



E-News from KPMG's EU Tax Centre

Key Insights of E-News Issue 232

KPMG's EU Tax Centre compiles a regular update of EU and international tax developments that can have both a domestic and a cross-border impact, with the aim of helping you keep track of and understand these developments and how they can impact your business. Today's edition includes updates on:

- *CJEU*: AG opinion on loss making non-resident shareholder receiving dividends subject to WHT
- *CJEU*: AG opinion on whether Luxembourg correctly transposed the interest limitation rules under the ATAD
- *European Commission*: Tax Omnibus proposal
- *European Commission*: DAC recast proposal
- *European Commission*: ATAD evaluation report published
- *European Parliament*: Workshop on possible EU own resource based on a digital levy
- *OECD*: Updates to Pillar Two filing deadlines
- *Germany*: Guidance on the criteria for establishing a permanent establishment under domestic and treaty law
- *Denmark (court decision)*: Denmark Supreme Court confirms five-year limitation period for withholding tax refund claims
- *Ukraine (court decision)*: Ukraine Supreme Court confirms beneficial ownership status of Cypriot financing company



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[ETFs – Euro Tax Flash](#)
[Euro Tax Flash - KPMG Global](#)

Table of contents

Latest CJEU, EFTA and ECHR.....	2
CJEU.....	2
AG opinion on loss-making non-resident shareholder receiving dividends subject to WHT.....	2
AG opinion on whether Luxembourg correctly transposed the interest limitation rules under the ATAD.....	4
State aid.....	6
State aid.....	6
Gibraltar State aid case: AG finds that decision opening investigation into completed aid measure remains non-challengeable .	6
EU institutions.....	8
European Commission.....	8
Tax Omnibus proposal	8
DAC recast proposal.....	9
ATAD evaluation report published.....	9
EC publishes study examining possible reforms to the taxation of the financial sector	10
OECD and other International Organizations.....	13
OECD.....	13
Update to OECD common understanding on central GIR filing and country responses	13
Updates to Pillar Two filing deadlines.....	14
Local Law and Regulations.....	15
Germany.....	15
Guidance on the criteria for establishing a permanent establishment under domestic and treaty law	15
Italy	16
Updated Q&A on Pillar Two filing obligations published.....	16
Luxembourg	16
Updated Q&A on Pillar Two published	16
Local courts.....	18
Denmark.....	18
Denmark Supreme Court confirms five-year limitation period for withholding tax refund claims	18
Italy	19
Italian Revenue Agency clarifies the application of the Interest and Royalties Directive to cooperative companies.....	19
Ukraine	19
Ukraine Supreme Court confirms beneficial ownership status of Cypriot financing company	19
United Kingdom	20
UK Court of Appeal clarifies remedy with respect to the incompatibility of the former UK exit tax regime with EU law	20
KPMG Insights.....	22
KPMG EU Tax perspectives webcast – replay now available	22

Latest CJEU, EFTA and ECHR

Key Insights

- AG opinion on loss making non-resident shareholder receiving dividends subject to WHT
- AG opinion on whether Luxembourg correctly transposed the interest limitation rules under the ATAD

CJEU

AG opinion on loss-making non-resident shareholder receiving dividends subject to WHT

On June 18, 2026, Advocate General (AG) Richard de la Tour of the Court of Justice of the European Union (CJEU) delivered an [opinion](#) in case C-241/25. The case deals with whether EU law precludes a Member State from requiring a non-resident company receiving dividends subject to withholding tax to determine its tax loss in accordance with the tax rules of that Member State, in order to benefit from the same tax treatment as a resident loss-making company receiving dividends.

Under the Swedish law applicable at the time of the proceedings, dividends distributed by Swedish companies to non-resident legal entities were subject to withholding tax, with refunds available only in limited circumstances. Since January 1, 2020, non-resident companies established in the EU may obtain a deferral of the dividend tax where they have incurred a loss calculated in accordance with Swedish tax rules.

The plaintiff, a French company belonging to a French tax consolidated group, received dividends from Swedish companies in 2012. Swedish withholding tax was levied on those dividend payments. The plaintiff subsequently sought a refund of the withholding tax, arguing that the tax constituted a restriction on the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU). The plaintiff argued that it was in a loss-making position and that, in comparable circumstances, a loss-making Swedish resident company would not have been subject to tax on such dividends. The Swedish tax authorities rejected the application. That decision was subsequently upheld by the national courts, which found that the documentation provided by the French company was insufficient to demonstrate, with the necessary degree of certainty, that it had incurred a loss in the relevant year. In their view, such assessment could only be made on the basis of a detailed calculation of both the company's and the group's profits and losses under Swedish tax rules.

In the appeal proceedings, Högsta förvaltningsdomstolen (the Supreme Administrative Court of Sweden) referred questions to the CJEU on whether Article 63 TFEU permits:

- requiring a non-resident company to recalculate its profit or loss under the source State's tax rules;
- taking into account the results of the company's tax group when assessing whether it is loss-making; and
- applying such an approach where the source State itself does not operate a consolidated tax group regime.

The AG started by recalling the guidance that can be derived from the CJEU decisions in case C-575/17 (please refer to Euro Tax Flash [Issue 386](#)) and C-601/23 (please refer to Euro Tax Flash [Issue 561](#)). In both cases, the Court found that legislation similar to the one in Sweden represented a restriction on the free movement of capital. The CJEU also rejected pleas brought by several Member States that the situations of resident and non-resident loss-making companies were not objectively comparable.

Specifically, in case C-575/17 the Court held that once a Member State, either unilaterally or by way of a convention, levies a tax from both resident and non-resident taxpayers on the income from dividends received from a resident company, the situation of those non-resident taxpayers becomes comparable to that of resident taxpayers. The Court reconfirmed this approach in C-601/23 and rejected the arguments based on principle of territoriality, as well as those related to inconsistency with previous case-law¹ brought by Spain and Germany. The CJEU also rejected justifications based on the need for a balanced allocation of taxing powers and the effectiveness of tax collection.

With respect to the case at hand, the AG reiterated that the withholding tax regime under dispute places non-resident companies at a disadvantage compared to resident loss-making companies, which benefit from a tax deferral or exemption. This difference in treatment represents a restriction on the free movement of capital.

The AG then recalled that it is settled case-law that a difference in treatment is only compatible with the free movement of capital where it concerns situations that are not objectively comparable or where it can be justified by an overriding reason in the public interest. In this context, the AG noted that the case under dispute provides an opportunity for the Court to confirm its reasoning in cases C-575/17 and C-601/23. The AG referred to the German Government's criticism, supported by Spain, that resident and non-resident entities are not objectively comparable as regards the treatment of losses incurred outside the source State². The German Government further argued that the Court's case-law above is difficult to reconcile with earlier Grand Chamber judgments endorsing the principle of territoriality. Nevertheless, the AG rejected those arguments and disagreed that the case-law relied on by Germany called into question the conclusions reached in the cases C-575/17 and C-601/23. First, the AG noted that the territoriality case-law cited by the German Government concerns situations involving genuine economic activity in the source State, whereas the cases C-575/17 and C-601/23 concerned passive income. Second, the AG emphasized that the earlier cases dealt with the determination of the tax base, whereas cases C-575/17 and C-601/23 concern the timing of tax payment or reimbursement. Accordingly, the AG concluded that the two lines of case-law address different fact patterns and are not contradictory.

