be interpreted as precluding legislation of a Member State which, in order to determine the amount of the basic personal allowance to which a taxpayer parent is entitled in respect of his or her dependent child, takes into account the support for learning mobility which that child has received under the Erasmus+ programme, with the result, as the case may be, that the taxpayer parent loses the entitlement to the increase of that allowance for the purposes of calculating income tax.

In its judgment, the CJ found that the aforementioned legislation is not compatible with the free movement of citizens. In reaching this conclusion, the CJ first considered the object and purpose of the Erasmus+ programme, which is that the programme promotes student mobility within the European Union and enables students to begin or pursue their studies in various Member States, irrespective of their place of origin, thereby strengthening the European dimension of education and training.

The CJ then stated that it is true that EU law offers no guarantee to a citizen of the Union that the exercise of his or her freedom of movement will be neutral as regards taxation. However, if a Member State participates in the Erasmus+ programme, it must ensure that the arrangements for the allocation and taxation of grants to support the mobility of beneficiaries of that programme do not create an unjustified restriction on the right to move and reside in the territory of the Member States.

Subsequently, the CJ stated that the taking into account the mobility support which a dependent child has received under the Erasmus+ programme for the purposes of determining the amount of the basic allowance to which a parent taxpayer is entitled in

respect of that child, with the consequent loss of the entitlement to the increase in that allowance for the purposes of calculating income tax, is liable to constitute a restriction on the right to freedom of movement and residence enjoyed by citizens of the Union under Article 21 TFEU. In addition, the CJ stated that having regard to the economic links between the child and his or her parent, both the dependent child and the taxpayer parent may, in circumstances such as those in the case in the main proceedings, rely on Article 21 TFEU and the provisions adopted for its application.

Regarding whether the aforementioned restriction could be justified by an overriding reason of public interest and whether the provisions of the national law at issue are in line with the principles of proportionality, the Court first found that the provided justification (i.e., that the national legislation intends to take into account the real capacity of the taxpayer parent to pay income tax) constitutes an objective of public interest and, in principle, is a justification.

However, when considering whether the measure is appropriate for ensuring attainment of the objective relied on, the CJ considered that the receipt of the support under the Erasmus+ programme does not increase the taxpayer parent's capacity to pay tax, as the support is supposed to contribute to covering additional costs of studying abroad, which would not have arisen in the absence of the student mobility. On such basis, the CJ concluded that the tax treatment of the support for learning mobility is therefore not capable of considering the real capacity of the parent taxpayer to pay income tax and may even lead to a heavier tax burden for those taxpayers.

Considering the lack of compliance with the suitability element of the principle of proportionality, the CJ ruled that the aforementioned discussed component of the Croatian income tax system is precluded under EU law.

French Court judgment on the compatibility of retroactive legislation with the EU principles of legitimate expectations and legal certainty

On 5 February 2025, the French Supreme Administrative Court delivered a judgment which, among other things, concerns the issue of whether retroactive legislation is compatible with the EU principles of legitimate expectations and legal certainty.

The case deals with French legislation which provided for an exit tax applicable to individuals who transferred their residence out of France and was introduced into domestic law on 11 May 2011 and formally adopted on 29 July 2011. The exit tax applied retroactively to transfers of residence that took place on or after 3 March 2011, which was the day when the Budget Minister publicly mentioned the existence of reflections within the Ministry on a possible restoration of an exit tax. In such context, the question of whether the retroactive entry into force of the exit tax violated the EU principles of legitimate expectations and legal certainty was raised before the French Supreme Administrative Court.

The French Court first held that general principles of EU law must apply in all situations governed by EU law, which include exit tax rules as this tax infringes the freedom of establishment and constitutes an exception to the general prohibition of restrictions of this freedom (justified by the necessity to preserve the taxing rights of France).

The French Court further noted that pursuant to case law of the CJ (i.e., *Stichting 'Goed Wonen' v Staatssecretaris van Financiën*, C-376/02) a new tax measure may have a retroactive effect under the exceptional circumstance that such retroactive effect prevents taxpayers from using a tax loophole that is available during the legislative process, provided that taxpayers are warned of the impending adoption of the new measure. Based on the understanding that the opinion expressed by the French Budget Minister

on 3 March 2022 was purely prospective and no official announcement of the exit tax had been made before the presentation of the amending finance bill on 11 May 2011, the French Supreme Administrative Court concluded that the application of the exit tax to transfers of residence that occurred between 3 March 2011 and 11 May 2011 amounted to a violation of the EU principle of legitimate expectations and legal certainty.

Developments

European Commission opens a call for feedback on the EU Start-up and Scale-up Strategy

On 24 February 2025, the European Commission opened a call for feedback on the EU Startup and Scaleup Strategy (the 'Strategy'). The feedback period is open until 17 March 2025.

Planned to be adopted as a Communication from the Commission in Q2/Q3 of 2025, the Strategy is a crucial element for enhancing the EU's competitiveness. It will contain a set of policy, financial and legislative measures to improve and simplify framework conditions for start-ups and scale-ups.

