



# International Tax News

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# Welcome

Our monthly publication offers updates and analysis on international tax developments around the world, authored by specialists in PwC's global international tax network. We hope you find this publication helpful. For more international tax-related content, please visit:

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## **Cross Border Tax Talks**

Doug McHoney, PwC ITS Global Leader, hosts PwC specialists who share insights on issues and developments in the OECD, EU, US and other jurisdictions. Listen to the latest:

## **Business Model Reinvention: Tax Implications**

Doug McHoney is joined by returning guest Alex Voloshko, an International Tax Partner in PwC's Washington National Tax Services Practice where he specializes in value chain transformation and the tax implications of business operating models. Doug and Alex discuss how tax interacts with the broader business, the evolution of the tax operating model, business model reinvention, the importance of data, supply chain management, IP trends from the 2017 TCJA, and the potential impact of Pillar Two.

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Doug McHoney, PwC's Global International Tax Services Leader shares some of the highlights from the latest edition of International Tax News

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# Legislation

## China

### China Released the 2024 Negative List for Foreign Investment

China released the updated version of Special Administrative Measures for Foreign Investment (2024 nationwide negative list) on 6 September 2024.

Compared to the 2021 version, the 2024 nationwide negative list has fewer restricted items, reduced from 31 to 29. The last two restrictions on foreign investment in the manufacturing sector, namely in the publishing or printing industry, that was previously open to only Chinese capital, and in industries such as steaming, frying, roasting and calcining that are common in the traditional Chinese medicine sector, have been lifted, resulting in zero restrictions on the manufacturing sector nationwide.

The 2024 Negative List shall take effect from 1 November 2024.

From 2017 to 2021, China refined the negative list for foreign investment continuously. A series of major opening measures have been launched in manufacturing, mining, agriculture, and finance.

The removal of restrictions on foreign investment in the manufacturing sector should be conducive to further attracting foreign investment in advanced manufacturing and high-tech industries. The move also indicates China's commitment to a more favorable business environment and should increase the confidence of foreign investors.



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# Legislation

## Cyprus

### Cyprus consents to all Pillar Two Safe Harbours

The Cyprus Ministry of Finance announced that Cyprus provides its full assurance and consent to all the safe harbours published by the OECD/Inclusive Framework on BEPS up to June 2024. This announcement supplements Cyprus' consent given in 2023 on the transitional CbCR safe harbour, the transitional UTPR safe harbour and the QDMTT safe harbour.

Under Article 32 of the relevant EU Directive on Pillar Two Global Minimum Tax of MNE Groups and Large Scale Domestic Groups (Council Directive (EU) 2022/2523) a 'qualifying international agreement of safe harbours' is one to which all EU Member States have consented. As Cyprus is not a member of the Inclusive Framework on BEPS its consent is required outside of the OECD/Inclusive Framework on BEPS.

Up to June 2024, the Pillar Two Safe Harbours of the Inclusive Framework on BEPS are:

- the transitional CbCR safe harbour;
- the QDMTT safe harbour;
- the transitional UTPR safe harbour; and

a framework for a potential simplified calculations safe harbour based on simplified calculations that will be developed as part of the GloBE implementation framework. The simplified calculations that have been developed to date by the Inclusive Framework are: non-material constituent entity simplified calculations.

Cyprus has not yet transposed locally the relevant EU Directive. Transposition of the EU Directive in Cyprus is expected in Autumn 2024, effective from the beginning of 2024 for the IIR and from the beginning of 2025 for the UTPR and Cyprus DMTT.

The Cyprus Ministry of Finance's announcement reflects Cyprus' long-standing consistent commitment to respect, adopt, and follow all OECD and EU-driven international tax developments.



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# Legislation

## Finland

### Finland draft proposal would amend existing Pillar Two legislation

The Finnish Government sent a draft proposal on changing the Pillar Two legislation for public consultation in August 2024. The proposed amendments would complement the existing Finnish Pillar Two law, taking into account the OECD administrative guidance published in February, July, and December 2023, so that the Finnish Pillar Two legislation (and especially its Domestic Minimum Top-up Tax (DMTT) rules) would be treated as qualified by the peer review process.

The proposed changes would include adding, among others, specific provisions regarding marketable transferable tax credits, an undertaxed profits rule (UTPR) safe harbour, simplified calculation safe harbour for non-material constituent entities, and anti-arbitrage rules for the transitional CbCR safe harbour.

The public consultation ended 6 September 2024. The proposed legislation would become effective retroactively from 1 January 2024, deviating from the regular legislative procedure.

For multinational groups headquartered in Finland or in jurisdictions that have implemented the Income Inclusion Rule (IIR), the proposed changes are not expected to have a substantial impact on the Pillar Two tax liability, given that most of the changes are technical or clarifying in nature.