Having found that the rules under dispute represent a restriction on the free movement of capital with respect to objectively comparable situations, the AG analyzed and rejected the justifications brought forward by several Member States, including those based on the balanced allocation of taxing rights and fiscal cohesion.

With respect to Sweden's plea that the rules under dispute were justified by the need to fight against tax avoidance (risk of shifting shares to a loss-making non-resident), the AG recalled that whilst combating abuse is a legitimate objective, the measures need to be proportionate. In the case at hand, the AG found that the requirement to compute losses under Swedish law is disproportionate to the objective pursued because it is based on a general presumption of fraud and not on evidence suggesting that fraud or an artificial arrangement intended to avoid payment of dividend tax is at issue. Moreover, in the AG's view, it imposes heavy administrative burdens, where the cost of that burden could exceed the amount of tax in question, especially for companies investing in several Member States. The AG took the view that accepting proof of losses under the law of the state of residence, combined with administrative cooperation under Directive 2011/16/EU, would be sufficient to achieve the objective of combating tax evasion and tax avoidance.

Regarding the risk of double use of losses (raised by the German Government), non-resident companies must provide relevant evidence enabling the source state's tax authorities to verify that the conditions for deferral of taxation are fulfilled. The AG recalled that this has already been confirmed by the Court in case C-601/23.

In light of these considerations, the AG proposed that the CJEU answer that Article 63 TFEU must be interpreted as precluding legislation of a Member State under which a non-resident company receiving dividends subject to withholding tax must calculate its loss in accordance with the tax rules of the source State in order to benefit from the same treatment as that available to resident companies in a comparable situation.

¹ CJEU's decisions in C-250/95; C-345/04 and joined cases C-10/14, C-14/14 and C-17/14.

² The German Government, supported by Spain, raised that, in light of that case law, resident and non-resident taxpayers are in a comparable situation only as regards costs having a direct economic connection with taxable income in the source State, and therefore questions whether losses determined under the rules of the State of residence can be taken into account in the same way.

AG opinion on whether Luxembourg correctly transposed the interest limitation rules under the ATAD

On June 18, 2026, AG Juliane Kokott of the CJEU [recommended](#) that the CJEU dismiss the European Commission's infringement action concerning Luxembourg's implementation of the Anti-Tax Avoidance Directive (ATAD) interest limitation rule (case C-138/24).

Article 4(7) of the ATAD provides that Member States can exclude certain 'financial undertakings' from the scope of the interest deduction limitation rules³. The Directive defines financial undertakings by reference to a closed list included in Article 2(5) of the ATAD. Securitization companies regulated under the EU Securitization Regulation are not included in that list. However, Luxembourgish legislation contains a derogation for securitization special purpose vehicles.

In July 2023, the European Commission (the EC or the Commission) announced its decision to refer Luxembourg to the CJEU for failing to correctly transpose the interest limitation rules under the ATAD. In its referral, the EC asked the CJEU to declare that Luxembourg has failed to fulfil its obligations under the ATAD and to order it to pay the costs. For previous coverage, please refer to E-News [Issue 193](#).

AG Kokott started the analysis of the case by recalling that, in order to determine the scope of the transposition obligation and the margin of discretion available to Member States, it is necessary to interpret the ATAD provisions relating to 'financial undertakings' in light of their wording, overall scheme, objectives and legislative background. The AG acknowledged that, as regards legislative technique, Article 2(5) of the ATAD appears to provide an exhaustive list of entities that qualify as financial undertakings for the purpose of the Directive. The AG further noted that the ATAD does not contain an explicit residual clause that would allow Member States to expand that list by introducing additional categories of entities, such as securitization companies. Moreover, in the AG's view, the spirit and purpose of the ATAD – including that of ensuring a common minimum level of protection against tax avoidance across the EU, also supports a restrictive interpretation of the provision. Nevertheless, the AG noted that the spirit and purpose of the derogation provisions included in Article 4 (interest limitation rules) and Article 7 (controlled foreign company) of the ATAD support instead a broader reading of the term 'financial undertaking'.

AG Kokott then noted that – in line with the general rule of interpretation, Article 2(5) ATAD must be interpreted, as far as possible, in a manner that preserves its validity. Accordingly, this provision must be interpreted in conformity with the entirety of primary EU law, including the principle of equal treatment set out in Article 20 of the Charter of Fundamental Rights of the European Union. Under settled CJEU case-law, the principle requires that comparable situations are not treated differently and that different situations are not treated in the same way, unless such treatment is objectively justified. In the view of the AG, securitization companies exhibit 'specific characteristics' comparable to those of 'financial undertakings' within the meaning of Article 2(5) ATAD. Apart from detailed differences, the usual activity of such entities relates to borrowed capital, interest and certain categories of income. In addition, since 2018, securitization vehicles have been subject to specific EU level regulation under Regulation (EU) 2017/2402 (Securitization Regulation). In the AG's view, such entities are therefore no more prone to the types of abusive tax arrangements that Article 4 and Article 7 of the ATAD seek to prevent than the financial and insurance undertakings that are listed in Article 2(5) ATAD and that benefit from the exception. However, in the absence of an update to the list of entities benefiting from the exception to include them, securitization vehicles are subject to the interest limitation rule and the CFC rule. In the AG's view this amounts to unequal treatment.

The AG considered that the Commission did not demonstrate a specific and proportionate reason why securitization entities should be treated more restrictively than other regulated financial undertakings. The AG essentially stressed that the Commission's reliance on the allegedly higher risk and complexity of securitization is unfounded, because these risks are precisely addressed by the Securitization Regulation and comparable to those of other regulated financial products.

In light of these considerations, AG Kokott proposed that the Court should dismiss the Commission's action.

³ Under Article 4(7) ATAD, the exception for certain financial undertakings is relevant both for the interest limitation rules and, in principle, for the CFC framework. However, Luxembourg chose to implement the ATAD CFC rules in accordance with the approach corresponding to option B (Article 4(7)(b) ATAD), which relies on a case-by-case assessment rather than the more general option A (Article 4(7)(a) ATAD). As a result, in the present reference the discussion of that exception concerns only the interest limitation rules (ILR), and not the application of the CFC rules.

For previous coverage, please refer to E-News [Issue 193](#).



State aid

Key Insights

- AG finds that decision opening investigation into completed aid measure remains non-challengeable

State aid

Gibraltar State aid case: AG finds that decision opening investigation into completed aid measure remains non-challengeable

On June 25, 2026, AG Biondi of the CJEU issued an [opinion](#) in case C-670/24 P. The case deals with whether a European Commission decision extending a formal State aid investigation under Article 108(2) TFEU⁴ is open to judicial challenge where the investigated measure had already been fully implemented when the formal investigation procedure was initiated.