In this call for feedback, stakeholders are invited to reply to the following questions: (i) Do you agree that startups and/or scaleups face the hurdles identified in this document (access to finance, regulatory and bureaucratic burdens and fragmentation, access to markets, access to talent, and access to infrastructure, knowledge and services)? (ii) Are there any additional hurdles faced by startups and/or scaleups? (iii) What actions do you think the EU and/or its Member States should take to address these hurdles?

The Strategy will be closely aligned with the upcoming EU Innovation Act, which will focus on providing legislative measures not only for startups and scaleups but for all innovative companies, large and small. A specific consultation is expected to be launched on the EU Innovation Act after the closing date of this call for evidence.

The White House publishes executive memorandum on protecting US technology from foreign tax measures

On 21 February 2025, President Donald Trump signed a new executive memorandum aimed at protecting US technology companies from foreign tax and regulatory measures such as Digital Services Taxes (DSTs) as adopted by many EU Member States and Canada.

The memorandum includes a mandate to the United States Trade Representative (USTR) to: (i) renew investigations under Section 301 of the Trade Act of 1974 of the DSTs adopted by France, Austria, Italy, Spain, Turkey, and the UK; (ii) investigate DSTs adopted by any other country; and (iii) take all appropriate and feasible action in response to them. Furthermore, an express mandate is included for the USTR to investigate Canada's DST (and potentially pursue a dispute settlement panel under the USMCA). The memorandum also includes a mandate to the Secretary of the Treasury to assess whether discriminatory or extraterritorial taxes are consistent or not with any tax treaty of the US or is otherwise actionable under Section 891 of title 26 of the US Internal Revenue Code (which authorizes the doubling of tax rates on foreign corporations and individuals from countries that impose discriminatory or extraterritorial taxes on U.S. citizens or corporations). Finally, the memorandum includes some broader mandates to the US Secretary of the Treasury, Secretary of Commerce, and USTR to jointly investigate (and take appropriate actions against) certain types of discriminatory regulatory practices that, for example, undermine freedom of speech and political engagement or otherwise moderate content.

At this stage, it is not clear whether the new mandates included in the February memorandum, and the results of the review of 'discriminatory measures' to be made delivered to the White House by the USTR by 1 April 2025, will ultimately lead to concrete US actions against foreign countries. As experience has shown, the existing threats may possibly be used as leverage to negotiate and impose conditions in other global negotiations, such as, for example, those regarding the OECD's Pillar Two rules (Minimum Tax).

Member States update EU list of non-cooperative tax jurisdictions

On 18 February 2025, the Economic and Financial Council configuration of the Council of the European Union (ECOFIN) confirmed the EU list of non-cooperative jurisdictions for tax purposes (Annex I) with no changes. The EU blacklist currently includes American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Furthermore, the Annex II of the Council conclusion (also known as the EU grey list) was updated and now includes Antigua and Barbuda, Belize, British Virgin Islands, Brunei Darussalam, Eswatini, Seychelles, Turkey and Vietnam. Costa Rica and Curaçao were removed from the list for fulfilling their commitments.

The EU-list of non-cooperative jurisdictions includes countries that have not engaged in constructive dialogue with the EU on tax governance or have not implemented promised reforms. Such reforms are needed to meet a set of objective criteria for good fiscal governance, including tax transparency, fair taxation and the application of international standards to prevent base erosion and profit shifting.

ECOFIN makes progress on European Semester Package and Economic Governance Framework

On 18 February 2025, the Economic and Financial Affairs Council (ECOFIN) made progress on several tax-related topics including, amongst others, the European Semester Package 2025 and the Economic governance framework.

Regarding the European Semester Package 2025 (which is a framework for the coordination of economic, budgetary, employment and social policies within the European Union), the Council approved the conclusions on the Alert Mechanism Report 2025 and agreed on the 2025 recommendation on the economic policy of the euro area.

Concerning the Economic governance framework (which aims to identify, prevent and correct economic imbalances that could weaken national economies or have a cross-country negative impact), the Council endorsed Hungary's medium-term fiscal-structural plan and set its net expenditure path.

During this ECOFIN meeting, the European Commission presented its Competitiveness Compass and the Council also approved an updated version of the EU's non-cooperative jurisdictions list, as discussed above.

European Commission opens feedback period on the draft Implementing Regulation to evaluate DAC7

On 5 February 2025, the European Commission opened a feedback period on a draft implementing regulation detailing the statistical data that Member States must provide to the European Commission for evaluating the Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7).

This initiative aims to specify: (i) the date by when Member States must submit statistical data in relation to information reported by digital platform operators; and (ii) the kind of statistics to be provided in relation to joint audits.

The closing date of the feedback period to provide input on this draft implemented regulation was 4 March 2025. Stakeholders' feedback will help the Commission finalize the implementing regulation, which is expected to be adopted in the first quarter of 2025.

