

E-News from KPMG's EU Tax Centre

Key Insights of E-News Issue 238

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 the treatment of final losses of foreign subsidiaries under the freedom of establishment
- *CJEU:* AG opinion on the compatibility of Germany's reinvestment relief regime for domestic real estate with the free movement of capital
- *CJEU*: AG opinion on Portuguese minimum holding period under the Parent-Subsidiary Directive
- *CJEU referrals:* Federal Fiscal Court refers questions on real estate transfer tax on share consolidations following a merger to the CJEU
- *European Commission:* EC plans initiative on tax rules for cross-border work
- *European Union:* Business associations issue joint statement on EU Tax Simplification Package
- *Council:* Negotiating mandate on 28th regime including employee stock option tax provisions adopted
- *Belgium:* Parliament adopts legislation implementing DAC9 and extending Pillar Two filing deadline
- *Netherlands:* Dutch Government outlines policy choices for implementation of the FASTER Directive
- *Sweden:* Parliament issues reasoned opinion on the Taxation Omnibus proposal

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Latest CJEU, EFTA and ECHR

Key Insights

- AG opinion on the treatment of final losses of foreign subsidiaries under the freedom of establishment
- AG opinion on the concept of double taxation under the EU tax dispute resolution mechanism
- AG opinion on the compatibility of Germany's reinvestment relief regime for domestic real estate with the free movement of capital
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- AG opinion on Polish exit taxation of individuals and the free movement of workers

CJEU

AG opinion on the treatment of final losses of foreign subsidiaries under the freedom of establishment

On October 22, 2026, Advocate General (AG) Juliane Kokott of the Court of Justice of the European Union (CJEU) delivered her opinion in joined Cases C-287/25 to C-289/25. The cases concern whether the French rules preventing a French parent company from taking into account the final losses of subsidiaries established in other Member States[1] are compatible with the freedom of establishment under Articles 49 and 54 of the Treaty on the Functioning of the European Union (TFEU)[2].

The disputes concerned French tax-integrated groups whose subsidiaries in Belgium, Latvia and Slovakia had been liquidated with accumulated losses. The French parent companies sought to take those losses into account in France, relying on the CJEU's judgement in case C-446/03. In that case, the Court ruled that the losses of a subsidiary established in another Member State may, in certain circumstances, be taken into account where they can no longer be used in that Member State. Following the rejection of the claims by the French tax authorities and subsequent litigation, the cases reached the Conseil d'État (the supreme administrative court in France).

The French Court asked the CJEU whether resident and non-resident subsidiaries are in objectively comparable situations where France does not tax the profits of the latter. It also asked whether, if the situations are comparable, the exclusion of final losses of non-resident subsidiaries constitutes a disproportionate restriction on the freedom of establishment.

AG Kokott recalled that the Court ruled in case C-446/03 that final losses of a subsidiary established in another Member State must be taken into account by the Member State of the parent company where all possibilities of claiming those losses in the

[1] Under the French tax integration regime, a French parent company may be liable for corporate income tax on the overall taxable result of a group formed with its French subsidiaries in which it holds, directly or indirectly, at least 95 percent of the capital. The regime allows profits and losses within the integrated group to be offset, whilst non-resident subsidiaries cannot be members of the group.

[2] Article 49 TFEU prohibits restrictions on the freedom of establishment of nationals of one Member State in another Member State, including restrictions on the setting-up of agencies, branches or subsidiaries. Article 54 TFEU extends the freedom of establishment to companies or firms formed under the law of a Member State and having their registered office, central administration or principal place of business within the EU.

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subsidiary's state have been exhausted and there is no possibility of those losses being taken into account in that State in the future – the "final losses" doctrine, also referred to as the "Marks & Spencer exception". The AG noted, however, that subsequent CJEU case-law has increasingly restricted the circumstances in which losses may qualify as final[3].

The AG considered that resident and non-resident subsidiaries were not objectively comparable in the present cases. In the AG's view, the decisive factor was whether France exercised taxing powers over the subsidiary concerned. Since France did not tax the profits of non-resident subsidiaries, it was not required to take their losses into account. The AG also relied on Case C-538/20, in which the CJEU found that domestic and foreign permanent establishments were not in comparable situations where the Member State concerned did not exercise taxing rights over the foreign permanent establishment.

If the CJEU were nevertheless to find the situations objectively comparable, the AG considered that the difference in treatment could be justified by the need to preserve the allocation of taxing powers between Member States and the coherence of the French tax system. In AG Kokott's view, requiring France to recognize losses of a non-resident subsidiary without having taxed its profits could result in France bearing the consequences of tax or other policy choices made by another Member State.

The AG also highlighted the legal uncertainty resulting from more than 20 years of case-law on the Marks & Spencer exception. She noted that it remains difficult for taxpayers and Member States to determine when cross-border loss relief must exceptionally be granted, and in particular, what constitutes 'final' losses. In her view, the case-law developed since Case C-446/03 has created more legal uncertainty than legal clarity.

The AG therefore proposed that the CJEU find that the situations are not objectively comparable where the Member State of the parent company does not tax the profits of the non-resident subsidiary. In the alternative, if the CJEU nevertheless finds the situations comparable, she concluded that the French rules are compatible with the freedom of establishment.

It is important to note that AG opinions are not binding on the CJEU. It therefore remains to be seen whether the Court will follow the AG's reasoning or will provide further guidance and clarity on the "final losses" doctrine.

AG opinion on the concept of double taxation under the EU tax dispute resolution mechanism

On October 22, 2026, AG Laulhé Shaelou of the CJEU delivered her Opinion in Case C-497/25. The case concerns the interpretation of the concept of "double taxation" under Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms (the DRM Directive)[4], in circumstances where two Member States claim taxing rights over the same income, but the income is effectively taxed in only one of them.

The dispute arose following the sale by a Netherlands company of shares in several Latvian companies. The Latvian authorities considered that, since more than 50 percent of the value of the assets of 12 of those companies consisted of immovable property situated in Latvia, the resulting income could be taxed in Latvia under the Latvia-Netherlands double tax treaty. The Netherlands authorities, by contrast, considered the income to be taxable only in the Netherlands. However, the income ultimately benefited from a tax exemption under Netherlands law.