The case forms part of the long-running State aid proceedings⁵ concerning Gibraltar's corporate income tax exemption regime and certain advance tax rulings granted to multinational groups. Following a complaint filed by Spain in June 2012, the EC held (on December 19, 2018) that Gibraltar's exemption scheme constituted State aid incompatible with the internal market. In addition, the Commission concluded that five individual rulings granted by the Gibraltar tax authorities – out of the 165 reviewed, involved illegal State aid. In short, according to the Commission, the rulings endorsed the passive interest and royalty income exemption for the period prior to the 2013 amendment and allowed beneficiaries to continue to benefit from the exemption afterwards⁶. The beneficiary of one of the tax rulings, that received royalty income from a Dutch partnership, decided to appeal the Decision before the General Court.

On April 6, 2022, the General Court upheld the Commission's finding that Gibraltar's corporate tax exemption for royalty income applicable until December 31, 2013, constituted unlawful State aid. Nevertheless, the General Court partially annulled the State aid decision issued by the Commission, in so far as it related to individual aid granted to the plaintiff, based on a tax ruling for the period 2014 onwards – see Euro Tax Flash [Issue 473](#). Following that judgment, the Commission adopted a new decision in

⁴ Article 108(2) TFEU establishes the European Commission's formal investigation procedure for assessing whether State aid is compatible with the EU internal market.

⁵ Gibraltar is a British Overseas Territory to which, before the UK's exit from the European Union, the fundamental freedoms under the TFEU applied. The Withdrawal Agreement concluded between the EU and the UK covered Gibraltar, and as a result the CJEU remained competent for judicial procedures concerning Gibraltar registered at the CJEU before the end of the transition period (i.e. December 31, 2020).

⁶ These five rulings concerned the tax treatment of royalty and interest income generated by Dutch limited partnerships. Both Gibraltar and the Netherlands provided that profits realized by a limited partnership in the Netherlands should be taxed where its partners are resident for tax purposes, i.e. in Gibraltar. However, the income was not taxed in Gibraltar, based on the tax exemption available at that time and confirmed under tax rulings issued locally. ⁷ The facts of the case took place while the UK was still an EU Member State and when it still had to comply with EU law.

October 2022 extending the formal investigation to the tax treatment of the Gibraltar entity from January 1, 2014, until its dissolution in October 2018 (the Decision).

The plaintiffs challenged the Commission's decision to extend the investigation, arguing, among others, that the Commission lacked jurisdiction under the EU–UK Withdrawal Agreement and that the Decision produced legal effects capable of judicial review. On August 13, 2024, the General Court dismissed the action as inadmissible, and the plaintiffs appealed the ruling before the CJEU.

The AG considered that the key issue is whether a Commission decision opening (or extending) a formal State aid investigation produces independent legal effects where the measure under investigation has already been fully implemented. In the AG's view, where a measure is still being implemented, a Commission decision to initiate the Article 108(2) procedure has immediate consequences due to the fact that it triggers the obligation to suspend implementation of the measure. In such situations, the AG concluded that the decision produces independent legal effects and may therefore be challenged before the EU courts.

Nevertheless, where the aid measure has already been fully implemented, the suspension effect no longer operates. Whilst national courts may choose to adopt interim measures or order recovery in certain circumstances, the Commission's opening decision does not itself create any binding obligation to do so. As a result, the AG concluded that the decision remains a preparatory procedural act that does not constitute a challengeable measure before the EU courts.

The AG also rejected Gibraltar's plea that the Commission's decision exposed it to the risk of recovery proceedings before domestic courts and therefore had legal effects. In this context, the AG noted that the mere possibility that a national court may order recovery or grant interim relief does not transform the Commission's procedural decision into a binding act. Any such decision remains subject to independent assessment by national courts exercising their own powers under EU State aid law.

Additionally, the AG analyzed the plaintiff's plea that the EC lacked competence under the EU – UK Withdrawal Agreement and that the opening decision therefore had immediate legal significance. The AG took the view that an institution's view regarding its own competence does not, by itself, create binding legal effects. Questions relating to the Commission's jurisdiction may instead be raised in proceedings against the final decision concluding the State aid investigation.

In light of the above, the AG proposed that the CJEU dismiss the appeal and confirm the General Court's finding that such a decision is not a challengeable act under Article 263 TFEU.

EU institutions

Key Insights

- European Commission issues Tax Omnibus proposal
- European Commission issues DAC recast proposal
- European Commission publishes ATAD evaluation report
- EC publishes study examining possible reforms to the taxation of the financial sector
- European Parliament holds workshop on possible EU own resource based on a digital levy

European Commission

Tax Omnibus proposal

On June 24, 2026, the European Commission (EC) [published](#) a Tax Omnibus proposal aimed at simplifying EU tax rules, reducing compliance burdens for businesses, and strengthening the competitiveness of the Internal Market.

Key proposed updates include:

- *Parent-Subsidiary Directive / Interest & Royalties Directive*: Removal of holding requirements – broad withholding tax exemption for intra-EU dividends, interest and royalties between eligible companies, withholding tax relief on dividends paid to pension institutions.
- *ATAD*: Introduction of EU-wide R&D allowance, changes to Interest Limitation Rules (e.g., mandatory deductibility threshold of 30 percent tax EBITDA, EUR three million de-minimis safe harbor made mandatory, exclusion for qualifying third-party debt, exclusion for public benefit projects and defense sector), carve out from scope of CFC rules for groups in scope of Pillar Two and SMEs, mandatory application of categorical passive-income approach for CFCs, extension of the scope of the GAAR to withholding tax and Pillar Two top-up taxes, and removal of rules on imported mismatches.
- *Dispute Resolution Directive*: Clarification of the scope, simplification of the complaint process, clearer rejection grounds with safeguards (e.g., 30-day remedy period), earlier taxpayer notification requirement if no agreement is reached, extension of the scope to include admissibility issues, and simplified filing mechanism for SMEs and individuals.
- *Merger Directive*: Alignment of scope with recent EU company law developments (to include simplified mergers and divisions by separation), and extension of tax neutrality to cross-border conversions.

For more information on the Tax Omnibus proposal, please refer to Euro Tax Flash [Issue 582](#) and to our [Webcast](#) held on June 29, 2026 where a team of KPMG specialist unpacked the Commission's proposals and discussed practical considerations for multinational groups operating across the EU.

DAC recast proposal

As part of its Tax Simplification Package, on June 24, 2026, the European Commission also [published](#) a proposal for a Council Directive on administrative cooperation in the field of taxation (recast) – the DAC recast proposal.