European Commission refers Spain to the CJ for restrictive conditions for tax deferrals under Merger Directive in case of company divisions

On 16 December 2024, the European Commission referred Spain to the Court of Justice of the European Union (CJ) over its rules on tax deferral under Council Directive 2009/133/EC of 19 October 2009 (Merger Directive) in the case of a division of companies. The Commission views Spain's requirement that companies must maintain the same proportion of shares in each acquiring entity for tax deferral as incompatible with this Directive.

A reasoned opinion on this point was sent to Spain in November 2019. The non-compliance with this opinion by the Member State led the European Commission to refer the case to the CJ.

European Commission confirms completion date for ATAD evaluation

The European Commission's 2025 Work Program published on 11 February 2025, confirmed that the evaluation of the Anti-Tax Avoidance Directive (ATAD) is expected to be completed by the end of 2025. The completion date (indicative finalisation time) for ATAD's evaluation concerns Q4 2025. However, there is no indication as to whether a legislative proposal to revise the ATAD will be tabled at that moment. In any event, the evaluation of the ATAD is expected to be focused, among other things, on the interaction between this Directive and its Controlled Foreign Corporation (CFCs) rules with the OECD's Pillar 2 rules.

Disagreement among Member States on DAC9 despite European Parliament's positive opinion

On 12 February 2025, the European Parliament adopted its positive opinion on the proposal for a Directive amending the Directive on Administrative Cooperation (DAC), also referred to as DAC9. The proposal aims to facilitate the filing and exchanging of Pillar Two-related information in the EU. The European Parliament adopted an opinion where no amendments are proposed. The European Parliament's opinion is non-binding but mandatory under the consultation procedure.

Despite this positive opinion, EU Member States are struggling to agree on how to make future updates to DAC9 at the Council. The differences among Member States reduce the chances of reaching an agreement on this Directive proposal during the 11 March meeting of the Economic and Financial Affairs Council (ECOFIN). Reportedly, during a 4 March preparatory meeting, four Member States did not support DAC9's compromise text because of a provision that would grant the European Commission delegated powers to swiftly update the standard form for the top-up tax information return (contained in an Annex of the draft Directive) to align it with any future updates to the OECD's standardized GIR.

Those Member States argue that the Council (and not the Commission) should have that authority and that the reference made in the DAC9 proposal to 'Commission delegated acts' should be replaced with 'Council implementing acts.' However, the Polish Council Presidency and the Council legal service do not seem to support this suggestion. This is mainly because, in their view, requiring Council's implementing acts would mean setting out Pillar 2's information return in full in a future legal act (instead of as an Annex to DAC9), which would pose scheduling challenges (as DAC9 is expected to be implemented in 2026) and lead to uncertainties for businesses.

FASTER Directive published in the Official Journal of the EU

On 10 January 2025, the Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER) was published in the Official Journal of the European Union. The Directive entered into force on the 20th day following this publication and Member States must transpose it by 31 December 2028, whereby domestic measures should apply as of 1 January 2030.

On 21 February 2025, the European Commission announced that it is preparing an implementing regulation to promote the uniform implementation of the FASTER Directive. The Commission Implementing Regulation promotes the uniform implementation of the Directive by setting out the technical requirements for establishing an EU-wide digital tax residence certificate and creating standardized formats for reporting relevant information and requesting relief to avoid potential double taxation. The Commission plans to adopt the regulation in the fourth quarter of 2026.

EU Commission Engages Member States on Online Gambling Taxation

The European Commission has committed to addressing the challenges posed by online gambling and fostering cooperation among Member States' tax authorities. During a meeting on 8 January 2025, the Polish presidency highlighted the issue of illegal gambling activities operated by entities outside the EU, which do not comply with EU tax and regulatory requirements.

The Polish presidency noted that the fragmented landscape of gambling regulation in the EU poses enforcement challenges due to the cross-border nature of online gambling and the limited jurisdictional reach of national regulators. The presidency suggested setting up a working group to explore the use of existing tax administrative cooperation tools for gambling purposes. The proposed working group could provide the Commission with advice for policy initiatives, with Member States showing receptiveness to the Polish initiative during the meeting.

This initiative aligns with a December 2024 manifesto by the European Casino Association, which called for action against illegal gambling activities in Europe.

OECD releases new Pillar Two administrative guidance package

On 15 January 2025, the OECD/IF released the fifth set of additional Administrative Guidance (Jan 2025 AG) and related documents on the Pillar Two global minimum taxation rules (GloBE Rules). This new guidance and documents are particularly relevant for the application of the EU Pillar 2 Directive, which closely follow the GloBE Rules.

The Jan 2025 AG, inter alia, provides further guidance on: (i) Limitation on use of deferred tax assets (DTAs); and (ii) The application of the transitional rules, notably the treatment of certain deferred tax assets that arose prior to the application of the GloBE Rules as a result of governmental arrangements, retroactive elections, or following the introduction of a new corporate income tax;

Furthermore, the Jan 2025 AG contains the following related documents and related guidance: (i) Central Record of transitional qualified status jurisdictions. The Central Record of Legislation with Transitional Qualified Status (Central Record), listing jurisdictions whose minimum tax legislation obtained transitional qualified status (Transitional Qualified Status) and a related updated Q&A; (ii) An updated form and guidance on the GloBE Information Return (GIR) and an updated version of the GIR; and (iii) The GIR Multilateral Competent Authority Agreement on the exchange of GloBE Information (GIR MCAA). We refer to tax flash OECD/IF releases Administrative Guidance on the GloBE Rules for more information on the Jan 2025 AG.