For multinational groups headquartered in a jurisdiction that has not implemented the IIR (especially the United States), the introduction of the UTPR safe harbour will reduce the top-up tax liability from the headquarter jurisdiction in case the nominal tax rate is at least 20%. This would postpone the application of UTPR to the profits of non-IIR jurisdictions until the accounting periods starting after 31 December 2025, giving these jurisdictions one additional year to implement IIR legislation.



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# Legislation

## Switzerland

### Switzerland introduces IIR effective 1 January 2025

During its meeting on 4 September 2024, the Swiss Federal Council introduced the Income Inclusion Rule (IIR) in Switzerland effective 1 January 2025. This IIR will complement the Swiss Domestic Top-up Tax (QDMTT) already introduced with effect from 2024. The main reason for implementing the IIR rule is to mitigate an otherwise burdensome process for Swiss-headquartered groups should other countries start to apply the UTPR (particularly EU Member States, United Kingdom, Canada, Australia, etc.) from 2025.

The Swiss Federal Council also decided not to introduce an Undertaxed Profits Rule (UTPR) in Switzerland for the time being. See the [full press release](#) for additional details.

For Swiss-headquartered groups, the introduction of the IIR in Switzerland effective in 2025 will mean that international top-up taxes might become due in Switzerland for low-taxed (<15% GloBE ETR) foreign constituent entities that are domiciled in countries that do not have a local QDMTT.

For non-Swiss headquartered groups with Swiss intermediary holding companies, it could also lead to international top-up taxes becoming due in Switzerland for low-taxed (<15% GloBE ETR) foreign constituent entities underneath such Swiss intermediary holding companies, if such constituent entities are domiciled in countries that do not have a local QDMTT and if there is no holding company further up the chain above the Swiss intermediary holding company that is domiciled in a country with an IIR rule. Note that these are the standard rules, but different outcomes might be possible depending on the specific facts and circumstances.







# Legislation

## Netherlands

### Tax Plan 2025 Measures

The Dutch government has presented its annual package of tax measures – the Dutch Tax Plan 2025 on 17 September 2024. The following corporate income tax measures were included in the proposal:

**EBITDA rule: adjustment to earnings stripping rule percentage:** the percentage for applying the earnings stripping (EBITDA) rule will be increased from 20% to 25% of the adjusted taxable profit (taxable EBITDA). At the same time, the EUR 1M threshold for the application of the rule will be removed for companies whose assets mainly consist of real estate rented out to third parties. For more information on the adjustment to the EBITDA rule see our [Tax News article](#).

**ATAD2: object exemption and disregarded permanent establishment:** to prevent double taxation, it is proposed that the Netherlands apply the object exemption to foreign disregarded permanent establishments, provided the profits of such a permanent establishment are subject to tax on profits in the foreign country.

**Debt cancellation profit exemption:** a new debt cancellation profit exemption will be introduced for taxpayers with losses exceeding EUR 1 million. Under this scheme, debt cancellation profit will be fully exempt to the extent that it exceeds the losses from the previous year. For more information see our [Tax News article](#).

**Adjustment of liquidation loss regime:** amendments are proposed to prevent the conversion of non-deductible losses into deductible liquidation losses for an intermediate holding company

**Deduction limitation for granting own shares:** the deduction limitation for the granting and issuance of shares and stock options within a group will be adjusted. This clarification establishes that the deduction limitation applies to all taxpayers, not just to companies with share capital.

**Codification of ATAD GAAR in corporate income tax:** the 'general anti-abuse rule' (GAAR) from ATAD 1 will be incorporated into Dutch corporate law. For more information see our [Tax News article](#).

**Pillar Two: overlap of corporate income tax subjectivity tests and Pillar Two:** For the participation exemption, the object exemption, and anti-profit-shifting measure in corporate income tax, it is now laid down in law, that a so-called "qualifying Pillar Two top-up tax" is considered a tax levied on profits. This is not the case for transfer pricing mismatches and hybrid mismatches. For more information see our [Tax News article](#). In addition, some technical changes will be made to the Minimum Tax Act 2024 (Pillar Two). Read more on the amendments to the Minimum Tax Act. For more information see our [Tax News article](#).

**Source Tax: replacement of 'collaborating group' with 'qualifying entity':** in the Source Tax Act 2021, the term 'collaborating group' will be replaced by 'qualifying entity'. For more information on the new group concept see our [Tax News article](#).

**Source Tax: retention of buyback facility in dividend tax:** It is proposed that the abolition of the buyback facility will not proceed. For more information see our [Tax News article](#).

For more information on for earlier announced measures such as the reporting requirements related to Public CbCR, amendments to tax qualification of partnerships and any other relevant corporate income tax measures, see our [Tax News article](#). The measures will apply from 2025, unless stated otherwise.