The Latvian and Netherlands competent authorities initiated a mutual agreement procedure under the DRM but were unable to agree on which provision of the double tax treaty applied and, consequently, which Member State was entitled to tax the income. The taxpayer subsequently requested the establishment of an Advisory Commission[5]. The Latvian authorities rejected the request on the grounds that, since the income was exempt in the Netherlands, there was no double taxation. Under Article

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[3] See, for example, cases C-322/11, C-172/13, C-607/17 and C-608/17.

[4] The DRM Directive provides a common EU framework for resolving disputes between Member States concerning the interpretation or application of agreements and conventions intended to eliminate double taxation.

[5] Under Article 6 of the DRM Directive, an affected person may apply to a competent court or to any other body or person designated in their national law for the carrying out of such function (national appointing body) to set up the Advisory Commission.

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16(7) of the DRM Directive, Member States may deny access to an Advisory Commission where the question in dispute does not involve double taxation.

The Latvian court referred several questions to the CJEU, including whether "double taxation", within the meaning of Article 2(1)(c) of the DRM Directive[6], covers a situation where the same income is subject to the tax systems of two Member States but is exempt from tax in one of them.

The AG proposed that the Court answer the question negatively. In her view, Article 2(1)(c) requires actual taxation in two or more Member States, as indicated by the reference to the "imposition" of taxes and the requirement for an additional tax charge, an increase in tax liabilities or a reduction of available losses.

The AG considered that this interpretation was also supported by the structure of the DRM Directive. While the mutual agreement procedure may apply to disputes concerning the interpretation or application of a double tax treaty more generally, Article 16(7) allows Member States to deny access to an Advisory Commission, on a case-by-case basis, where the question in dispute does not involve double taxation.

Finally, the AG acknowledged that a broader interpretation could enhance legal certainty by allowing unresolved treaty interpretation disputes to proceed to an Advisory Commission even in the absence of actual double taxation. However, the AG considered that this could not override the wording and structure of the Directive, which permit Member States to limit access to that stage of the procedure to cases involving actual double taxation.

The AG therefore proposed that the CJEU find that "double taxation" within the meaning of Article 2(1)(c) of the DRM Directive does not cover a situation where the same income is subject to the tax systems of two Member States but benefits from a tax exemption in one of them.

Please note that AG opinions are not binding on the CJEU, and it remains to be seen whether the Court will follow the AG's reasoning.

AG opinion on the compatibility of Germany's reinvestment relief regime for domestic real estate with the free movement of capital

On October 15, 2026, AG Ćapeta of the CJEU delivered an Opinion in case C-410/25 concerning the compatibility of Germany's reinvestment relief regime with the free movement of capital. The AG proposed that the CJEU find that Germany had failed to fulfil its obligations under the free movement of capital by excluding certain non-resident taxpayers from a tax deferral mechanism available for reinvested capital gains.

Under the German rules, capital gains realized on the disposal of certain assets, most notably real estate, may be deferred where the proceeds are reinvested in replacement assets within a period of up to six years. However, the deferral is available only if the original asset formed part of the fixed assets of a German permanent establishment for an uninterrupted period of at least six years before its disposal. Non-resident companies without a German permanent establishment are nevertheless subject to German corporate income tax on gains arising from the sale of German real estate. Since they cannot satisfy the permanent establishment requirement, they are excluded from the deferral mechanism and must therefore pay the tax immediately.

The case forms part of a long-running infringement procedure against Germany concerning the regime under dispute. In 2015, the CJEU ruled in *Commission v Germany* (C-591/13) that the regime breached the freedom of establishment. At the time, the relief was available only where the replacement asset was allocated to a German permanent establishment. Germany subsequently amended its rules to allow the tax to be paid in instalments over five years where the replacement asset is

[6] Article 2(1)(c) of the DRM Directive defines double taxation as the imposition by two or more Member States of taxes covered by an agreement or convention referred to in Article 1 in respect of the same taxable income or capital when it gives rise to either: (i) an additional tax charge; (ii) an increase in tax liabilities; or (iii) the cancellation or reduction of losses that could be used to offset taxable profits.

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allocated to a permanent establishment in another EU/EEA State. However, Germany did not amend the requirement that the original asset must have been allocated to a German permanent establishment. The Commission considered that this requirement infringed the free movement of capital and therefore continued the infringement proceedings. It issued a reasoned opinion in 2019 and, in November 2024, decided to refer Germany to the CJEU – please see E-News Issue 216.

The AG first examined whether the German rules restrict the free movement of capital. The AG noted that the distinction drawn by the rules is based on the existence of a German permanent establishment rather than directly on the taxpayer's residence. Nevertheless, a company established in Germany is more likely to have a German permanent establishment as compared to a non-resident company. In the AG's view, the rules are therefore liable to discourage a greater number of non-resident companies from investing in German real estate, or from selling and reinvesting in such assets. The AG also rejected Germany's argument that non-resident companies could establish a German permanent establishment and thereby qualify for the relief, concluding that the rules constitute a restriction on the free movement of capital.

The AG then examined whether the two categories of taxpayers are in objectively comparable situations, having regard to the purpose of the relief. According to Germany, the regime is intended to facilitate business restructuring through reinvestment and to help companies adapt to structural change. The AG noted that companies with and without a German permanent establishment are subject to the same corporate income tax on gains arising from the sale of German real estate and may equally need the flexibility to reinvest those gains. The AG therefore concluded that the two categories of taxpayers are objectively comparable.

Finally, the AG rejected each of the justifications put forward by Germany. The promotion of investment in Germany was considered a purely economic objective, which cannot, in principle, justify a restriction on a fundamental freedom. The AG also noted that the regime is not specifically targeted at small and medium-sized enterprises. The argument based on the coherence of the tax system was likewise rejected because, in the AG's view, there is no direct link between the deferral of corporate income tax and the local trade tax, which applies only to companies with a German permanent establishment.

Whilst acknowledging Germany's right to tax capital gains arising from real estate located in its territory, the AG concluded that requiring immediate payment of the tax goes beyond what is necessary to preserve the balanced allocation of taxing powers. Referring to the CJEU's 2015 judgment in *Commission v Germany* (C-591/13), the AG noted that a less restrictive measure was available. Taxpayers without a German permanent establishment could instead be given a choice between immediate and deferred payment of the tax, with appropriate arrangements to ensure that Germany retains the ability to collect the tax at a later stage.