As the Globe Rules are closely followed in the EU Directive and point 24 of the EU Directive states that Member States should use the OECD GloBE Rules and the commentary to such rules as a source of illustration an interpretation, the Jan 2025 AG should be considered highly relevant for the interpretation and application of the EU Directive and consequently for the implementation of the EU Directive by Member States.

UN kicks off negotiations on international tax cooperation: US withdraws and EU calls for a more inclusive process

From 3 to 6 February 2025, the UN intergovernmental negotiating committee held an organizational session to draft the UN Framework Convention on International Tax Cooperation (FC). The session focused on establishing the organizational structure and decision-making process for the FC, as well as selecting the topic for an early protocol to be negotiated simultaneously with the Convention.

The intergovernmental negotiating committee decided to use good faith efforts to reach consensus, but to have simple majority decision-making as the rule for negotiating the FC. Decisions on substantive matters related to protocols will be made by a qualifying majority of two-thirds. Whether a matter is substantive will be decided by a simple majority. The committee chose 'prevention and resolution of tax disputes' as the subject of an early protocol to be negotiated simultaneously with the FC.

The United States withdrew from the negotiations on the UN FC after the election of the committee's officers, stating that it would oppose any resulting outcomes. In a separate statement, the US cited tax sovereignty and the use of simple majority voting as the primary reasons for its withdrawal.

Poland, representing the EU Member States as holder of the rotating presidency, criticized the outcomes of the organizational session and the lack of clarity regarding the organization of work. In a statement, it indicated that only adoption by consensus guarantees a truly inclusive process as it ensures that the viewpoint of each single negotiating party matters and the different points of view are taken into consideration. However, it noted that the European Union remains committed to engaging in good faith negotiations, provided that the process is truly inclusive and reflects the views and interest of all participating Member States.

The committee agreed to hold three substantive meetings each year and to conclude negotiations on the FC and the early protocols by late 2027.

3. State Aid

Case Law

CJ dismisses appeal against General Court's judgment upholding the European Commission's decision on Madeira's Free Trade Zone (*Região Autónoma da Madeira v Commission*, Case C-547/23 P)

On 16 January 2025, the CJ delivered its judgment in the case *Região Autónoma da Madeira v Commission (Zone franche de Madère)* (C-547/23 P). By its judgment, the Court dismissed Madeira's appeal against the General Court's ruling of 21 June 2023 (T-131/21, EU: T:2023:348), which upheld the European Commission's decision on Madeira Free Trade Zone (Decision (EU) 2022/1414 of 4 December 2020 on the aid scheme SA.21259 (2018/C), ex 2018/NN).

Back in 2020, the European Commission had concluded that the Madeira Free Zone scheme (Regime III) (*Zona Franca da Madeira,* ZFM) was not compatible with the EU internal market based on Article 107(3)(a) of the TFEU. On 28 February 2021, Madeira filed an action before to the General Court challenging the Commission's decision, which the General Court dismissed on 21 June 2023. The dismissal was based on the following grounds: (i) Madeira has *locus standi* against the Decision under Article 263 Treaty on the Functioning of the European Union (TFEU); (ii) the scheme, as implemented, conferred a selective advantage to its beneficiaries; (iii) the Commission did not err in finding that: (a) the corporate tax income reduction provided by the scheme could only apply to profits resulting from activities 'actually and materially carried out in Madeira'; (b) the scheme, as implemented, infringed the condition of creating and maintaining jobs in Madeira; and (c) the scheme, as implemented, was substantially modified in relation to the scheme authorized by the Commission, and therefore amounted to new and illegal State aid; (iv) the Decision does infringe the principle of legitimate expectations, the principle of legal certainty, the principle of sound administration, or the principle of proportionality; and (v) the limitation period for recovering unlawful aid has not been exceeded.

In disagreement with such dismissal, Madeira filed an appeal against the General Court's judgment before the CJ, which also decided to dismiss Madeira's appeal and claims, upholding the General Court's judgment (thus confirming the European Commission decision on State Aid). The text of the CJ's judgment can be read here.

Developments

European Commission announces an upcoming State Aid Framework Under Clean Industrial Deal

On 26 February 2025, in the context of the Communication on the Clean Industrial Deal (see above), the European Commission announced that, in the second quarter of 2025, it will publish a Recommendation to Member States to adopt tax incentives to support this Deal such as shorter depreciation periods for clean technology assets, use of tax credits for businesses in strategic sectors for the clean transition, etc. In this context, the Commission also announced that a new Clean Industrial Deal State Aid framework will integrate the above instruments to ensure that they are fully compatible with EU State Aid rules. There is not much information yet on what these new State Aid rules will look like and it is expected that the upcoming recommendation of the EU Commission to Member States will shed some light on this new Sate aid framework.