The proposal aims to improve clarity by consolidating the various DAC texts (DAC1 to DAC9) into a single cohesive text and to streamline the application of certain rules in the DAC framework through a series of targeted amendments, including:

- *DAC4 /DAC9*: An option for MNE groups in scope of Country-by-Country Reporting and Pillar Two to file a combined notification form to report which group they are a part of and who and by when is filing the report on their behalf. Such groups are currently subject to notification requirements under both sets of rules.
- *DAC6*: A number of amendments to the EU Mandatory Disclosure Rules, including a reporting exemption for groups in-scope of Pillar Two (subject to conditions), and changes to the list of hallmarks (e.g., removal of generic hallmarks under section A), the reporting period (i.e., trigger point only where the first implementation step is taken and extension of the filing deadline from 30 to 90 days) and the notification requirements for intermediaries subject to legal professional privilege.
- *DAC7*: A number of changes to the EU reporting obligations for platform operators, including clarifications of the term ‘Platform Operator’, exclusion of certain small and medium sized Platform Operators, amendments to the exclusion criteria for sellers of low-value goods, and exclusion of related party sellers.
- Other measures in the DAC recast proposal include the automatic exchange of information on beneficial ownership for real estate and the introduction of a new digital tool to enable the automated verification of the correctness of Tax Identification Numbers.

For more information on the DAC recast proposal, please refer to Euro Tax Flash [Issue 583](#) and to our [Webcast](#) held on June 29, 2026 where a team of KPMG specialist unpacked the Commission’s proposals and discussed practical considerations for multinational groups operating across the EU.

ATAD evaluation report published

On June 25, 2026, the EC published a [Staff Working Document](#) evaluating the implementation and impact of the ATAD from the entry into force of the first provisions (January 1, 2019) to mid-2025. The Evaluation reflects findings from a study conducted by a third party in 2025, the results of the public consultations undertaken by the Commission (see Euro Tax Flash [Issue 572](#)), as well as feedback provided by Member States.

The report concludes that the ATAD has established a common minimum standard against corporate tax avoidance across the EU, while recognizing that the implementation options available to Member States created differing national approaches and interpretations, which has resulted in fragmentation, complexity, and legal uncertainty. In this context, the report outlines the different policy choices made by EU countries, including different deductibility thresholds under the interest limitation rule (ILR), different application of the de minimis safe harbour and carve-out provisions under the ILR, as well as the choice between the two models available for the application of controlled foreign companies (CFC) rules.

The report further finds that the ATAD provisions appear to apply to a very modest share of EU corporations. The finding is based on the data shared by EU countries with respect to, for example, the low number of tax returns adjusted for ILR purposes and the low number of cases reported in relation to the local CFC rule and the General Anti-Abuse Rule (GAAR).

Further takeaways for each ATAD measure include:

- *ILR*: According to the evaluation, the ILR has had the strongest impact on protecting tax bases and influencing taxpayer behavior. The results of the evaluation suggest that the rule increased corporate effective tax rates by approximately 1.5 percentage points in medium- and high-tax Member States. However, stakeholders raised concerns that certain aspects of the rule may no longer fully reflect current economic conditions. In particular, businesses in capital-intensive sectors such as infrastructure, real estate and energy noted that high levels of external financing are often driven by commercial and regulatory requirements rather than tax considerations. In this context,

stakeholders argued that the ILR may restrict interest deductions arising from genuine economic activity, potentially affecting the viability of long-term investment projects and reducing competitiveness.

- *GAAR*: The evaluation considers the GAAR an important safeguard that allows tax authorities to address aggressive tax planning arrangements not captured by more specific anti-avoidance provisions. However, due to its broad scope and evolving interpretation through CJEU case law, stakeholders reported concerns regarding legal uncertainty and inconsistent application. Questions were also raised about the interaction between the GAAR and more recent frameworks, including Pillar Two.
- *CFC rules*: The report concludes that, while the CFC rules remain relevant in combating tax avoidance, stakeholders highlighted the significant administrative burden associated with the rules and the complexity resulting from divergent implementation across Member States. In addition, the evaluation notes growing concerns regarding the overlap between the CFC rules and the Pillar Two framework, with many businesses considering the CFC regime increasingly redundant for groups already subject to the global minimum tax rules.
- *Hybrid mismatch rules*: The report describes the Hybrid mismatch rules as one of the most innovative elements of ATAD. Although they are rarely applied in practice, the evaluation suggests that they have helped discourage the use of mismatch arrangements and, when applied, can contribute to protecting tax bases. At the same time, the evaluation highlights the complexity of these rules, particularly in relation to imported mismatches, with both taxpayers and tax authorities facing practical challenges in gathering and assessing information across jurisdictions.
- *Exit taxation rules*: According to the evaluation, the Exit taxation rules have been implemented with relatively low administrative costs and have helped ensure that unrealized gains accrued in a Member State remain taxable when assets or activities are transferred abroad. Nevertheless, the report notes that practical difficulties continue to arise when determining the market value of transferred assets, especially intangibles.

Looking ahead, the report notes that, while ATAD remains a key element of the EU's anti-avoidance framework, simplification of the framework and greater consistency in implementation across Member States could help reduce compliance burdens and support competitiveness, particularly in light of developments such as the Pillar Two global minimum tax rules.

Several of the concerns raised by stakeholders during the evaluation process have already been taken into account by the EC in developing the Tax Omnibus proposal published on June 24, 2026. Examples include the proposed revisions to the ILR, the proposed CFC carve-out for Pillar Two groups and the proposed removal of the imported hybrid mismatch rules. For further details, please refer to the Tax Omnibus [update](#) above.

For more details on the implementation of the ATAD provisions across EU countries, please refer to our dedicated [summary](#).

EC publishes study examining possible reforms to the taxation of the financial sector

In June 2026, the Commission [published](#) a study on the taxation of the financial sector. The study was conducted by an external service provider and provides a comprehensive review of the tax framework, with a focus on the VAT exemption for financial services and national sectoral taxes. The study was carried out in consultation with tax authorities, other public authorities (e.g., central banks), and representatives of the financial services sector, service providers and academia. Key findings include:

- *Growing fragmentation from sector-specific taxes*: The study identifies 92 sectoral tax measures currently applied across the EU, including financial institution levies, additional corporate income taxes and windfall taxes. Based on the findings of the study, the proliferation of these measures contributes to complexity and fragmentation, particularly for financial groups operating across multiple Member States.
- *Significant revenue contribution from sector-specific taxes*: The study estimates that Member States collect approximately EUR 82 billion annually through sectoral taxes imposed on the financial sector. While insurance premium taxes account for the largest share of this amount, the study highlights the broader importance of sector-specific taxation as a source of government revenue.

The study outlines three possible reform paths, as follows:

- Retain the current VAT exemption while modernizing and simplifying the VAT rules. Two approaches were considered: i) modernize the definitions of financial services (e.g., custody, payment value chains, insurance intermediation and crypto-asset services), and ii) simplify and harmonize the rules on proportional deduction for input VAT. The study concludes that whilst this path would improve legal certainty and reduce compliance burdens, it would do little to address the structural issue of irrecoverable or “hidden” VAT costs.
- Reduce hidden VAT while preserving the exemption. Key measures include broader VAT grouping, expanded cost-sharing arrangements and making the option to tax available across all Member States. The study concludes that changes could significantly improve VAT neutrality for financial institutions, particularly in cross-border and intra-group settings, although some options could reduce VAT revenues and increase administrative complexity.
- Far-reaching reforms, that could include: i) full or partial removal of the VAT exemption for financial services; and ii) the introduction of a Financial Activities Tax (FAT) for all financial services, combined with VAT zero-rating and the removal of existing sectoral taxes. According to the report, an FAT could improve coherence and simplify the overall tax framework, although it would not fully eliminate the distortions associated with the current system because it is not a transaction-based tax.