The Dutch Tax Plan 2025 introduces several measures that could significantly impact MNEs operating in or through the Netherlands. One of the most key measures is the increase in the EBITDA rule percentage from 20% to 25%, which will provide more flexibility and room for interest deduction. Furthermore, the retention of the buyback facility in dividend tax aims to enhance the competitive position of Dutch businesses, and allows listed companies to continue share buybacks free from Dutch dividend withholding tax under certain conditions. MNEs should ensure that share buybacks comply with the specified conditions to benefit from the tax exemption. Additionally, the proposed changes to Pillar Two rules would mean that the participation exemption may become applicable to one of the shareholdings or the object exemption will become applicable to profits from a permanent establishment where this was not previously the case, or that measures such as the interest deduction restriction or anti-mismatch measures will no longer apply. Finally, the incorporation of the GAAR into Dutch corporate law does not aim to introduce any material changes.

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# Administrative

## Mexico

### Recent changes in Mexican tariff regime affect US companies with manufacturing operations in Mexico

On 22 April 2024, the Mexican Ministry of Economy established import tariffs ranging from 5% to 50% on specified products, which went into effect on 23 April 2024. Additionally, in April 2024 (through a guideline published in May), the Mexican Government changed the criteria for application of 'Regla Octava' (Rule 8), which previously allowed temporary imports of 'sensitive' products to be exempted from duties. Temporary importations of identified 'sensitive goods' — e.g., aluminum, steel, textiles, sugar, tobacco — are no longer eligible for the Rule 8 exemption.

For US companies manufacturing in Mexico under the Maquiladora, Manufacturing, and Export Services Industry (IMMEX) Program (hereinafter referred to as IMMEX companies), there are important considerations arising from the recent Mexican Government actions. Elimination of the Rule 8 exemption signifies that certain companies importing goods classified as 'sensitive' into Mexico now may be required to pay Most-Favored-Nation (MFN) duties, which are the standard import tariffs, on those items. In addition, if the imported goods also are included in the list of specified products covered by the newly announced tariffs, these companies will face Mexico tariffs above and beyond the MFN duties.

For more information see our [PwC Insight](#).

IMMEX companies engaging in temporary importations of 'sensitive' goods under the IMMEX Program for subsequent export to the United States may need to consider the implications of potential increases in Mexican duties and tariffs. To develop a comprehensive understanding of the potential impacts according to each company's structure (e.g., maquiladoras, Mexican toll manufacturers that are not maquiladoras, contract manufacturers), as well as the overall supply chain, companies may wish to model various scenarios including different transactional and operational flows. Further, IMMEX companies may want to consider an analysis of these impacts under the United States-Mexico-Canada Agreement (USMCA) to avoid potential additional tariffs when exporting to the United States, as well as other financial and tax perspectives.