European Commission approves Finish and Italian schemes under EU State Aid Rules

The European Commission has recently approved, under EU State aid rules, several Member States' schemes including: (i) A Finnish scheme fostering transition to net-zero economy; (ii) An Italian scheme to support employment of young people and women.

On 18 February 2025, the European Commission announced that it had approved a Finnish scheme aimed at supporting investments in strategic sectors and helping industrial companies to decarbonize their production processes. This scheme consists of three measures: (i) the accelerated renewable energy and storage rollout measure; (ii) the decarbonization and energy efficiency measure; and (iii) the measure for investments in strategic sectors.

Similarly, on 31 January 2025, the European Commission also announced that it had approved an Italian scheme aimed at supporting the employment of young people and women. Under the Italian scheme, employers hiring qualifying young people and women with a permanent contract concluded before 31 December 2025 may be exempt from paying certain social security contributions for a maximum period of 24 months, up to EUR 650 per month for each employee (EUR 500 per month for young individuals not employed in productive facilities located in the single special economic zone (*zona economica speciale unica*, ZES unica)).

Irish Revenue increases stamp duty relief for farmland leases to comply with EU State Aid Rules

The Irish Revenue has updated its Stamp Duty Manual to raise the stamp duty relief for farmland leases from EUR 20,000 to EUR 50,000, effective from 16 December 2024. This adjustment aligns with the EU State Aid regulations outlined in Commission Regulation (EU) No 1408/2013 dated 18 December 2013.

The relief pertains to the stamp duty exemption for specific farmland leases, applicable to leases with terms between 6 and 35 years, where the land is used exclusively for commercial farming by the lessee.

European Commission finds that Polish public support for chemical company PCC is in line with State aid rules

On 23 January 2025, the European Commission published its conclusion that two support measures totalling EUR 23 million awarded by Poland to chemical company PCC MCAA Sp. z o. o ('PCC') for an investment into a new plant are in line with EU State aid rules.

In 2012 and 2013, Poland granted public support to PCC for investing in a new plant to produce ultra-pure monochloroacetic acid in Brzeg Dolny, Poland. The support took the form of: (i) a direct grant of EUR 16 million, and (ii) a tax exemption of up to EUR 7 million. Poland did not notify the support to the Commission as it considered that it was exempted from notification under the 2008 General Block Exemption Regulation ('2008 GBER›).

In February 2014, the Commission received a complaint from a direct competitor of PCC, alleging that the direct grant was not in line with EU State aid rules and should have been notified. In 2016, Poland revoked the tax exemption after concluding that the measure was not in line with the 2008 GBER. Following a complaint, in October 2019, the Commission opened an in-depth investigation into both the direct grant and the tax exemption.
In September 2022, upon appeal by PCC, the Supreme Administrative Court of Poland ruled that Poland should not have revoked PCC's tax exemption.

The Commission assessed the two Polish measures under the EU Regional Aid Guidelines 2007-2013 ('2007-2013 RAG›). Based on its in-depth assessment, the Commission concluded that:

- The direct grant and the tax exemption had an 'incentive effect', as they gave PCC a real incentive to carry out the investment in Brzeg Dolny, a disadvantaged region. PCC would not have carried out the investment in the region, or would have carried it out at a smaller scale, without the public support.

- The overall aid amount granted by Poland to PCC did not exceed the regional aid ceiling applicable to the Brzeg Dolny region.
- While the complainant had claimed that the monochloroacetic acid market was in overcapacity at the time of the investment and that therefore no aid should be granted to support the investment, the Commission concluded that demand had not been in absolute decline, and prospects for future growth looked promising at the time of the granting of the aid.
- The positive effects of the measures outweighed any potential distortion of competition and trade in the EU.

European Commission approves Italian request to prolong its tonnage tax regime

On 21 January 2025, the Official Journal of the EU published the European Commission approval of Italy's request to prolong the tonnage tax regime from 13 December 2024 to 13 January 2034.

The European Commission originally authorized Italy's tonnage tax regime for a 10-year period in 2004 and later extended its approval in 2016 until 31 December 2023. After this extension, the Commission chose not to object to an additional prolongation, considering the scheme compatible with the internal market under Article 107(3)(c) of the Treaty on the Functioning of the European Union (TFEU).

Appeal filed against General Court's Judgment upholding European Commission's decision regarding Madeira Free Zone Scheme (*Recubans and Others*, Case C-3/25 P)

On February 2025, an appeal was filed by several companies (i.e. Recubans, Lda., Register.com LP and Intercement Portugal SA) against the General Court's judgments delivered on 23 October 2024 in the following cases: Cases T-724/22, *Neottolemo v Commission* (Madeira Free Zone) and T-725/22, *Register.com v European Commission* (Madeira Free Zone).

4. VAT

Case Law

CJ judgment regarding VAT on public broadcasting activities (*A, B, Foreningen C*, Case C-573/22)

On 19 December 2024, the CJ issued its judgment in the case *Foreningen C and Others* (C-573/22).