The Opinion also notes that the rules remain compatible with EU law in relation to third countries. Under the "grandfather clause" in Article 64(1) TFEU (also referred to as a "standstill clause"), Member States may continue to apply restrictions on capital movements to or from non-EU countries involving direct investment, including investment in real estate, where those restrictions existed on December 31, 1993. As the German regime predates that date, it is covered by the grandfather clause, a point that the Commission did not contest.

It is important to note that AG opinions are not binding on the CJEU and it remains to be seen whether the CJEU will follow the AG's recommendations. If followed by the Court, the judgment would require Germany to amend the rules under dispute to ensure compliance with EU law.

AG opinion on the 2022 EU solidarity contribution on surplus profits of energy companies

On October 22, 2026, AG Athanasios Rantos delivered his opinions in cases C-153/25 (Italy), C-358/24 (Belgium) and C-533/24 (Ireland). The cases concern the interpretation and validity of the temporary solidarity contribution introduced by Regulation (EU) 2022/1854 in response to the energy crisis. The AG proposed that the Court of Justice of the European Union confirm that the Regulation is valid, including its legal basis. The AG also found the contribution compatible with key principles of EU law.

The Regulation introduced a temporary solidarity contribution on surplus profits generated in 2022 and 2023 by companies in the crude petroleum, natural gas, coal and refinery sectors. The contribution applied to profits exceeding the average taxable profits of the four preceding fiscal years by more than 20 percent. Article 14 of the Regulation allowed Member States to apply equivalent national measures instead. National measures in Belgium, Ireland and Italy were subsequently challenged before domestic courts.

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The AG's key findings include:

- *Legal basis*: The Regulation was validly adopted under Article 122(1) TFEU[7]. It addressed an exceptional crisis, was temporary in nature and reflected the principle of solidarity between Member States. Although the contribution has fiscal characteristics, its main objective was to mitigate the energy crisis rather than to harmonize direct taxation. As a result, unanimity[8] in the Council was not required.
- *Legal certainty and non-retroactivity (Ireland)*: The Regulation entered into force on October 8, 2022, before the end of the 2022 fiscal year, so it did not operate retroactively. The Irish implementing legislation, adopted in August 2023, did have retroactive effect for 2022. However, the AG considered this justified by the general-interest objective, particularly as the Regulation had already provided for the contribution to apply to 2022 profits.
- *Proportionality and fundamental rights (Ireland)*: The AG found that neither the Irish 75 percent rate on surplus profits nor the restrictions on using historical losses were disproportionate. The AG also found no breach of the right to property or the freedom to conduct a business under the Charter of Fundamental Rights of the EU. He stressed that the effective tax rate, rather than the nominal rate, is the relevant measure.
- *Equivalent national measures (Belgium and Italy)*: Member States may extend a national levy to operators not covered by the Regulation. They may also use a different calculation method, such as the Belgian volume-based levy. This is subject to two conditions: the measure must impose a comparable burden on covered undertakings, and its proceeds must not be lower than those of a rate of at least 33 percent on surplus profits. The AG also found that applying the levy alongside the cap on market revenues for electricity producers is not precluded, in principle.
- *Customs duties, internal taxation and State aid (Belgium)*: The AG concluded that the Belgian contribution is not a charge having equivalent effect to a customs duty and is not discriminatory internal taxation. It also does not constitute State aid, since no selective advantage was identified.

Note importantly that AG opinions are not binding on the CJEU, and it remains to be seen whether the Court will follow the AG's reasoning. The opinions are, however, timely given the renewed discussions at EU level on taxing windfall profits in the energy sector (see E-News Issue 237).

For more details, please refer to Euro Tax Flash Issue 587.

AG opinion on the combability of the Portuguese minimum holding period with the Parent-Subsidiary Directive

On October 22, 2026, AG Juliane Kokott of the CJEU delivered her opinion in case C-633/25 concerning Portuguese rules that restrict the deduction of dividends where some of the underlying shares have not been held for the required minimum holding period. The AG proposed that the CJEU find that the Parent-Subsidiary Directive (PSD) precludes such a restriction where the recipient already qualifies as a parent company under the Directive.

Portugal implemented the PSD for both purely domestic and cross-border situations. Under the Portuguese corporate income tax rules, a 100 percent exemption for dividends received is available only where the parent company has satisfied the minimum one-year holding period in respect of each share in the subsidiary to which the dividends relate.

The case concerns a Portuguese bank, which claimed a full deduction from its taxable profits for dividends received from four Portuguese companies in the 2003 tax year. The Portuguese tax authorities allowed the taxpayer to deduct only 50 percent of those dividends, on the grounds that it had not held all of the shares to which the dividends related for the required minimum

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[7] Article 122 TFEU allows the Council to adopt – in exceptional circumstances, measures based on a European Commission proposal without involving the European Parliament and through qualified majority voting. Article 122(1) is concerned with economic difficulties faced by Member States.

[8] Under Article 115 TFEU, measures approximating Member States' direct tax laws require unanimity in the Council, whereas Article 122(1) TFEU requires only a qualified majority. The applicants argued that, as the contribution is in substance a tax, the Regulation should have been adopted unanimously under Article 115 TFEU.

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period of one year. The taxpayer challenged the assessment, and the case ultimately reached the Portuguese Supreme Administrative Court. The latter referred the case to the CJEU and asked whether the minimum holding period may be applied not only for the purpose of determining whether the recipient qualifies as a parent company, but also in respect of each individual share to which the distributed profits are attributable.

Although the case concerns a purely domestic situation, the AG took the view that the CJEU has jurisdiction to interpret the rules under dispute. In this respect, the AG noted the Portuguese Government's confirmation that the rules under dispute were intended not only to transpose the PSD, but also to extend its application to purely domestic situations. The AG relied on the case-law established in joined cases C-297/88 and C-197/89 and subsequent doctrine, according to which the CJEU may interpret EU law where national law makes EU rules applicable by direct and unconditional reference, without amending their purpose or scope.