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# Administrative

## United States

### Proposed guidance addresses broad range of CAMT issues

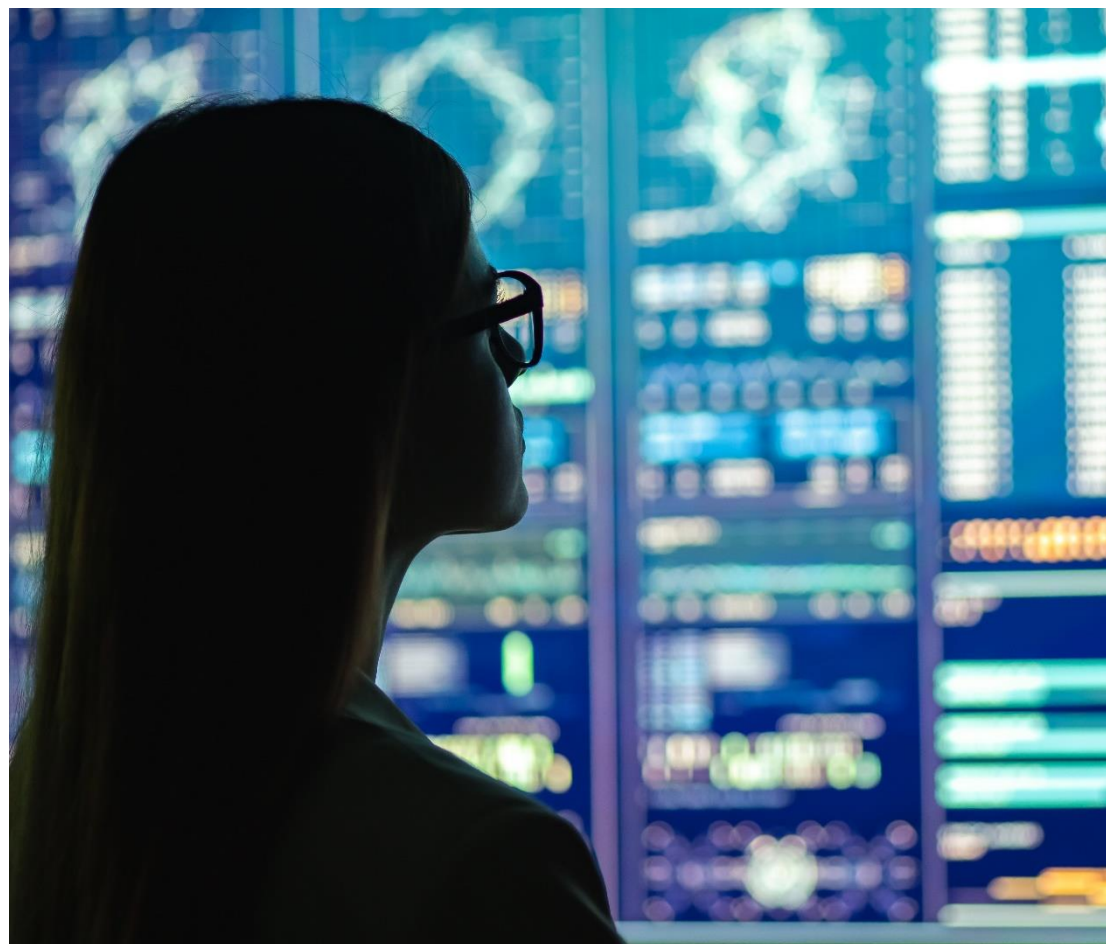
Treasury and the IRS on 12 September 2024 issued [proposed regulations](#) on the corporate alternative minimum tax (CAMT), which is a 15% minimum tax imposed on the adjusted financial statement income (AFSI) of certain corporations based on their applicable financial statements for applicable tax years beginning after 2022. The IRS also issued [Notice 2024-66](#), providing a limited waiver of the addition to tax under Section 6655(a) relating to the CAMT for a tax year that begins after 31 December 2023, and before 1 January 2025.

Following a series of notices providing interim guidance on the CAMT, the proposed regulations set forth guidance on how the CAMT applies to certain taxpayers, particularly multinational groups, partnerships, and entities with complex tax structures. Certain provisions of the proposed regulations, if adopted, generally would apply to tax years ending after final regulations are published in the Federal Register. Other provisions of the proposed regulations would be effective for tax years ending after 13 September 2024r.

Notice 2024-66 incorporates the relief for CAMT estimated tax penalties provided in Notice 2024-33 and Notice 2024-47 and obsoletes those notices.

For more information see our [PwC Tax Insight](#).

Taxpayers should consider whether to submit comments on the proposed regulations. Comments are due by 12 December 2024. A public hearing is scheduled for 16 January 2025. They also should examine the specific effective dates that apply to the proposed regulations and previously issued interim guidance.



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# Judicial

## Belgium

### CJEU analysis of DAC6 validity

The Court of Justice of the [European Union](#) (CJEU) delivered its judgment in the case of the [Belgian Association of Tax Lawyers and others \(C-623/22\)](#) on 29 July 2024. This case was about the validity of certain provisions of DAC6, which mandates the reporting of potentially aggressive cross-border tax arrangements by intermediaries or taxpayers to the competent tax authorities. The case was brought before the CJEU following proceedings before the Belgian Constitutional Court initiated by various organisations representing lawyers and tax consultants.

#### Background

The DAC6 Directive (Council Directive 2011/16/EU, as amended by Council Directive (EU) 2018/822) establishes an obligation for intermediaries, and in their absence, the involved taxpayers, to report potentially aggressive cross-border tax arrangements to the competent tax authorities. This measure aims to combat tax avoidance and evasion in the internal market. In 2020, several organisations representing legal and tax professionals filed a case before the Belgian Constitutional Court, contesting the Belgian law of 20 December 2019 transposing the Directive. They argued that the Directive violated the Charter of Fundamental Rights of the EU (the Charter) and general principles of EU law. Subsequently, the Belgian Constitutional Court referred several questions to the CJEU for a preliminary ruling.

#### 1. Scope of Reporting Obligation: Broad Range of Taxes vs. Corporate Tax

The first item addressed by the CJEU was the scope of the reporting obligation under the Directive. Specifically, the CJEU examined whether the Directive's application to a broad range of taxes, beyond just corporate tax, was valid in light of the principles of equal treatment and non-discrimination. The Directive's reporting obligation applies to all taxes levied by EU Member States, except VAT, customs duties, and excise duties. The CJEU concluded that the Directive's broad scope is justified and appropriate, finding no factors affecting its validity concerning the principles of equal treatment and non-discrimination..

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#### 2. Concepts, Definitions and Reporting Period

The second item concerned the clarity and precision of concepts used in the Directive and the starting point of the reporting period, evaluated in light of the principles of legal certainty, legality in criminal matters, and respect for private life.