A, B and Foreningen C initiated a class action in Denmark requesting a refund of the Danish VAT paid on certain media contributions for the years 2007-2017. In Denmark, VAT is levied on such contributions based on a so-called 'standstill clause'. The standstill clause permits Denmark to maintain VAT on certain transactions that were taxed before 1 January 1978, but are not taxable under the EU VAT Directive.

The applicants argued, with reference to recent CJ case law, that the levy could not be considered consideration for a service. Furthermore, the applications also argued that the standstill clause could no longer apply due to significant regulatory changes over time compared to when the standstill clause became effective.

The CJ ruled that Denmark is not acting in violation of EU law by subjecting the media contribution to VAT. This applies regardless of whether the levy constitutes a supply of services for consideration. Amendments to the regulation, including its extension to more devices such as smartphones and the partial allocation of revenue to entities beyond public broadcasters, do not affect Denmark's right to impose VAT on the media contributions.

CJ judgment regarding joint and several liability board members (*Adjak*, Case C-277/24)

On 27 February 2025, the CJ issued its judgment in the case *Adjak* (C-277/24).

This case concerns M.B., a former member of the management board of a company, who requested to be admitted to a tax procedure aimed at verifying a VAT return and accessing related documents. Her request was denied because under Polish law, while management board members are jointly and severally liable for the company's tax liabilities, they do not have the status of a party in such proceedings. M.B. appealed the decision, arguing that excluding her from the tax proceedings violated her right to defend her interests.

The CJ ruled that EU law does not preclude national legislation and practice that denies a third party the right to participate in tax proceedings against a legal person. However, any subsequent liability proceedings must allow the individual to challenge both the factual and legal basis of the company's tax debt. This also means that board members must have access to the case files from those proceedings and be granted the right to effectively challenge the findings made by the tax authorities in proceedings against the company.

AG Kokott's Opinion on VAT treatment of subsidies for public transport (*P.S.A.*, Case C-615/23)

On 13 February 2025, the opinion of AG Kokott was published in the case *P.S.A.* (C-615/23).

P.S.A., a private transport company, sought an advance tax ruling on whether compensation from local authorities to cover losses from public transport services should be included in the taxable amount for VAT purposes. The compensation is based on vehicle-kilometres offered, not the number of users, and serves to subsidize the overall transport costs. The tax authority argued that this compensation constitutes taxable turnover linked to the price of transport services.

AG Kokott opined that the subsidy aims to ensure the availability of transport in the public interest and that is should not be regarded as remuneration for services provided by P.S.A. to the users. Moreover, since the subsidy is calculated based on vehicle-kilometres, not user numbers, it is also not directly linked to the price of transport services. Instead, it is regarded by AG Kokott a general subsidy to offset losses without affecting individual service prices. AG Kokott, therefore, proposed that the CJ rule that the compensation does not constitute a consideration for a supply of services and should not be included in the taxable amount for VAT purposes.

AG Campos Sánchez-Bordona's Opinion on enforcement measures (*Ati-19 EOOD*, Case C-605/23)

On 13 February 2025, the Opinion of AG Campos Sánchez-Bordona was published in the case *Ati-19 EOOD* (C-605/23).

The case concerns Ati-19 EOOD, a Bulgarian company whose business premises were sealed by tax authorities for 14 days due to alleged VAT irregularities (the reported turnover was lower than the cash register turnover). The company sought to suspend this measure.

The referring court questioned whether the measure under Bulgarian law is compatible with the Charter of Fundamental Rights of the EU.

AG Campos Sánchez-Bordona concludes that it is not contrary to EU law for a judge to suspend the sealing of a business space in connection with VAT irregularities. This applies when the sealing could cause serious or difficult to repair damage.

AG Campos Sánchez-Bordona's Opinion on VAT-related penalties (*Beach and Bar Management EOOD*, Case C-733/23)

On 13 February 2025, the Opinion of AG Campos Sánchez-Bordona was published in the case *Beach and Bar Management EOOD* (C-733/23).

Beach and Bar Management EOOD, a company operating a bar and restaurant, was inspected by the Bulgarian tax authorities, which found 85 instances of failure to issue fiscal cash register receipts for transactions. The authorities imposed 85 financial penalties totalling BGN 42,500 (approximately EUR 21,250) and ordered the sealing of the business premises for 14 days.

AG Campos Sánchez-Bordona examined whether imposing both financial penalties and a sealing measure for the same offences is compatible with the Charter of Fundamental Rights of the EU. AG Campos Sánchez-Bordona concluded that imposing both measures is in principle compatible with EU law, provided they are proportionate and justified by the need to ensure VAT compliance.

Developments

European Commission urges eight Member States to transpose VAT Directive for Small Enterprises

The European Commission has initiated infringement procedures against Bulgaria, Ireland, Greece, Spain, Cyprus, Lithuania, Portugal, and Romania for failing to transpose the Directive on the special VAT scheme for small enterprises by the deadline of 31 December 2024. This Directive allows small businesses to sell goods and services without charging VAT and reduces their compliance obligations, including for cross-border transactions. The Member States have two months to respond and complete transposition - otherwise, the Commission may escalate the procedure by issuing a reasoned opinion.