Turning to the substance, the AG took the view that the minimum holding period is relevant for determining whether the recipient qualifies as a parent company under the PSD. Once that status has been established, the relief from economic double taxation applies to the distributed profits without requiring each individual share giving rise to those profits to have been held for the minimum period.

The AG based this conclusion on the wording of the PSD, which permits the exclusion of companies, rather than individual shares, and treats distributed profits as a whole. The AG also distinguished between the conditions for acquiring parent-company status and the entitlement to relief, which follows once that status has been established, without requiring a separate minimum holding period for each individual share. In the AG's view, imposing such a requirement would therefore introduce a condition not provided for by the Directive, therefore undermining its objective of avoiding economic double taxation and increasing the administrative burden on parent companies.

The AG also rejected the Belgian Government's argument[9] that a more restrictive interpretation was necessary to prevent abuse. In the AG's view, the minimum holding period applicable to the qualifying shareholding already prevents a company from acquiring parent-company status through short-term, one-off share purchases merely to obtain the tax benefits of the PSD. It was therefore not necessary, for anti-abuse purposes, to require each individual share to which the distributed profits relate to have been held for the minimum period.

Please note that AG Opinions are not binding on the CJEU. It therefore remains to be seen whether the Court will follow the AG's proposed interpretation.

AG opinion on Polish exit taxation of individuals and the free movement of workers

On October 28, 2026, AG Juliane Kokott of the CJEU delivered her Opinion in case C-430/25 concerning the compatibility of the Polish exit taxation regime for individuals with EU law. The case concerns the imposition of a Polish exit tax on unrealized capital gains payable by an individual in connection with the planned transfer of his tax residence from Poland to another EU Member State.

Under Polish law, individuals changing their tax residence are subject to a 19 percent tax on unrealized gains where Poland loses the right to tax income from the disposal of assets. The taxable base is represented by the excess of the market value of assets over their tax value. Reporting obligations apply when the market value of transferred assets exceeds PLN 4 million (approximately EUR 937,000), with tax due either immediately or in installments over a period of five years.

The plaintiff, who holds dual Italian and US citizenship, became a Polish tax resident on January 1, 2023, subject to taxation in Poland on his worldwide income. The individual was planning to transfer his tax residence to Germany once his Polish employment contract ends in 2028. Prior to moving to Poland, the plaintiff had accumulated substantial assets unrelated to his Polish-source income. Upon his departure from Poland, his assets – including shares and immovable property, were expected to exceed PLN 4 million (market value). The plaintiff applied for an advance tax ruling to clarify whether he would be liable to the Polish exit tax on the unrealized gains upon changing his residence. On December 31, 2024, the tax authorities

[9] The Belgian government submitted written observations in the proceedings before the Court.

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issued a ruling confirming that the plaintiff would indeed be liable to an exit tax under Polish law, which taxes increases in the value of the assets upon a change in tax residence. The plaintiff challenged the ruling, and the Polish District Administrative Court referred the case to the CJEU.

The referring court essentially asked whether EU law precludes national rules under which an exit tax (i) takes into account unrealized gains that arose before the taxpayer became resident and taxable in Poland, (ii) does not take into account unrealized losses on other assets, and (iii) becomes payable upon the transfer of residence, subject to the possibility of applying for payment in instalments over a period of up to five years. For more details, please refer to E-News Issue 216.

As a preliminary point, AG Kokott considered that the questions should be assessed under the free movement of workers under Article 45[10] of the Treaty on the Functioning of the European Union (TFEU), rather than the general right to free movement under Article 21 TFEU. In the AG's view, the taxpayer's move to Poland was connected with his employment there and his subsequent departure would occur following the cessation of that employment.

The AG considered that Article 45 TFEU precludes Poland from levying exit tax on unrealized gains that arose before the taxpayer became resident in Poland, at a time when both the taxpayer and the relevant sources of income were outside Poland. In the AG's view, extending the exit tax to such gains could not be justified by the need to preserve a balanced allocation of taxing powers, since the gains had arisen outside Poland's taxing jurisdiction. The AG considered that, in line with the principle of territoriality, a Member State should be entitled to tax unrealized gains that arose within its jurisdiction during the period in which the taxpayer was resident there.

The AG further considered that unrealized losses should be taken into account when determining the exit tax liability. The AG noted that, for the purposes of determining the disputed exit tax, unrealized gains are taken into account, whereas losses from assets that have declined in value are not considered meaning that unrealized gains cannot be offset against unrealized losses. On the other hand, Polish income tax on the proceeds from the sale of shares is determined by reference to both (realized) gains on the shares disposed of during the tax period and (realized) losses on other shares disposed of during that period. This inequality of treatment increases the cash-flow disadvantage inherent in exit taxation and therefore reinforces the restriction on the free movement of workers. Finally, the AG considered that Article 45 TFEU does not require payment of the exit tax to be deferred until the assets are actually disposed of. In her view, a system under which the taxpayer may, upon application, obtain full or partial deferral through instalments over a period of up to five years can be compatible with EU law.

Note that AG Opinions are not binding on the CJEU, and it remains to be seen whether the Court will follow the AG's reasoning.

For our previous coverage of the case, please refer to E-News Issue 216.

[10] Article 45 TFEU is the EU Treaty provision that guarantees the free movement of workers. In simple terms, a Member State must not impose rules that unjustifiably discourage an employee from taking up work in another EU Member State.

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Infringement Procedures and CJEU referrals

Key Insights

- Italian court refers questions on the energy sector windfall contribution to the CJEU (case C-791/26)
- German Federal Fiscal Court refers questions on real estate transfer tax on share consolidations following a merger to the CJEU

CJEU referrals

Italian court refers questions on the energy sector windfall contribution to the CJEU (Case C-791/26)

On July 13, 2026, the First Instance Tax Court of Bologna (Corte di Giustizia Tributaria di primo grado di Bologna) asked the CJEU for a preliminary ruling in case C-791/26 on whether Italy's extraordinary contribution on energy sector undertakings is compatible with EU law. The request was published in the Official Journal of the EU on October 12, 2026.