The CJEU underlined the principle of legal certainty, which requires, on the one hand, that the rules of law are clear and precise and, on the other hand, that their application is foreseeable for those subject to law. The definitions of key terms such as 'cross-border,' 'marketable,' 'bespoke arrangements,' 'intermediary,' 'associated enterprise,' the 'hallmarks' and 'main benefit test' were deemed sufficiently clear and aligned with international standards like the OECD's CRS Model Rules. Regarding the [reporting period](#), the CJEU derived from the DAC6 Directive that it starts from the day after an arrangement is available for implementation, is ready for implementation, or its first step is made. For those providing aid, the period starts after completing the aid or advice. The CJEU concluded that these provisions are clear and precise, meeting the requirements of legal certainty and legality in criminal matters

#### 3. Legal Privilege of Lawyers vs. Other Professionals

The third item addressed the interactions between the reporting obligations under the Directive and intermediaries' legal professional privilege. The CJEU reiterated the special protection afforded to lawyers due to their role in the administration of justice and ethical obligations, reason for which it concluded in the case [Orde van Vlaamse Balies and Others](#) that the obligation to notify violates the respect for private life of Article 7 of the Charter. Finally, the CJEU concluded that the invalidity of the obligation to notify applies only to lawyers (as defined in Directive 98/5), and not to other professions authorised to provide legal representation.

#### 4. DAC6 in general: Private Life

The fourth item concerned the validity of the reporting obligation under DAC6 in light of the right to respect for private life (Article 7 of the Charter). The CJEU concluded that the reporting obligation is proportionate to the objective pursued and does not impose a burden that outweighs that objective. Therefore, it upheld the validity of DAC6 concerning the right to respect for private life.

The CJEU found no reasons affecting the validity of DAC6 concerning the principles of equal treatment, non-discrimination, legal certainty, legality in criminal matters, respect for private life, and the specific provisions related to legal professional privilege. The Directive's broad application, clear definitions, and reporting obligations were deemed appropriate and necessary to achieve its objectives of combating aggressive tax planning and preventing tax avoidance and evasion.





# Judicial

## European Union

### CJEU sets aside Apple 2020 EU General Court decision and rules that Ireland provided State aid via 'tax rulings'

The Court of Justice of the EU (CJEU) on 10 September 2024, set aside the EU General Court's (GC) 2020 judgment in the Apple State aid case and gave final judgment requiring Ireland to recover the State aid from Apple.

According to the CJEU, the GC erroneously misinterpreted the decision (Decision) of the European Commission (EC) when it ruled that the EC had not shown to the requisite legal standard that the intellectual property (IP) licenses (and associated profits) had to be attributed to the Irish branches of two non-Irish resident Apple Group entities. Having set aside the GC judgment, the CJEU considered that the state of the proceedings was such that it may give final judgment in the actions by confirming the EC's approach to the allocation of profits – that approach being to compare the activities of the Irish branches of the non-Irish resident Apple Group companies to the activities performed by the head offices of those branches. Under this approach, the 'tax rulings' issued by the Irish tax authority were considered by the EC to endorse methods for allocating profits which produce an outcome that separate and standalone undertakings operating under normal market conditions would not have accepted.

The CJEU's ruling brings matters in this particular case to an end. It remains to be seen what the implications of this judgment are for the other ongoing State aid cases.

For more information see our [PwC Tax Insight](#).

Although this is an individual State aid case, meaning it is specific to Apple and its facts, taxpayers should consider the potential impact of this case. While the EC could investigate similar structures, we understand that there were a limited number of rulings granted on similar structures. Finally, other State aid cases are still pending, and taxpayers should monitor those outcomes and analyze their impact.



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# Judicial

## Poland

### Optical fibers as an industrial device subject to withholding tax in Poland

The Provincial Administrative Court in Warsaw, in its ruling of 7 August 2024 (ref. III SA/Wa 1129/24), adjudicated that fees paid for the use and maintenance of fiber optic cables and colocation spaces to foreign contractors can be subject to Polish withholding tax as revenues for the use or the right to use an industrial equipment, based on Article 21(1)(1) of the corporate income tax act. The company, which applied for an individual interpretation to the Director of National Tax Information (NTI), argued that optical fibers, as simple glass structures without mechanical components or power systems, do not constitute 'industrial equipment' within the meaning of the above article.

According to the Court, the term 'industrial device' should be interpreted broadly and cannot be limited only to industrial production processes but relates to broadly understood business activities, including telecommunications services. In the context of this broad definition of an industrial device, an optical fiber is not only the cable itself but also the final elements that make the service, which constitutes the essence of the business activity, possible. Consequently, the entire complex of this device, which constitutes the services offered by the foreign contractors, must be considered an industrial device.