Whilst the report does not recommend a specific course of action, it suggests that more fundamental reforms of the current framework may be technically feasible and could better support broader EU policy objectives, including the Savings and Investment Union.

European Parliament

Workshop on possible EU own resource based on a digital levy

On June 23, 2026, the Budgetary Support Unit for the Committee on Budgets of the European Parliament held a workshop on possible EU own resource based on a digital levy. Four expert speakers – Mr. Apostolos Thomadakis (Senior Research Fellow and Head of the Financial Markets and Institutions Unit, Centre for European Policy Studies), Ms. Cristina Enache (Economist, Tax Foundation), Mr. Faith Amaro (PhD Researcher, Institute of Advanced Legal Studies, University of London) and Ms. Patricia Brown (Senior Economic Affairs Officer, Financing for Sustainable Development Office, United Nations) presented assessments of a potential EU-wide Digital Services Tax (DST) and provided pros and cons, design options, revenue potential and the international context.

The discussion identified a structural mismatch between the digital economy and traditional corporate tax rules. The panelists highlighted that current rules are built around physical presence, such as permanent establishments and headquarters, whilst large digital companies can generate substantial revenues in countries where they have little or no physical footprint. Accordingly, concerns were raised about tax fairness, the erosion of Member States’ tax bases, and possible negative impacts on competitiveness, innovation and EU strategic autonomy.

The panelists highlighted that several European countries have introduced DST-style measures (including Austria, Denmark, Finland, France, Hungary, Italy, Poland, Portugal and Spain, Türkiye and the UK) with considerable differences in terms of scope, thresholds, rates and reporting requirements, which is seen as a source of fragmentation in the single market and a driver of trade-related challenges and broader geopolitical risks. The panelists also referred to the stalled negotiations on Pillar One at OECD level, which focused on the reallocation of taxing rights to market jurisdictions. Ms. Patricia Brown also provided an update on the work performed at the level of the United Nations, including the two early protocols on cross-border services and dispute resolution.

Further key takeaways from the discussion include:

- According to Mr. Apostolos Thomadakis, a harmonized EU DST at a rate of 3–5 percent on a broad range of digital services could theoretically generate around EUR 20–43 billion per year, possibly corresponding to 10–22 percent of the EU budget, but these estimates are highly uncertain and depend strongly on the scope of taxable services. Risks highlighted include potential trade tensions, pass-through of the tax burden to businesses and consumers, changes in

business models to reduce tax exposure, concerns over competitiveness and innovation, and significant legal and administrative implementation challenges.

- According to Ms. Cristina Enache, existing national DSTs contribute only marginally to overall tax revenues and even an EU-wide DST would represent a very small share of EU tax budget resources. In countries that have adopted DSTs, annual revenues generally fall typically below 0.1 percent of total government revenue, with Türkiye being a notable exception at about 0.24 percent. At EU level, the European Commission estimated that an EU-wide DST could raise up to EUR 5 billion per year. According to Ms. Cristina Enache, if the objective is to provide meaningful funding for the EU budget, a DST is not an effective instrument.
- Ms. Cristina Enache discussed whether expanded rates or bases of VAT on digital services would be a more appropriate and effective solution as this already generates about EUR 33 billion per year (2024) and is applied in a coordinated manner, including a credit mechanism that avoids multiple taxation along the value chain.
- For the longer term, as regards the design of DST, Mr. Faith Amaro suggested moving from simple revenue or profit thresholds towards profit-margin-based approaches, using EBITDA margin formulas combined with standard corporate tax rates to set withholding tax rates on digital income, so that a profit-based withholding tax is calibrated to the MNE's global EBITDA margin. In his view, the DST should cover a broad scope of digital services, including automatic digital services as well as online gambling and crypto-assets services.

For more information, please refer to the [press release](#) of the European Parliament.

OECD and other International Organizations

Key Insights

- Update to OECD common understanding on central GIR filing and country responses
- Updates to Pillar Two filing deadlines

OECD

Update to OECD common understanding on central GIR filing and country responses

On May 18, 2026, the OECD issued new guidance on central filing and exchange of the GloBE Information Return (GIR), with a common understanding among 33 of the 38 jurisdictions implementing the GMT for 2024 committing to waving penalties and refraining from enforcing local GIR filing obligations (subject to domestic limitations) provided that the MNE centrally files its GIR in a listed jurisdiction and submits the required local notification. Notably, jurisdictions may require local filing if GIR information is not exchanged by December 31, 2026.

On June 25, 2026, a revised version was issued to reflect that the Bahamas and Greece joined the common understanding and that Slovakia joined the common understanding with respect to all jurisdictions that appear in the Annex, except for those that do not have an activated exchange relationship with Slovakia.

Since the release of the guidance, a number of jurisdictions have already confirmed their position with respect to the common understanding (see E-News [Issue 230](#) and [Issue 231](#)). Additional EU countries that have recently issued statements in this context include:

- *Bulgaria:* The Bulgarian tax authorities have made a [formal announcement](#) on their website regarding the OECD common understanding on GIR central filing. However, it is noted that local filing may still be required if the GIR is not exchanged on time by December 31, 2026.
- *Finland:* The Finnish tax administration [clarified](#) that legislation sets limits to central filing. Finland accepts central filing in other countries only if the information exchange relationships are in effect before the filing deadline expires, the GIR has been submitted within the time limit, and the notification has been submitted in Finland within the time limit.
- *Hungary:* On June 4, 2026, the Hungarian National Tax and Customs Administration published [guidance](#) on GIR reporting, confirming the application of the OECD common understanding on central GIR filing for the 2024 reporting year.
- *Ireland:* On June 26, 2026, Irish Revenue issued a [communication](#) confirming that the central GIR filing in another jurisdiction will be accepted even where the GIR is filed later than June 30, 2026, provided certain conditions are met. According to Irish Revenue, the central filing mechanism may continue to be available to Irish group members and late GIR filing penalties will not apply where a correct and complete GIR is filed in a different jurisdiction on or before the earlier of (i) the date to which penalties will not apply in that jurisdiction, and (ii) September 30, 2026, and where a GIR notification has been submitted to Irish Revenue on or before the specified return date. For more details, please refer to E-News [Issue 230](#).

- *Italy*: On June 22, 2026, the Italian Ministry of Economy and Finance issued [guidance](#) confirming that Italy will apply the OECD common understanding on central GIR filing. The guidance provides that centralized filing by the Ultimate Parent Entity (UPE) or a designated filing entity in another participating jurisdiction will generally be accepted for the 2024 reporting fiscal year, even where exchange relationships are not yet fully activated at the filing deadline, provided the GIR is validly filed and the relevant information is subsequently exchanged with Italy. In such cases, Italy will not require a local GIR filing. However, where the relevant information has not been received by December 31, 2026, the Italian tax authorities may request a local filing within 30 days.
- *Luxembourg*: On June 17, 2026, the Luxembourg tax authorities (LTA) released an [updated FAQ](#) confirming alignment with the OECD common understanding on central GIR filing.
- *Norway*: The tax administration in Norway confirmed on their [webpage](#) the application of the OECD common understanding on central GIR filing for the 2024 financial year. Where the information from the relevant country is not exchanged, groups operating in Norway will receive a request from the tax administration to submit the GIR within a new deadline.