The Italian contribution was introduced by Article 37 of Decree-Law No. 21 of March 21, 2022, as later amended, to offset rising energy prices – i.e., before the adoption of Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices. The contribution applied to undertakings producing, importing or reselling electricity, gas and petroleum products in Italy, including generators of electricity from renewable sources. Unlike the solidarity contribution under Article 14 of the Regulation, which is levied on surplus taxable profits, the Italian contribution was calculated on the increase in the balance between output and input transactions reported in periodic VAT returns.

The referring court observes that, although the contribution predates the Regulation, it must be determined whether it is to be assessed in light of the Regulation's objectives – noting that the Italian Revenue Agency itself described it in a circular as a measure equivalent to the Article 14 solidarity contribution.

The referring court asked the CJEU to clarify the following:

- *Regulation (EU) 2022/1854:* Whether the Regulation precludes a national measure that also applies to renewable electricity generators and is calculated on a VAT-based balance. The referring court notes that this balance is not linked to the surplus profits actually generated.
- *EU energy policy*: Whether Article 4(3) of the Treaty on European Union (TEU) and Article 194(1) of the Treaty on the Functioning of the European Union (TFEU) preclude a measure that could undermine investment in renewable energy or hinder EU energy policy objectives. This includes the measure's cumulative effect with other charges on energy sector revenues or profits.
- *State aid*: Whether the measure could give a selective advantage under Articles 107 and 108 TFEU, because it applies only to certain categories of energy operators and excludes others that the national court considers comparable. If so, the referring court also asks whether failing to notify the Commission under Article 108(3) TFEU affects whether the measure can be applied.
- *Right to property*: Whether Article 17 of the Charter of Fundamental Rights of the EU precludes the measure. The referring court points to the measure's structure, its basis of calculation, the absence of a ceiling, possible overlap with other charges

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and its impact on the taxpayer's financial position. Together, these could create a burden that is manifestly disproportionate to the general-interest objective.

The referral adds to a growing body of CJEU litigation on national windfall levies in the energy sector. These include the cases in which AG Rantos delivered his opinions on October 22, 2026 (see Euro Tax Flash Issue 587), as well as a separate Romanian referral (case C-588/25) on applying the solidarity contribution and concerning the scope of the sectors and activities covered by Article 14 of the Regulation (see E-News Issue 223).

German Federal Fiscal Court refers questions on real estate transfer tax on share consolidations following a merger to the CJEU

On September 16, 2026, the German Federal Fiscal Court (Bundesfinanzhof – BFH) suspended appeal proceedings II R 8/23 and referred three questions to the CJEU. The questions concern whether German real estate transfer tax (RETT) on share consolidations following a merger is compatible with Council Directive 2008/7/EC on indirect taxes on the raising of capital (the Capital Duties Directive). The referral order has not yet been published, and no CJEU case number has been assigned so far.

The referral follows the CJEU's June 4, 2026, judgment in case C-837/24. In that case, the Court held that the Directive precludes a Portuguese municipal real estate transfer tax on contributions of shares in real estate-owning companies, provided that the transaction qualifies as a restructuring operation within the meaning of the Directive. The Court found that the exception in Article 6(1)(b) for transfer duties applies only where legal ownership of real estate is transferred. It rejected the argument that economic transfers should also be covered. For more information on the case C-837/24, please refer to Euro Tax Flash Issue 581.

Notably, in earlier cases from 2007 (II R 65/06) and 2024 (II R 36/21), the German Federal Fiscal Court ruled against the taxpayer on the compatibility of German real estate transfer tax with the Capital Duties Directive and declined to refer the matter to the CJEU for a preliminary ruling. See a previous tax alert prepared by KPMG in Germany.

The case at hand concerns an Austrian capital company that held, through intermediate companies, 100 percent of the shares in leasing companies owning real estate in Germany. The company was merged into its 60 percent-held subsidiary. The German tax authorities found that, as a result of the merger, the relevant threshold of the shares in the real estate-owning companies transferred indirectly to the acquiring company had been met. They therefore levied RETT under Section 1(3) No. 4 of the German Real Estate Transfer Tax Act (GrEStG). The taxpayer argued that the merger is a restructuring operation within the meaning of Article 4 of the Directive, and that Article 5(1)(e) prohibits indirect taxes on such operations. In the taxpayer's view, the Article 6(1)(b) exception does not apply because the RETT is triggered by a transfer of shares, while the real estate itself remains owned by the real estate-owning companies. The Munich Fiscal Court dismissed the claim at first instance (judgment of February 8, 2023, 4 K 1671/20) and held that the merger-related transfer of shares was taxable and did not infringe the Directive. The German Federal Ministry of Finance has joined the appeal proceedings.

The referral is the second request for a preliminary ruling on RETT and the Capital Duties Directive in recent weeks. It follows the Austrian Supreme Administrative Court's referral of September 3, 2026 (see E-News Issue 237).

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EU institutions

Key Insights

- EC plans initiative on tax rules for cross-border work
- Business associations issue joint statement on EU Tax Simplification Package
- Council: negotiating mandate on 28th regime including employee stock option tax provisions adopted

European Commission

EC plans initiative on tax rules for cross-border work

On October 13, 2026, the European Commission (EC) published a webpage for a new initiative entitled "Making tax rules fit for modern ways of working" on its Have Your Say portal.

Although no documents have been published yet in this respect, the webpage notes that the initiative aims to address tax obstacles that may hinder businesses from recruiting and retaining talent across borders and deter individuals from taking up cross-border employment opportunities. This comes in the context of increased mobility of individuals and the use of technology to work across borders and remotely.

The EC intends to address these issues through a Recommendation, with adoption planned for the third quarter of 2027. A Call for Evidence is expected to be launched.

For further discussion on the tax implications of remote working, please join our upcoming webcast on November 11, 2026.

Council of the EU

Business associations issue joint statement on EU Tax Simplification Package

On October 28, 2026, a group of 23 European business, financial and professional associations published a joint statement on the EC's Tax Simplification Package, calling on Member States to maintain the level of ambition of the package during the negotiations.

The associations highlight that the package could reduce tax-related compliance costs and administrative burdens, with estimated annual savings of approximately EUR 8 billion for European businesses. They also note that tax simplification should contribute to the Commission's overall objective of reducing administrative burdens by at least 25 percent for companies and 35 percent for SMEs, while maintaining effective tax enforcement.

