

# Euro Tax Flash from KPMG's EU Tax Centre

## CJEU decision on withholding tax relief under the Interest and Royalties Directive - procedural aspects

March 11, 2026

On March 5, 2026, the Court of Justice of the European Union (CJEU or the Court) rendered its [decision](#) in case C-828/24.

The case concerns procedural aspects for granting the withholding tax exemption under the Interest and Royalties Directive (IRD or the Directive). The CJEU held that under the IRD Member States may grant withholding tax exemptions retroactively, meaning that the exemption can apply not only from the date when the administrative decision was issued, but also to earlier periods, including those preceding the taxpayer's submission of the required documentation.

The Court also held that the Directive does not impose EU-level deadlines for submitting the attestation that it meets the substantive requirements under the Directive or other supporting documents, nor does it limit the period prior to their submission for which a withholding tax exemption may be granted. Instead, such deadlines must be determined under national law.



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## Czechia – Interest and Royalties Directive – Time limit to provide supporting documentation for obtaining the withholding tax exemption – Decision to grant an exemption – Limitation on the period that may be subject to an exemption

### Background

The plaintiff was a company resident outside Czechia that applied in June 2019 for an exemption from Czech withholding tax with respect to royalty payments for the years 2014–2018. The Czech tax authorities granted the exemption only for 2017 and 2018, denying the request for 2014–2016 on the grounds that the deadline for claiming an exemption had expired. Following several appeals, the case was brought before the Czech Supreme Court.

Under the IRD, the source Member State may require the recipient company to demonstrate entitlement to the withholding tax exemption at the time of the payment through an ‘attestation’ certifying that the relevant substantive conditions are met – i.e., the attestation should therefore confirm the tax residence of the recipient, the fact that the recipient is the beneficial owner of the payment, the fact that the recipient takes one of the legal forms covered by the IRD, and the fulfillment of the minimum shareholding and minimum holding period requirements under the IRD. In addition, the source Member State can make the application of the exemption conditional upon a prior administrative decision issued by the tax authorities. Czechia has implemented both of these mechanisms.

Furthermore, under Article 1(15) of the Directive, if tax has been withheld at source by the paying company the beneficial owner of the payment can submit a refund claim, provided the substantive requirements listed above are met. The period for submitting this claim may be determined by the source State, but must run for at least two years after the date when the interest or royalties were paid.

Whilst the Czech legislation does not set a time limit for submitting an application for a tax exemption decision, the lower court in the present case ruled that, in the absence of a national deadline, the applicable limit is the one set out by the IRD in Article 1(15). Specifically, in the lower court’s opinion, this maximum period amounted to two years.

Second, the Supreme Court found it unclear whether the exemption decision constitutes a substantive or a formal condition for granting the exemption. If the issuance of an exemption decision is considered a substantive condition – meaning an essential prerequisite for the exemption, then an exemption could not be granted for periods when the taxpayer had not yet obtained the decision. However, if the exemption decision is deemed a formal condition, the exemption could potentially apply to earlier periods, provided the substantive criteria for the exemption were met at that time. With the aim of interpreting the wording of the IRD, the Supreme Court highlighted inconsistencies across different language versions of the IRD. In the Supreme Court’s view, these inconsistencies further contribute to the ambiguity regarding the retroactive issuance of an exemption decision.

The referring court therefore asked the CJEU to clarify:

- whether the IRD allows a source Member State to grant, on the basis of an administrative decision, a withholding tax exemption retroactively – i.e., that is, for periods preceding the administrative decision granting the exemption or even before the taxpayer submitted the required attestation and supporting documentation.
- if the answer to the first question is affirmative, whether EU law sets: i) a deadline for submitting the attestation to obtain the exemption decision, and ii) a limit on how far back the exemption can apply before the attestation was provided.

### CJEU decision

#### *Retroactive exemption from withholding tax under the IRD*

The Court first recalled that Article 1(1) of the Directive provides a withholding tax exemption in the source state for interest and royalty payments made between associated companies located in different EU Member States, provided that the beneficial owner is a company of another Member State or a permanent establishment of such a company. Additionally, Article 1(12) of the IRD allows the source Member State to make the granting of this exemption conditional upon an administrative decision, issued after the taxpayer submits an attestation and any supporting information reasonably requested by the relevant tax authorities.

Quoting its settled case-law, the CJEU then highlighted that, when interpreting a provision of EU law, it is necessary to consider not only the wording of the provision, but also the context in which it occurs and the objectives of the related legislation. In

the case at hand, the Court held that the wording of the IRD does not preclude the source Member State from i) granting the exemption for periods preceding the administrative decision, or ii) granting the exemption for periods before the taxpayer submits the attestation and the supporting documentation. In the CJEU's view, this interpretation is consistent with the context of the Directive, as well as with its objectives – i.e., elimination of double taxation of interest and royalties.

In light of the above, the CJEU concluded that the IRD allows Member States to grant the exemption retroactively, including for periods prior to both the administrative decision and the submission by the taxpayer of the required documentation.

#### *Time limit for requesting the withholding tax exemption under the IRD*

The Court then examined whether the Directive sets a deadline for submitting the attestation and supporting documents required to obtain a withholding tax exemption on interest or royalty payments, or limits how far back the exemption may apply.

The Court first noted that Article 1(12) of the Directive, which allows the source Member State to grant withholding tax exemption through an administrative decision, does not set any deadline for submitting the attestation or the supporting information required by the competent tax authorities. Similarly, Article 1(13) provides that the attestation has a maximum validity period of three years from the date of issue, but it does not establish a time limit for submitting the attestation to the tax authorities, nor does it restrict the period prior to its submission for which an exemption may be granted.

The CJEU also clarified that Article 1(15) concerns a separate procedure, namely the refund of withholding tax already paid. In the Court's view, whilst that provision allows Member States to set a minimum time limit of two years for submitting refund claims, this rule does not apply to exemption applications submitted under Article 1(12).

The CJEU also held that, as the Directive itself does not regulate deadlines for submitting the required documentation, the determination of such procedural time limits falls within the procedural autonomy of Member States, subject to their national legal frameworks.

In light of the above, the Court concluded that the Directive does not impose EU-level deadlines for submitting the attestation or supporting documents, nor does it limit the period prior to their submission for which a withholding tax exemption may be granted. Instead, any such limitations must be determined under national law.

## ETC Comment:

The CJEU decision clarifies how Member States may apply, from a time limit perspective, the withholding tax exemption under the IRD.

The Court also upheld the referring court's interpretation concerning whether a deadline specified in the Directive for submitting the documentation required to obtain a withholding tax exemption would be applicable in the absence of its transposition into Czech law. In this context, the CJEU reiterated its settled case-law that a Directive cannot impose obligations directly on individuals (no reverse vertical direct effect) and therefore cannot be relied upon against a taxpayer. Consequently, even if the Directive was interpreted as containing a submission deadline, such a deadline could not be applied to the disadvantage of the taxpayer.

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