Updates to Pillar Two filing deadlines

On June 30, 2026, calendar year MNE groups in scope of Pillar Two were required to file their GIR for the 2024 fiscal year in accordance with the GloBE Model Rules and the Commentary. In order to benefit from the GIR central filing approach (i.e., designated group member files the GIR on behalf of the MNE group), other group members were required to notify their local tax authorities of the identity and location of the designated filing entity (GIR notification).

As the June 30, 2026, deadline loomed for those filing requirements, a number of jurisdictions provided transitional relief measures and administrative flexibility, to support taxpayers encountering compliance difficulties:

- *Belgium*: On June 12, 2026, the Belgian Tax Authorities announced that the GIR notification must be submitted by September 30, 2026, for both fiscal years 2024 and 2025. For more details, please refer to E-News [Issue 231](#).
- *Cyprus*: On June 15, 2026, the Cypriot tax administration clarified that, for fiscal year 2024, no administrative penalties will be imposed provided that all compliance obligations are fulfilled by September 30, 2026. For more details, please refer to E-News [Issue 231](#).
- *Finland*: The Finnish tax authorities clarified that, for the 2024 filing, groups can apply for an extension if they are unable to submit the returns within the time limit for a justified reason. The extension needed to be requested by June 30, 2026, at the latest.
- *Greece*: On July 1, 2026, the Independent Authority for Public Revenue in Greece issued a decision providing for an extension of the filing deadline to October 30, 2026 for fiscal years ending on or before March 31, 2025. The same deadline will apply to the submission of the GIR notifications. For more details, please refer to a [report](#) prepared by KPMG in Greece.
- *Portugal*: On June 3, 2026, the Portuguese tax administration issued an order extending the deadline for filing the GIR and top-up tax local returns for the 2024 fiscal year from June 30 to September 30, 2026, for in-scope groups with fiscal years ending between December 31, 2024, and March 31, 2025 (i.e., no application of penalties or additional charges in those cases).
- *South Africa*: On June 29, 2026, the South African Revenue Service confirmed a penalty-free extension to July 31, 2026, granted to taxpayers genuinely attempting to meet their filing obligations.
- *Türkiye*: On June 26, 2026, the Turkish tax administration issued a notice extending the filing and payment deadline for the 2024 fiscal year to July 31, 2026, for those filings/payments which were otherwise due on June 30, 2026.
- *United Kingdom*: On June 26, 2026, HMRC clarified that no late-filing penalties will apply to Pillar Two returns due on June 30, 2026, provided the returns are successfully submitted by July 31, 2026. Where a GIR is initially submitted by June 30, 2026, and any validation errors are subsequently corrected by July 31, 2026, HMRC will retain the original submission date as the filing date. For more details, please refer to a [report](#) prepared by KPMG in the UK.

For more information on local Pillar Two compliance obligations, please refer to the [KPMG BEPS 2.0 tracker](#) in Digital Gateway.

Local Law and Regulations

Key Insights

- *Germany*: Guidance on the criteria for establishing a permanent establishment under domestic and treaty law
- *Italy*: Updated Q&A on Pillar Two filing obligations published
- *Luxembourg*: Updated Q&A on Pillar Two published
- *Spain*: Revised list of non-cooperative jurisdictions published in the Official Gazette

Germany

Guidance on the criteria for establishing a permanent establishment under domestic and treaty law

On June 18, 2026, the German Ministry of Finance released updated [guidance](#) providing clarifications on the criteria for establishing a permanent establishment (PE) for German domestic tax and treaty purposes.

The guidance updates the previous version dated December 24, 1999, reflecting recent developments in German Federal Fiscal Court case law as well as changes to the OECD Model Tax Convention (MTC) and Commentary, including the latest amendments from December 2025 addressing cross-border remote working (see E-News [Issue 222](#)).

Key points addressed in the updated guidance include:

- clarifications on the criteria for establishing a fixed place of business PE (e.g., degree of permanency, sufficient link to the ground, use for the enterprise's business, power of disposal over the place of business, etc.), which should not be assessed in isolation, but as part of an overall assessment of the facts and circumstances;
- clarifications on the differences and relationship between the domestic tax law and tax treaty rules with respect to the definition of a PE;
- clarifications on further PE concepts, including the definition of a construction or assembly PE (article 5(3) OECD MTC), preparatory and auxiliary activities and anti-fragmentation rules (article 5(4) OECD MTC), and agency PE (article 5(5) OECD MTC);
- clarifications on the treatment of an employee's home office, which will generally not constitute a domestic PE of the employer, as the employer typically lacks sufficient power of disposal over the employee's private premises. For treaty purposes, the guidance refers to the OECD Commentary on cross-border home office activities, including the relevance of the 50 percent threshold and the need for an overall facts-and-circumstances analysis where this threshold is met or exceeded. The guidance further clarifies that the treaty analysis may also be relevant for employees exercising management functions (i.e., creation of a management PE / determining place of effective management);
- clarifications on a range of specific scenarios, including activities in third-party premises, service and management companies, market stalls, influencers, ships, and the leasing of business facilities or equipment.

The updated guidance applies in all open cases.

Italy

Updated Q&A on Pillar Two filing obligations published

On June 26, 2026, guidance in the form of an updated [FAQ webpage](#) was issued by the Italian tax authorities. The guidance provides clarifications on different aspects of the Pillar Two compliance obligations in Italy, including:

- filing obligations where an Italian Constituent Entity is transferred from one group to another during the fiscal year;
- filing obligations with respect to liquidated Italian investment funds;
- currency conversion requirements;
- filing requirements where Safe Harbour provisions are applicable (e.g., the transitional Country-by-Country Reporting Safe Harbour or the Qualified Domestic Minimum Top-up Tax (QDMTT) Safe Harbour);
- considerations regarding the completion of the local top-up tax return.

For more information on Pillar Two filing requirements in Italy, please refer to E-News [Issue 225](#).