In particular, the associations highlight the need to address situations where taxes are collected and subsequently refunded, withholding taxes that may act as barriers to investment within the Single Market, and requirements for businesses to provide

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information already held by tax administrations. They also argue that simplification measures that can be implemented sooner should not be unnecessarily delayed.

The statement acknowledges that revenue considerations, safeguards and implementation will need to be addressed during the negotiations, while stressing that this should not result in renewed complexity. The associations therefore call on Member States to reach agreement on the package while preserving the ambition of the Commission's proposals.

The joint statement comes as the Commission is seeking feedback on the Tax Omnibus proposal through a public consultation, which remains open until November 5, 2026. For previous coverage of the consultation, please refer to E-News Issue 236. For previous coverage of Member State reactions to the proposal, please refer to E-News Issue 237.

For more information on the Tax Omnibus proposal, please refer to Euro Tax Flash Issue 582 and our dedicated KPMG webcast.

Negotiating mandate on 28th regime including employee stock option tax provisions adopted

On October 23, 2026, EU Member State ambassadors in the Committee of Permanent Representatives (COREPER) agreed on the Council's negotiating mandate on the proposed 28th regime corporate legal framework (EU Inc), paving the way for negotiations with the European Parliament. The proposal takes the form of a regulation based on Article 114 TFEU meaning that it will be adopted via the ordinary legislative procedure, whereby the EP and Council act as co-legislators and is subject to qualified majority voting in Council.

The proposed regulation would introduce an optional harmonized corporate legal framework for EU Inc. companies. Notably, the Council mandate maintains a highly debated EU Employee Stock Option Plan (EU-ESO), including provisions governing two specific aspects of the taxation of qualifying options. For EU Inc. companies with fewer than 750 employees and annual turnover not exceeding EUR 150 million, income derived from EU-ESO warrants would be taxed only when the shares acquired upon exercise are disposed of, rather than at grant, vesting or exercise. The taxable amount would generally equal the difference between the disposal price and the acquisition price.

The Council text further clarifies that, except for the timing of taxation and the calculation of taxable income under the EU-ESO provisions, the proposed regulation would not affect other tax matters. In particular, the determination of the tax residence of EU Inc. companies and employees, the characterization of income and the allocation of taxing rights would continue to be governed by applicable EU and national tax law and, where relevant, double tax treaties.

Additionally, the Council issued a statement noting that the current agreement to include certain narrow tax provisions in a regulation reflects the specific circumstances of this initiative and should not be seen as a precedent for including tax provisions in other EU legislation.

As a next step, the Council Presidency may enter into negotiations with the European Parliament on the final text of the proposed regulation once the Parliament has adopted its negotiating position.

For more information, please refer to the Council negotiating mandate and the Council's press release.

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OECD and other International Organizations

Key Insights

- OECD issues ninth BEPS Action 13 (Country-by-Country Reporting) peer review report

OECD

Ninth BEPS Action 13 (Country-by-Country Reporting) peer review report issued

On October 19, 2026, the OECD issued the ninth annual peer review report for the BEPS Action 13 minimum standard. The standard requires multinational enterprises to report to tax authorities revenues, profits, taxes paid and certain measures of economic activity on a Country-by-Country (CbyC) basis. The review covered 142 jurisdictions.

Key takeaways include:

- Over 120 jurisdictions have a domestic legal framework for CbyC reporting in place. In addition, a number of jurisdictions have final legislation approved that is awaiting official publication.
- Nineteen jurisdictions have received a general recommendation to put in place or finalize their domestic legal or administrative framework.
- Twenty-five jurisdictions received one or more recommendations for improvements to specific areas of their framework.
- One hundred and ten jurisdictions have multilateral or bilateral competent authority agreements in place.
- One hundred and six jurisdictions have undergone an assessment by the Global Forum concerning confidentiality and data safeguards in the context of implementing the AEOI standard, and did not receive any action plan.
- Nintey-four jurisdictions have provided detailed information, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use of CbyC reports.

With respect to jurisdictions included in Annex II of the EU list under criterion 3.2, the 2026 peer review removed previous recommendations for Greenland and two recommendations concerning Viet Nam's exchange of information framework. Recommendations for Jordan and Morocco remain in place, as does the recommendation for Viet Nam concerning local filing.

The report notes that certain Inclusive Framework Members have not been included in this peer review report, namely Cook Islands, Guatemala, Saint Kitts and Nevis, and Samoa. The next peer review report is expected to be issued in the third quarter of 2027.

For more information, please refer to the OECD release.

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Local Law and Regulations

Key Insights

- Belgium: Parliament adopts legislation implementing DAC9 and extending Pillar Two filing deadline
- Bulgaria: DAC8 and DAC9 transposed into national law
- Hungary: Direct tax changes presented in 2027 Budget proposal
- Netherlands: Government outlines policy choices for implementation of the FASTER Directive
- Sweden: Parliament issues reasoned opinion on the Taxation Omnibus proposal
- Switzerland: Amendments to the minimum taxation ordinance adopted (Pillar Two)

Belgium

Parliament adopts legislation implementing DAC9 and extending Pillar Two filing deadline

On October 22, 2026, the Belgian Parliament adopted legislation transposing Council Directive (EU) 2025/872 (DAC9) into domestic law and introducing related amendments to Belgium's Pillar Two rule.

DAC 9

DAC9 introduces a framework for the exchange of Pillar Two Top-up Tax Information Returns between EU Member States, allowing MNEs to switch from local to central filing in the EU, where the EU UPE or designated filing entity files on behalf of the group in an EU Member State.

Belgium was among the Member States that had not fully transposed DAC9 by the December 31, 2025, deadline. Following the launch of infringement proceedings in January 2026, the EC issued a reasoned opinion to Belgium on July 8, 2026, on the grounds that Belgium had not yet adopted or notified all measures required to fully implement DAC9. The reasoned opinion represented the second stage of the infringement proceedings. With the adoption of the legislation by Parliament, Belgium has now taken a further step towards completing the transposition of DAC9 into domestic law.

To the best of our knowledge, Czechia, Estonia, Lithuania, Malta and Spain have yet to transpose DAC9 into national law.