For more information see our [PwC Alert](#).

The Polish tax authorities and administrative courts present an unfavorable interpretation for taxpayers by expanding the interpretation of industrial equipment, primarily resulting in a broader scope of payments subject to WHT obligations in Poland. The interpretation of the NTI Director as well as the Provincial Administrative Court's judgment are consistent with the previous interpretation regarding the concept of 'industrial equipment' through the prism of using the equipment in a broadly understood economic activity, regardless of the given device's specific construction. For example, the status of 'industrial equipment' was also applied to the devices not directly related to industrial production, including cranes/hoists (see e.g. judgment of the Supreme Administrative Court (SAC) of 18 May 2018, ref. II FSK 1403/16), forklifts (judgment of the SAC of 26 April 2018, ref. II FSK 1018/16), seismic sensors and sand separators (judgment of the SAC of 9 August 2017, ref. II FSK 1963/15).

Consider whether the interpretation adopted by the NTI Director and the court would be the same if the subject of the agreement was the use of optical fiber capacity. According to the explanations included in point 9.1 of the OECD Commentary to Article 12 of the OECD Model Convention on Income and Capital Taxes, it is worth emphasizing that under certain conditions, the mere use or right to use of the transmission capacity of a specific device should not lead to WHT taxation of payments.

To reduce WHT risk in Poland, entities should verify their contracts with Polish companies regarding their treatment in light of withholding rules and their interpretation in Poland and take the necessary steps to assure their WHT compliance.



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# Judicial

## Germany

### German Federal Fiscal Court rules in favour of French and Luxembourg investment funds

Two important judgments (case numbers I R 1/20 and I R 2/20) on cases with very similar factual backgrounds were published on 22 August 2024: Germany's Federal Fiscal Court (the Supreme Court for tax cases) decided that the exclusion of foreign investment funds, which are comparable to German investment funds, from the tax exemption under the German Investment Tax Act 2004 violates the free movement of capital. Foreign investment funds can, therefore, claim a refund of dividend withholding tax if they are comparable to a domestic investment fund.

#### Background and facts

A French *Fonds Commun de Placement* (FCP, case I R 1/20) and a Luxembourgish *Société d'Investissement à Capital Variable* (SICAV, case I R 2/20) in the legal form of a *Société Anonyme* received dividends from German companies in the years 2008-2013 and 2009-2013, respectively. Withholding tax of 26.375% of each dividend was withheld and paid to the German tax office.

Pursuant to Germany's tax treaties with France and Luxembourg, the withholding tax was reduced to 15% (i.e., both investment funds received a tax refund in the amount of 11.375% of the dividend). The investment funds applied for the refund of the remaining withholding tax (15%) plus interest. Both claimants argued that not refunding the 15% would lead to an infringement of the free movement of capital (Article 63 TFEU) since they were comparable to a German investment fund which would have been tax exempt under the Investment Tax Act 2004.

#### Judgments of the Federal Fiscal Court

The Court held that a refund claim must be filed within the statutory four-year period applicable to withholding taxes. The four-year period starts at the end of the year in which the respective dividend was received or the withholding tax was paid. The Federal Fiscal Court did not decide whether a longer period of seven years may apply in cases where withholding tax refunds can be obtained via a tax assessment (i.e., via filing a corporate income tax return) as this was not decisive in these specific cases.

Due to the four-year limitation period, the French FCP's claims were unfounded in as far as they related to dividends received in 2008 and 2009 since the FCP's claims were only filed in 2014. Regarding the other claims of the French FCP (years 2010-2013) and all claims of the Luxembourg SICAV, the court ruled in favour of the plaintiffs. Levying withholding tax of 15% results in a discrimination of foreign investment funds which cannot be justified. Whether the investors of the funds are taxed in either the fund's state of residence or the investors' state(s) of residence is not relevant as it does not affect the tax exemption of German funds.

Moreover, the Federal Fiscal Court confirmed that the amount to be refunded is subject to interest. The interest period is generally assumed to start six months after the respective claim has been filed. From 2012 onwards the interest period may even begin at the date of the dividend receipt due to a change in law which allowed German investment funds under certain conditions to receive dividends without the need for the payor to withhold any tax.

The applicable interest rate is 6% per annum. The Court left it undecided whether the interest rate must be reduced to 1.8% per annum as of 1 January 2019 because the lawsuits were already filed in 2017. The Federal Fiscal Court referred the case back to the local fiscal court to determine whether the investment funds can also substantiate their claims formally (e.g., via dividend vouchers) and to determine the specific amount of interest that has been accumulated so far.

The German tax authorities had already started processing claims filed for a refund of withholding taxes in the past. This current practice is expected to continue after the last two decisions of the Federal Fiscal Court and the German tax authorities are expected to request more information from the claimants soon. It is currently expected that claims will have to be substantiated by providing a comparability analysis and a formal proof that withholding tax were levied via dividend vouchers.