Luxembourg

Updated Q&A on Pillar Two published

On June 17, 2026, the Luxembourg tax authorities (LTA) released an updated [FAQ document](#) providing clarifications on different aspects of the Pillar Two rules in Luxembourg, including:

- *Registration obligations:* all Luxembourg constituent entities, joint ventures and affiliated entities to a joint venture must register under Pillar Two, irrespective of their filing obligations or the availability of any Safe Harbour provisions. The Q&A further clarifies that:
 - Investment entities and their sub-funds are also subject to the registration requirement.
 - Stateless entities are not required to register.
 - Entities must complete both registration and deregistration procedures even if they are incorporated and liquidated within the same financial year.
 - Entities transferring between groups are required to deregister from the original group and register again under the new group.
- *GIR filings:* Luxembourg entities must file a GIR unless an exemption applies. When the exemption does apply, Luxembourg entities must still notify the LTA of (i) the entity filing the return, and (ii) the jurisdiction where it is filed. As a temporary measure, jurisdictions that do not have an active exchange relationship with Luxembourg (under DAC9 or the GIR MCAA) by June 30, 2026 (e.g., Barbados, Switzerland and Türkiye), may still be selected as the central GIR filing jurisdiction in accordance with the OECD common understanding published on May 18, 2026. In such case, the LTA will not require a local GIR filing, provided the return is filed on time in that jurisdiction and the information is exchanged with Luxembourg by December 31, 2026. Otherwise, local filing will be required.
- *Local Top-up Tax returns:* The FAQ also provides detailed guidance on filing obligations for the local top-up tax return for the purposes of the Income Inclusion Rule (IIR), the Undertaxed Profits Rule (UTPR) and the QDMTT. In particular, it provides examples of who is required to file the top-up tax return (depending on which collection mechanism is in point – IIR, UTPR or QDMTT) and in which cases filing exceptions apply (e.g., no top-up tax as a result of applying the transitional Country-by-Country Reporting Safe Harbour).
- *Other administrative aspects:* The LTA confirmed that it will issue tax assessments in a timely manner to ensure that payment can be made within the three-year statutory timeframe, provided that tax returns are filed on time.

For more information details, please refer to a [report](#) prepared by KPMG in Luxembourg.

Spain

Revised list of non-cooperative jurisdictions published in the Official Gazette

On June 27, 2026, Spain [published](#) order in the Official Gazette amending the list of jurisdictions that are considered to be non-cooperative or to have harmful tax regimes.

The order removes Barbados, Dominica, Gibraltar, Seychelles, Trinidad and Tobago, and Samoa. In addition, the order adds the Russian Federation in light of its international holding companies regime that has been deemed to be harmful.

As a result, the Spanish list includes the following 19 jurisdictions and territories: Anguilla, Bahrain, Bermuda, Fiji, Guam, Guernsey, Isle of Man, Cayman Islands, Falkland Islands, Mariana Islands, Solomon Islands, Turks and Caicos Islands, British Virgin Islands, US Virgin Islands, Jersey, Palau, American Samoa, Vanuatu and the Russian Federation.

The changes apply from June 28, 2026, while the inclusion of the Russian Federations will take effect six months after the date of publication in the Official Gazette.

For previous coverage, please refer to E-News [Issue 231](#).

Key Insights

- Denmark Supreme Court confirms five-year limitation period for withholding tax refund claims
- Italian Revenue Agency clarifies the application of the Interest and Royalties Directive to cooperative companies
- Ukraine Supreme Court confirms beneficial ownership status of Cypriot financing company
- UK Court of Appeal clarifies remedy with respect to the incompatibility of the former UK exit tax regime with EU law

Denmark

Denmark Supreme Court confirms five-year limitation period for withholding tax refund claims

On June 11, 2026, the Danish Supreme Court issued a [judgment](#) in joined cases BS-36976/2025-HJR and BS-36974/2025-HJR, clarifying the limitation period applicable to refund claims for Danish withholding tax on dividend and royalty payments. The Court held that refund claims submitted by non-resident taxpayers are subject to a five-year limitation period, rather than the general three-year limitation period applied by the Danish tax authorities since 2016.

Section 67A of the Danish Withholding Tax Act was introduced in 2010 and had initially been interpreted by the tax authorities as providing a five-year limitation period for refund claims brought by non-resident taxpayers. In 2016, however, the tax authorities changed their administrative practice and took the position that such claims were instead subject to the ordinary three-year limitation period under Danish law.

The cases at hand concern three taxpayers that were subject to Danish withholding tax on dividend and royalty payments. In 2017, the taxpayers applied for refunds of tax withheld in excess of the amounts ultimately due under the applicable double tax treaties. The Danish tax authorities rejected part of the claims as time-barred, arguing that the ordinary three-year limitation period had expired before the refund applications were submitted. Following proceedings before the lower courts, the dispute reached the Danish Supreme Court, which was asked to determine whether the claims were governed by the general three-year limitation period or by the special five-year limitation period in section 67A of the Danish Withholding Tax Act.

The Supreme Court noted that the wording of section 67A does not clearly identify all categories of claims covered by the special limitation period. The Court therefore examined the legislative history of the provision and concluded that the most natural interpretation is that refund claims brought by taxpayers with limited tax liability in Denmark fall within the scope of the five-year limitation period.

In reaching this conclusion, the Court emphasized that refund claims submitted by non-resident taxpayers are among the most common types of claims covered by the withholding tax rules. The Court also attached significance to the fact that, following the introduction of section 67A, the Danish tax authorities themselves interpreted and administered the provision as applying to such claims for several years before changing their practice in 2016.

The Supreme Court therefore held that section 67A applies to claims for repayment of tax on dividends and royalties withheld in excess of the final tax liability determined under an applicable double tax treaty. As a result, the taxpayers' refund claims were subject to the five-year limitation period and were not time-barred. The Court accordingly upheld the lower court decisions and dismissed the Ministry of Taxation's appeal.

Italy

Italian Revenue Agency clarifies the application of the Interest and Royalties Directive to cooperative companies

On June 25, 2026, the Italian Revenue Agency issued a [ruling](#) (no. 129/2026) on the possibility to apply the withholding tax exemption under the Italian implementation of the Interest and Royalties Directive (IRD) to Italian cooperative companies.

The case concerned an Italian cooperative company holding an 85 percent participation in a Spanish subsidiary. Under an intra-group agreement, the Italian company provided rental services to the Spanish entity, with the related payments qualifying as royalties for Italian tax purposes. The company took the view that the payments fell within the scope of the IRD. One of the conditions for applying the IRD withholding tax exemption is that the recipient must take one of the legal forms listed in Annex A to the Directive. Whilst cooperative companies are not expressly included in the Italian list, Annex A contains a residual category for Italy covering “public and private entities carrying on industrial and commercial activities”.

The taxpayer therefore sought confirmation that it met the Directive’s subjective scope requirements. In this context, it argued that, as an entity subject to Italian corporate income tax (IRES) and engaged in commercial activities, it should be regarded as falling within the residual category of “public and private entities carrying on industrial and commercial activities” included in Annex A.

The Italian Revenue Agency acknowledged that the domestic provisions implementing the IRD apply only where the conditions laid down by the Directive are satisfied. Notwithstanding the absence of an express reference to cooperatives in Annex A, the Agency took the view that the residual category is broad enough to include cooperative companies that conduct business activities.

Ukraine

Ukraine Supreme Court confirms beneficial ownership status of Cypriot financing company

On May 11, 2026, the Ukrainian Supreme Court issued a [decision](#) (case no. 520/24629/24) confirming that interest paid to a Cypriot group financing company qualified for the reduced treaty withholding tax rate under the Ukraine–Cyprus double tax treaty. The Court upheld the decisions of the lower courts and rejected the tax authority's plea that the Cypriot recipient acted merely as a conduit company and was not the beneficial owner of the interest income.