For previous coverage on DAC9, please refer to our E-News Issue 230 and E-News Issue 233.

Extension of Pillar Two filing deadline

The legislation also confirms the extension of the statutory filing deadline for the Belgian Qualified Domestic Minimum Top-up Tax (QDMTT) return. The deadline is aligned with those applicable to the other Pillar Two returns and will be the last day of the 15th month following the end of the fiscal year. For example, for a fiscal year ending on December 31, 2025, the statutory filing deadline will move from November 30, 2026, to March 31, 2027.

A transitional 18-month deadline applies for fiscal years starting no later than December 31, 2024. As previously reported, the QDMTT filing deadline for fiscal years beginning on or after December 31, 2023, and ending no later than October 31, 2025,

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had already been extended to October 31, 2026, by way of administrative tolerance. Under the transitional 18-month rule, for example, the statutory filing deadline for a first Pillar Two fiscal year running from June 1, 2024, to May 31, 2025, will be November 30, 2026, rather than October 31, 2026.

For more information, please refer to E-News Issue 236 and a report prepared by KPMG in Belgium.

Bulgaria

DAC 8 transposed into national law

On September 15, 2026, Bulgaria published in the State Gazette amendments to the Tax and Social Security Procedure Code transposing Council Directive (EU) 2023/2226 (DAC8) into domestic law. Although published in September 2026, the legislation applies retroactively from January 1, 2026. The legislation introduces rules on the reporting and automatic exchange of information on crypto-assets, as well as other amendments required under DAC8, including changes to the automatic exchange of financial account information and the exchange of advance cross-border rulings involving individuals.

Bulgaria was among the Member States that had not notified DAC8 transposition measures by the December 31, 2025, deadline and was therefore included in the infringement procedure announced by the European Commission on January 30, 2026. With the publication of the new legislation, Bulgaria has now completed the transposition of DAC8 into domestic law.

To the best of our knowledge, Czechia and Spain remain the only two Member States that are yet to transpose the provisions of DAC8 into domestic law.

For previous coverage on DAC8, please refer to our E-News Issue 230.

DAC 9 transposed into national law

On September 15, 2026, Bulgaria also published in the State Gazette amendments to the Tax and Social Security Procedure Code transposing DAC9 into domestic law. Although published in September 2026, the legislation applies retroactively from January 1, 2026.

Bulgaria was among the Member States that had not notified DAC9 transposition measures by the December 31, 2025, deadline. Following the launch of infringement proceedings by the European Commission on January 30, 2026, Bulgaria received a reasoned opinion on July 8, 2026, for failing to adopt or notify all measures required to implement DAC9. With the publication of the new legislation, Bulgaria has now completed the transposition of DAC9 into domestic law.

For previous coverage on DAC9, please refer to our E-News Issue 230 and E-News Issue 233.

Hungary

Direct tax changes presented in 2027 Budget proposal

On October 19, 2026, the Hungarian government presented its 2027 budget proposal. Key direct tax measures include:

- *Corporate income tax rate:* The corporate income tax rate would increase from 9 percent by "a few percentage points" for companies with annual revenues exceeding HUF 180 billion (approximately EUR 450 million).
- *Wealth tax:* A new wealth tax would apply at a rate of 1.5 percent for net assets exceeding HUF 100 billion (approximately EUR 250 million). The wealth tax will have to be paid by August 31, 2027, based on the value of assets held at the end of 2026.
- *Retail tax:* The retail tax is a progressive sector-specific levy imposed on gross revenues from retail sales. It is proposed that the retail tax rate applicable to businesses with annual revenue between HUF 1 billion and HUF 50 billion (approximately EUR 2.5 million and EUR 125 million) would increase from 0.15 percent to 0.45 percent.

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- *Advertising tax:* The advertising tax rate, currently set at zero percent, would increase to 3.75 percent. The advertising tax is a sector-specific levy on revenue arising from the publication or dissemination of advertising, generally borne by businesses that publish advertisements through media or other advertising channels.

The proposal remains subject to the legislative process and may therefore be amended before adoption.

Netherlands

Dutch Government outlines policy choices for implementation of the FASTER Directive

On October 16, 2026, the Dutch State Secretary for Finance informed the Dutch Parliament about the planned implementation of the EU FASTER Directive (Directive (EU) 2025/50). The FASTER Directive, which aims to make withholding tax relief procedures faster and more robust against abuse, must be transposed by December 31, 2028, and will apply from January 1, 2030. For more details, please refer the KPMG's EU Tax Centre factsheet on the FASTER Directive.

The Netherlands intends to implement the rules through a new standalone tax law. In this context, the Dutch Government has outlined its key implementation choices in respect of the various options available to Member States under the FASTER Directive:

- *Relief at source*: Member States are required to choose at least one of the two fast-track procedures outlined by the FASTER Directive, i.e., i) the relief at source system or ii) the quick refund system[11]. The Netherlands intends to implement the relief-at-source procedure for dividends on publicly traded shares. Existing Dutch refund procedures would remain available as the standard refund mechanism. The Dutch Government also intends to examine whether the existing treaty-based dividend withholding tax relief procedures could be improved.
- *Digital tax residence certificates*: tax certificates would be issued on a calendar-year basis and with references to all applicable tax treaties.
- *Indirect reporting*: under the FASTER Directive Member States can choose one of two reporting options for certified financial intermediaries (CFIs): direct and indirect[12]. The Netherlands intends to opt for the indirect reporting model, under which certified financial intermediaries are required report information concerning other intermediaries in the payment chain. The Dutch Government considers this approach technologically less complex. The Government acknowledges that indirect reporting could entail a higher administrative burden for the CFIs, but in their view the increased burden is not expected to be significant.
- *Exclusions from relief at source*: under the FASTER Directive Member States have the option to limit the use of the new fast-track procedures with a view to preventing abusive practices. The Directive outlines specific circumstances where Member States may exclude requests for relief and perform additional checks. The Dutch Government plans to exclude from the fast-track procedures cases where i) the dividends relate to shares acquired within five days before the ex-dividend date, ii) transactions linked to a financial arrangements that has not been settled, expired, or otherwise terminated at the ex-dividend date, iii) claims based on a domestic withholding tax exemption, and iv) a reduced WHT rate not deriving from double tax treaties is claimed.