Given that claims for the relevant years may have been filed several years ago, claimants of such withholding refunds should consider preparing the required documentation as soon as possible as deadlines set by the tax authorities can be tight. The Court decisions do not affect any withholding tax claims relating to dividends received after 31 December 2017.





# Judicial

## European Union

### CJEU annuls EC decision that financing company provisions in the UK CFC tax regime constituted State Aid

On 19 September 2024 the Court of Justice of the EU (CJEU) rendered its judgment in the joined cases [United Kingdom v European Commission](#), [ITV plc v European Commission](#) and [LSEGH \(Luxembourg\) Ltd and Others v European Commission](#) ([C-555/22](#), [C-556/22](#) and [C-564/22](#)). The case concerned an annulment application in respect of a European Commission decision that certain parts of the UK's controlled foreign company (CFC) regime constituted State aid. The case was an appeal against the General Court's earlier decision to uphold the Commission's State aid determination.

The CJEU decided that the Commission had incorrectly identified the reference system as the CFC regime, whereas the reference system should have been regarded as the wider UK corporation tax regime. This error was sufficient to vitiate the Commission's decision. As such, the CJEU upheld the appeal and annulled the Commission's State aid determination.

In relation to admissibility, the Commission argued that the General Court's assessment of national law - and hence its determination of the reference framework - was a question of fact not subject to review in this case. The CJEU held whether the General Court had correctly determined the reference framework was a question of law (and of the application of Art 107(1) TFEU) which the CJEU must be entitled to review.

In relation to the reference framework, the CJEU observed that where a specific set of tax rules were classified as 'a corollary to', 'supplementary to' or 'an extension of' a wider set of rules, those specific rules could not be regarded as clearly severable from the wider set of rules, and so the specific rules could not be regarded in and of themselves as a reference framework.

In assessing whether this was the position in the case at hand, the CJEU followed the principles set out in *Engie & Luxembourg v Commission* (C-451/21 and C-454/21), which held that, as a consequence of the duty of sincere cooperation for State aid investigations, the Commission was obliged to accept a Member State's interpretation of its own national law unless this was contraindicated by the wording of the law, case law, or administrative practice.

Here, the United Kingdom stated the CFC rules were intended to supplement the wider UK corporation tax regime by taxing the profits of certain CFCs which posed a higher risk of artificial diversion of profits from the United Kingdom, and the purpose of the Chapter 9 provision was to ensure that certain situations that did not pose sufficiently high risks of diversion were not subject to a CFC charge but were rather dealt with under the normal territorial corporation tax system. Following this approach the CFC rules were therefore not separable from the general corporation tax system as a whole. The CJEU considered that this constituted an interpretation of national law which was consistent with the wording of the relevant provisions and therefore, according to the *Engie* principles set out above, should have been followed by the Commission in their analysis.

On this basis, the CJEU determined that the correct reference system was the wider UK corporation tax rules rather than the CFC regime as identified by the Commission. This error in the choice of reference system was sufficient to vitiate the Commission's State aid determination. The CJEU therefore allowed the appeal and annulled the State aid determination.

Following the Commission's 2019 State aid determination, the UK enacted specific legislation under which charging notices would be issued to recover the State aid. Where – as has occurred – the Commission's decision has been annulled, this legislation requires the UK Government to bring forward regulations to reverse these charging notices and put taxpayers in the same position they would have been in had the Commission's State aid determination never been made. These regulations when issued should therefore give rise to repayments of any amounts recovered from taxpayers. We await further UK announcements regarding the publication of these regulations and the way forward.



# EU/OECD

## European Union

### Global digital trade rules: Proposal negotiated at WTO

The World Trade Organization (WTO) circulated draft text of the E-commerce Agreement under the Joint Statement Initiative (JSI) on Electronic Commerce on 26 July 2024. From a tax perspective, the JSI is important for two main reasons - it provides a commitment to prohibit imposing customs duties on electronic transmissions and it supports measures to promote e-invoicing. More broadly, the JSI outlines a comprehensive framework for digital trade covering matters such as: paperless trading and data exchanges to facilitate digital trade; consumer protection (designed to enhance consumer confidence and trust in e-commerce); personal data protection; cybersecurity; and e-payments.

The agreement focuses on streamlining global digital trade and includes a commitment to not imposing customs duty on electronic transmissions by a significant number of countries. The agreement, in which over 90 WTO Members actively participated (i.e. more than half of the WTO membership) including the European Union, seeks to establish the first-ever global rules governing digital trade and support digital inclusiveness and economic growth of the developing and least developed WTO participating Members. The participants are now focused on integrating the agreed text into the WTO legal framework, a process that requires consensus among all WTO Members. The final shape of the agreement will not be known for some time and may be subject to change after future discussions. Importantly, there is no guarantee that all WTO members will adopt the draft agreement, even if amended. Even though various plurilateral measures already exist in relation to digital trade (as discussed below), this development marks a positive step in attempting to establish the first global rules on digital trade

For more information see our [Tax Policy Alert](#).