European Commission urges seven Member States to transpose VAT Rates Directive

The European Commission has launched infringement procedures against Belgium, Bulgaria, Greece, Spain, Lithuania, Portugal, and Romania for failing to fully transpose the Directive on VAT rates by the deadline of 31 December 2024. This Directive expands the use of reduced and zero VAT rates for essential goods like food, pharmaceuticals, and medical products. The Member States have two months to comply; otherwise, the Commission may escalate the procedure by issuing a reasoned opinion.

5. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ judgment on national provisions providing for effective, proportionate and dissuasive penalties for failure to comply with customs legislation (Joined cases *Sistem Lux*, C-717/22 and VU, C-372/23)

On 19 December 2024, the CJ delivered its judgment in the joined cases of *Sistem Lux and VU* concerning national provisions providing for the imposition of an administrative penalty equal to the customs value of goods in respect of which a person has failed to comply with customs legislation and the confiscation of those goods, irrespective of their owner.

On 28 May 2021, a Bulgarian customs officer at a border post with Turkey conducted an inspection of a semi-trailer truck containing 13 consignments of aluminium profiles that had been loaded in Turkey and were being transported to Serbia. Eight (8) of these consignments had not been declared in the accompanying documents. Following an administrative procedure, an administrative penalty was imposed on the driver, VU, corresponding to 100% of the customs value of the eight undeclared consignments. In addition, the aluminium profiles in these eight consignments were confiscated for the benefit of the Bulgarian State in accordance with national legislation. Following these measures, Sistem Lux, the consignee and owner of the goods, brought an action against the decision to confiscate the aluminium profiles. In addition, VU challenged the decision to impose the administrative penalty on it and the decision to confiscate the eight undeclared consignments. In both national proceedings, preliminary questions were referred to the CJ because the national court had doubts on the interpretation of Article 42 Regulation (EU) No 952/2013 (UCC) which allows Member States to impose penalties in case of a failure to comply with the customs legislation.

First, the CJ considered that failure to fulfil the obligation to lodge a declaration under Article 15(1) of the Union Customs Code (UCC) constitutes a failure to comply with the customs legislation pursuant to Article 42(1) of the UCC. The application of penalties under this Article covers situations regardless of whether the failure to comply was intentional, negligent or absent of any wrongful conduct. It is the responsibility of Member States to provide for effective, proportionate and dissuasive penalties, and within these boundaries, Member States are free to decide on penalties as they deem appropriate. Moreover, the severity of penalties must be proportionate to the seriousness of the infringements for which they are imposed, taking account of all the facts and circumstances of the case. According to the CJ, Articles 15 and 42(1) of the UCC do not preclude the imposition of an administrative penalty on a person who has failed to comply with customs legislation for the sole reason of negligence, consisting of failure to use the prescribed form for declaring the goods being transported. However, these articles do preclude, in such circumstances, the imposition of an administrative penalty equal to the customs value of the goods in respect of which he has failed to comply.

Second, the CJ considered that Article 42(2) of the UCC, which contains a list of administrative penalties that may be applied for failure to comply with customs legislation, is not exhaustive. As such, Member States may provide for administrative penalties other than those listed in that article, such as the confiscation of goods in respect of which a customs offence has been committed, provided that the goods confiscated do not belong

to a third party acting in good faith. Member States may also provide for a combination of administrative penalties, provided that the combination of the administrative penalties meets the requirement of proportionality.

Third, the CJ examined whether Article 2(1) of Framework Decision 2005/212 is to be interpreted as applying to the confiscation of goods in respect of which there has been a failure to comply with customs legislation, where that failure constitutes only an administrative offence. Since this provision only covers criminal offences punishable by a custodial sentence of more than one year, the CJ ruled that this provision does not apply in cases where the failure to comply with customs legislation constitutes an administrative offence and not a criminal offence punishable by a custodial sentence of more than one year.

CJ judgment on national rules regarding the vendor as liable for the excise duties chargeable in the EU Member State of destination (*Pohjanri*, Case C-596/23)

On 19 December 2024, the CJ delivered its judgment in the case of *Pohjanri* on national rules regarding the vendor as liable for the excise duties chargeable in the EU Member State of destination in accordance with Article 36(1) of Council Directive 2008/118/EC (the 'Directive').

B UG, a company established in Germany, operated a website through which its customers could purchase alcoholic beverages of different brands. The website was also available in the Finnish language. When customers placed an order on B UG's website, an advertisement for the transport services of various companies would appear. After payment of the purchase price, a prompt concerning the organization of the transport would appear, containing direct links to the websites of the transport companies. On these websites, the customer was not required to enter any information about the purchase order except for contact details. However, the customer could also select the option to collect the order directly from a warehouse located in Germany. On its website, B UG informed its customers that they were responsible for paying taxes in Finland.