The Dutch Government notes that its proposed treatment of withholding tax exemptions is particularly relevant in light of the European Commission's Tax Omnibus proposal, which would extend the FASTER procedures to exemptions under the Parent-Subsidiary Directive and Interest and Royalties Directive. For the time being, the Netherlands intends to maintain its proposed

[11] Relief at source system: under this system, the reduced (or nil) tax rate is applied at the time of dividend or interest payment. Quick refund system: the quick refund system provides that tax is withheld at the higher rate applied in the source country, but the excess tax is refunded within a set timeframe.

[12] Direct reporting involves certified financial intermediaries (CFIs) reporting directly to the competent authority of the source Member State. Under the indirect reporting option, CFIs along the securities payment chain provide information sequentially, up to the withholding tax agent or designated CFI, which then reports to the competent authority. The information to be provided by the CFIs along the securities payment chain is limited to information regarding the recipient and the payor.

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exclusion of exemption claims from the FASTER procedure but will take developments in the Tax Omnibus negotiations into account during implementation.

A stakeholder public consultation is expected as part of the legislative process, with the Government aiming to submit the legislative proposal to the Dutch Parliament in summer 2027.

Sweden

Swedish Parliament issues reasoned opinion on the Taxation Omnibus proposal

On October 21, 2026, the Swedish Parliament (Riksdag) sent a reasoned opinion to the EU institutions on the European Commission's Tax Omnibus proposal (COM(2026) 560).

The Riksdag welcomes the Commission's aim to simplify EU direct tax rules and reduce the administrative burden for companies. At the same time, it stressed the need to safeguard Member States' tax sovereignty, noting that the benefits of harmonized rules must be balanced against Member States' ability to introduce or maintain national rules.

The main concerns outlined by the Riksdag include:

- *EU minimum R&D deduction*: the Riksdag considers that the proposed EU-wide minimum deduction for research and development expenditure under the Anti-Tax Avoidance Directive (ATAD) is not a simplification of existing EU law. Instead, it harmonizes a new area where Member States have so far set their own rules. In the Riksdag's view, the design of R&D tax incentives should be decided mainly at national level.
- *Changes to minimum harmonization directives*: the Riksdag points out that some of the proposed amendments relate to minimum harmonization provisions –the ATAD interest limitation rules and the removal of holding requirements for withholding tax exemptions under the Parent-Subsidiary Directive and the Interest and Royalties Directive. The reasoned opinion argues that these directives should leave Member States considerable scope to take national circumstances into account and to introduce or maintain their own rules. Where proposals limit national competence within minimum harmonization directives, the Riksdag underlines the need for a high standard of justification. In its view, the Commission has not shown that these changes are targeted or that they do not go beyond what is necessary to achieve simplification.

The Riksdag therefore concluded that certain elements of the Tax Omnibus proposal do not comply with the principle of subsidiarity.

Under the Lisbon Treaty's subsidiarity control mechanism, a national parliament has eight weeks from the presentation of a draft legislative act to issue a reasoned opinion if it believes the proposal breaches the principle of subsidiarity. That principle says the EU should act only where Member States cannot sufficiently achieve the objectives themselves. If objections reach the 'yellow card' threshold of one third of the votes allocated to national parliaments, the Commission must review the proposal. It may then keep, amend or withdraw it, but it must give reasons for its decision.

For the Tax Omnibus proposal, the deadline for reasoned opinions was October 27, 2026. The Czech Chamber of Deputies issued the first reasoned opinion on the proposal on October 2, 2026 (see E-News Issue 237).

For more information on the Tax Omnibus proposal, please refer to Euro Tax Flash Issue 582 and our dedicated KPMG webcast.

Switzerland

Amendments to the minimum taxation ordinance adopted (Pillar Two)

On October 21, 2026, the Swiss Federal Council adopted an amendment to the minimum taxation ordinance concerning the application of the OECD's January 2025 Administrative Guidance.

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The amendment confirms the application of the January 2025 Administrative Guidance under the Swiss Pillar Two rules, which excludes certain deferred tax assets (DTAs) from recognition under the transitional rules (Article 9.1 of the OECD Model Rules). However, the adopted change provides that, as opposed to prior tranches of Administrative Guidance, the relevant OECD guidance only applies for fiscal years beginning on or after January 1, 2025.

Please note that the Swiss minimum tax ordinance directly refers to the GloBE Model Rules and provides that the Swiss minimum tax rules are to be interpreted in accordance with the OECD Commentary and related OECD/G20 Inclusive Framework materials. As a result, new OECD Commentary would generally become applicable without further legislative steps.

The explanatory notes indicate that the deferred application may trigger the QDMTT Safe Harbour Switch-off Rule for fiscal year 2024. Accordingly, affected groups would not benefit from the QDMTT Safe Harbour under a foreign Income Inclusion Rule (IIR) for their Swiss constituent entities and would instead be subject to the credit method for IIR purposes. Nevertheless, the explanatory notes expect the Swiss QDMTT to retain its transitional qualified status for fiscal year 2024, as the Switch-off Rule preserves the integrity of the Pillar Two framework by allowing other jurisdictions to neutralize the relevant effects under the IIR.

For more information on Pillar Two implementation in Switzerland, please refer to E-News Issue 228. For more information on the January 2025 Administrative Guidance, please refer to a report prepared by KPMG International.

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Global workforce mobility and remote working webcast – November 11, 2026

On November 11, 2026, KPMG will host a webcast on remote working and global workforce mobility.

The webcast will follow up on KPMG's March 2026 session on the changes introduced by the 2025 update to the OECD Model Tax Convention Commentary and their implications for remote working. The session will consider developments since then, including how tax authorities are approaching the revised Commentary in practice and issues emerging from discussions with businesses and tax authorities at OECD level.

In particular, the webcast will cover:

- permanent establishment risks associated with remote working;
- employee taxation and payroll obligations;
- transfer pricing considerations; and
- potential future developments in the taxation of remote work and individual mobility.

The webcast will take place on November 11, 2026, from 14:00 to 15:00 London / 15:00 to 16:00 Amsterdam / 09:00 to 10:00 Toronto and New York**.**

Please follow the webcast registration link to register for the session.

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