The plaintiff, a Ukrainian agricultural business forming part of a multinational group, paid interest between 2017 and 2019 under several intragroup loan agreements. Following a group restructuring, the loans were transferred to another group company resident in Cyprus (CYCo). When making the interest payments, the taxpayer applied the reduced withholding tax rate available under the Ukraine–Cyprus double tax treaty.

Following a tax audit, the Ukrainian tax authorities challenged the application of the treaty benefits, arguing that the Cypriot company was not the beneficial owner of the interest income but merely a conduit entity acting as an intermediary within a broader financing structure. In support of this position, the authorities noted that the interest payments were ultimately passed up the corporate chain to other group entities, including an investment fund established in the Cayman Islands. On this basis, the authorities denied the reduced withholding tax rate under the Ukraine–Cyprus double tax treaty and assessed additional withholding tax liabilities and related penalties.

The Supreme Court recalled its settled case law, under which beneficial ownership is not determined solely by the legal entitlement to receive income. Instead, the recipient must be able to use, enjoy and determine the further economic use of the income and must not be under a contractual or legal obligation to pass the income to another person.

With respect to the tax authorities' argument that the Cypriot company was part of a broader group structure ultimately controlled by non-Cypriot investors, the Supreme Court emphasized that the concept of a beneficial owner of income is distinct from that of an ultimate beneficial owner of a corporate group. The Court held that group ownership, common control, or the existence of multiple layers of holding companies do not, in themselves, demonstrate the absence of beneficial ownership.

In this context, the Supreme Court rejected the tax authorities' plea that CYCo acted merely as a conduit company. The Court found that the authorities had failed to demonstrate (i) any contractual obligation requiring CYCo to pass the interest income to another entity, (ii) a direct link between the receipt of interest and subsequent payments within the group, (iii) evidence of a transit or back-to-back flow of funds, or (iv) that the company acted as an agent, nominee, or intermediary. According to the Court, assumptions based on publicly available information and the existence of a multinational group structure were insufficient grounds for denying treaty benefits.

On the contrary, the Supreme Court identified several factors supporting the conclusion that the Cypriot company carried out genuine financing activities. These included its ownership of the loan portfolio following the 2016 restructuring; its financing and investment activities; the authority of its directors to make business and investment decisions; its assumption of financing and credit risks; its use of interest income to extend new loans and make investments; and the absence of restrictions on its ability to use the income received.

The Supreme Court also rejected the tax authorities' argument that CYCo's access to the Notional Interest Deduction (NID) regime in Cyprus supported the conduit company characterization. The Court held that the application of the NID regime does not, by itself, affect the beneficial ownership status of the recipient. It further noted that the Ukrainian tax authorities were not entitled to assess the legitimacy of the company's application of Cypriot domestic tax rules.

United Kingdom

UK Court of Appeal clarifies remedy with respect to the incompatibility of the former UK exit tax regime with EU law

On June 12, 2026, the England and Wales Court of Appeal (the Court) issued a [judgment](#) in two joined cases concerning the consequences of UK exit tax provisions that were found previously to be incompatible with the EU freedom of establishment⁷ (HMRC ([2026] EWCA Civ 744). The Court upheld that the incompatibility could be remedied by allowing taxpayers to pay exit taxes in five annual instalments rather than immediately.

The appeals concern two taxpayers that had migrated from the UK to another EU Member State before the UK left the EU, i.e., the trustees of a UK trust who became resident in Cyprus, and a UK legal entity that migrated its tax residence to the Netherlands. Under the UK exit tax regime applicable at the time, the migration of residence triggered a deemed disposal of assets, followed by immediate re-acquisition at market value. The disputed measure did not allow for the deferral of the related capital gains tax beyond January 31 of the year in which the deemed disposal occurred.

The case involving the trustees had been previously referred to the CJEU (C-646/15). At that time, the CJEU concluded that the trust could rely on the fundamental freedoms and that the disputed tax infringed the freedom of establishment, but was justified by the need to preserve the allocation of powers of taxation between Member States. However, the CJEU decided that, by only allowing the immediate payment of the tax due without the possibility of deferral, the disputed measure went beyond what was necessary to achieve that objective and was therefore not proportionate and constituted an unjustified restriction on the freedom of establishment. See Euro Tax Flash [Issue 336](#) for more details.

The reason for the current proceedings was that the parties disagreed on the appropriate remedy. The key question brought before the Court was whether the incompatible legislation should be disapplied entirely or whether it could be interpreted in a manner consistent with EU law by reading into the legislation a right to defer payment. A lower court (the Upper Tribunal) had already held that the defect in the legislation was not the exit charge itself, but the absence of a mechanism allowing

⁷ The facts of the case took place while the UK was still an EU Member State and when it still had to comply with EU law.

deferred payment – and consequently adopted a conforming interpretation under which taxpayers could pay the exit tax in five equal annual instalments. The taxpayers appealed that conclusion before the Court.

The Court dismissed the appeals and upheld the Upper Tribunal's approach. Specifically, the Court recalled that it is settled CJEU case law that the UK exit tax at that time did not, in itself, violate EU law. Instead, the incompatibility arose due to the fact that the legislation did not provide an option to defer payment. In the Court's view, the defect could be remedied through a conforming interpretation of the payment provisions – i.e., allowing the exit tax to be paid in five annual instalments, consistent with the CJEU's case law on proportionate exit taxation.

The Court also rejected the taxpayers' plea that the lower courts had effectively created a new statutory regime and engaged in impermissible judicial legislation. Additionally, the Court rejected the plea that the previous rulings breached the principles of legitimate expectation and legal certainty. In this context, the Court noted that conforming interpretations are inherently retrospective and that UK courts are required to give effect to EU rights. Moreover, in the Court's view, the fact that taxpayers may not have anticipated the eventual interpretation of the legislation did not prevent the courts from declaring what the law had always been.

KPMG EU Tax perspectives webcast – replay now available

European direct tax policy is entering a new phase as the EC is moving forward with its proposals for a Tax Simplification Omnibus and the Recast of the Directive on Administrative Cooperation (DAC), both published on June 24, 2026.

The European Commission has set out an ambitious plan to unnecessary reporting and compliance burdens, and to eliminate outdated and overlapping tax rules by amending core EU direct tax directives - including the Anti-Tax Avoidance Directive (ATAD), the Parent-Subsidiary Directive (PSD), the Interest and Royalties Directive (IRD), the Merger Directive (TMD) and the Directive on Tax Dispute Resolution Mechanisms (DRM), as well as streamlining the DAC.

On June 29, 2026, a panel of KPMG tax specialists provided insights on the European Commission's proposals and explored their implications for multinational groups operating across the EU. The discussion covered:

- An overview and analysis of the Commission's proposals,
- the wider EU tax policy context, including interactions with Pillar Two,
- key practical considerations for multinational groups operating across the EU;
- expected timeline and next steps, including the legislative process ahead and the likelihood of securing Member State approval.

The webcast playback is now available. Please click on the following [link](#) to access it.

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