There is no guarantee that all WTO Members will adopt the proposed agreement. However, the initiative presents an opportunity to coordinate digital trade rules globally and certain tax matters, such as e-invoicing and preserving the current prohibition against imposing customs duties on electronic transmissions. The proposed commitment to not impose customs duties on electronic transmissions - echoing what has been agreed under Regional Comprehensive Economic Partnership - is a positive development bearing in mind that the WTO's multilateral Work Programme on E-Commerce had earlier this year decided to not renew the moratorium on such duties when it is due for review in 2026. The current global tax landscape - in relation to both tax-paying obligations and data sharing and reporting - has become very complicated and is becoming more fragmented. Pillar Two has had a profound impact on businesses and their processes, VAT rules have grown rapidly in relation to cross-border digital trade (especially in relation to services), and we expect more movement in the future on digital services taxes (DSTs) and regulatory change in relation to cross-border services.

Against the backdrop of an increasingly complicated global tax landscape, measures that help coordinate global tax rules and reduce fragmentation, such as those promoted in the draft E-commerce Agreement in relation to customs duties on electronic transmissions, are a welcome development. Even if not all WTO Members ultimately adopt the proposal - thereby increasing the prospects of fragmentation - the initiative sets a precedent for future digital trade developments and provides a helpful framework that can be built upon through other plurilateral agreements or regional partnerships.



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# EU/OECD

## OECD

### Nine countries sign Subject to Tax Rule MLI

The OECD/G20 Inclusive Framework (IF) convened a signing ceremony for the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI). For further details on the STTR and the STTR MLI, see our previous tax policy alerts of 5 October 2023 and 19 July 2023. On 19 September 2024, nine jurisdictions signed the STTR MLI and another ten jurisdictions expressed their intent to sign. The OECD press release noted that 38 additional jurisdictions 'participated' in the signing ceremony - but without making specific commitments

For more information see our [PwC Alert](#).

The Pillar Two STTR allows source countries to impose an additional tax liability on certain intra-group payments where the recipient is subject to a nominal corporate tax rate of less than 9%. The provision was specifically designed to help developing countries protect their tax base and is an integral part of the Pillar Two consensus.



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# Treaties

## United States

### US requests consultations on Canada's Digital Services Tax under USMCA

The Office of the United States Trade Representative (USTR) on 30 August 2024 [announced](#) that the United States has requested dispute settlement consultations with Canada under the [United States-Mexico-Canada Agreement](#) (USMCA). The consultations concern Canada's [recently enacted Digital Services Tax](#) (DST), outlined in [Bill C-59](#). This DST targets revenues from online marketplaces, targeted advertising, social media platforms, and user data.

In the [consultation request](#), the USTR asserts that Canada's DST discriminates against US companies, thereby violating commitments under the USMCA's [Cross-Border Trade in Services](#) and [Investment](#) chapters. This development could have significant implications for US companies operating in Canada, impacting trade relations and business models within the digital services sector. Specifically, the USTR has in the past imposed retaliatory tariffs on select products imported from other countries who have implemented DSTs like Canada's.

For more information see our [PwC Tax Insight](#).

Affected companies should monitor developments closely to remain informed about the consultation process and its potential outcomes. Modeling the outcomes of how the DST may affect business operations and tax liabilities in Canada, and how potential retaliatory tariffs could impact imports from Canada, is recommended. Additionally, companies should prepare to ensure compliance with DST requirements should the tax remain in force. Further, companies should consider engaging with trade associations and legal counsel to address potential challenges ahead of any definitive outcomes.



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# Glossary

## Acronym

ATAD .....  
ATO .....  
BEPS .....  
CFC .....  
CIT .....  
CTA .....  
DAC6 .....  
DST .....  
DTT .....  
ETR .....  
EU .....  
MNE .....  
NID .....  
PE .....  
OECD .....  
R&D .....  
SBT .....  
SiBT .....  
VAT .....  
WHT .....

## Definition

anti-tax avoidance directive  
Australian Tax Office  
Base Erosion and Profit Shifting  
controlled foreign corporation  
corporate income tax  
Cyprus Tax Authority  
EU Council Directive 2018/822/EU on cross-border tax arrangements  
digital services tax  
double tax treaty  
effective tax rate  
European Union  
Multinational enterprise  
notional interest deduction  
permanent establishment  
Organisation for Economic Co-operation and Development  
Research & Development  
same business test  
similar business test  
value added tax  
withholding tax



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