On 20 April 2020, the Finnish customs authorities seized a consignment of alcoholic beverages sold by B UG consigned from Germany. The Finnish customs authorities took the view that B UG, or a person acting on its behalf, had directly or indirectly dispatched the alcoholic beverages to Finland and that consequently, B UG had acted as a distance seller and was liable for the excise duty in Finland. Subsequently, the Finnish customs authorities imposed the payment of excise duty and a tax penalty on B UG. B UG contested this and brought an action against this decision before the *Helsingin hallinto-oikeus* (Administrative court, Finland). It argued that the alcoholic beverages were purchased by a private individual for his own use who acquired them in Germany and paid the transport costs directly to the transport company. In this procedure, the Administrative court referred two preliminary questions to the CJ.

The CJ considered that where a vendor acts in such a way as to guide the purchaser in the choice of the company responsible for the dispatch and/or the transport of the excise goods purchased on his website, he must be regarded as indirectly involved in the dispatch and/or the transport of the excise goods to the Member State of destination. As such, he is liable for the excise duty in that Member State pursuant to Article 36 of the Directive.

The CJ specified that the term 'indirectly involved' also covers cases where the vendor directs the dispatch and/or the transport by offering the consumer a choice between recommended consignors and transporters. Whether this is the case must be assessed according to the objective nature of the transaction rather than its legal form. Therefore, the fact that the purchaser enters into separate contracts with the vendor and the transport company is irrelevant for the purpose of determining whether a distance sale falls within the scope of Article 36 of the Directive.

CJ judgment concerning the extension of the period during which goods imported under the temporary admission procedure may remain under that procedure (*Malmö Motorrenovering*, Case C-781/23)

On 12 December 2024, the CJ delivered its judgment in the case of *Malmö Motorrenovering* concerning the extension of the period during which goods may remain under the temporary admission procedure pursuant to Article 251 of Regulation (EU) No 952/2013 (UCC).

On 30 April 2019, Malmö Motorrenovering AB imported a racing car under the temporary admission procedure from the United States to Sweden for use in racing competitions taking place in the EU. According to the terms of the authorisation issued by the Swedish customs authorities for the temporary admission procedure, the racing car had to be re-exported by 30 July 2019. The last race was set to take place on 8 September 2019. The racing car was subsequently re-exported on 19 September 2019. As the re-export of the racing car took place after 30 July 2019, a customs debt incurred.

Malmö Motorrenovering contested the customs debt before the *Förvaltningsrätten i Linköping* (Administrative Court, Sweden). The Administrative Court found that the customs declaration did not state a date for re-exportation and that Malmö Motorrenovering had intended to re-export the car after the racing season. Second, it found that there was no indication of fraudulent intent on the part of Malmö Motorrenovering. Finally, it found that the customs authorities had no reason not to allow Malmö Motorrenovering to use the temporary admission procedure until the date of actual re-exportation (19 September 2019), if that date had been indicated in the customs declaration. The Administrative Court ruled that the customs debt was extinguished pursuant to Article 124(1)(h) of the UCC.

In appeal, the parties submitted various arguments as to the interpretation of Article 251 of the UCC. On the one hand, Article 251 of the UCC could be interpreted as requiring exceptional circumstances for the extension of the temporary admission procedure if the authorised use cannot be achieved within the period initially granted. On the other hand, this article could also be interpreted as requiring exceptional circumstances for the extension of the temporary admission procedure only if the overall period granted for the use of the temporary admission procedure exceeds 24 months. As the *Högsta förvaltningsdomstol* (Supreme Administrative Court, Sweden) was in doubt as to the correct interpretation, it referred a preliminary question to the CJ.

The CJ considered that it is for the customs authorities to determine the period within which goods placed under the temporary admission procedure must be re-exported or placed under a subsequent procedure. That period must be sufficiently long to achieve the objective of the authorised use. In addition, the CJ considered that the existence of exceptional circumstances is required only in situations where the maximum duration of 24 months is insufficient to achieve the objective of the authorised use. In such cases, an extension may be granted if evidence substantiating the exceptional circumstances is put forward. In any case, such an extension may not result in the duration of the temporary admission procedure exceeding 10 years, except in the case of an unforeseeable event.

In the case of Malmö Motorrenovering, the period for re-exportation set by the customs authorities was insufficient to achieve the objective of the authorised use. However, according to the CJ, it follows from the wording of Article 251 of the UCC that the existence of exceptional circumstances is only required where the cumulative duration of the period for which the goods may remain under the temporary admission procedure exceeds 24 months. The CJ left it up to the referring court to decide whether the customs debt can be extinguished based on Article 124(1)(h) of the UCC.

Developments

Adoption of the 16th sanctions package against Russia

On 24 February 2025, the Council adopted the 16th Russia sanctions package, which includes additional measures to further increase pressure on Russia, such as trade measures including a ban on imports of primary aluminium under HS heading 7601. Amongst others, further measures include the extension of export restrictions to chemical precursors, software and chromium.

Get in contact

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