GLOBAL TAX SERIES



European Tax Handbook 2026

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Preface

IBFD is pleased to present the *thirty-seventh* edition of the *European Tax Handbook*.

The 2026 *European Tax Handbook* covers surveys on 49 countries and jurisdictions. All information on the European tax systems has been updated to reflect, as much as possible, the laws applicable in 2026.

As before, the *European Tax Handbook* includes in addition to the country level surveys, a chapter on EU Direct Taxation (together with the most important tax directives), as well as descriptions of seven of the most important Swiss cantons, i.e. Basel-Stadt, Bern, Geneva, Schwyz, Vaud, Zug and Zurich.

All the country chapters of this book are also available in the online collection Country Surveys of the IBFD Tax Research Platform, which contains descriptions of the tax systems of 53 European countries and, in addition, descriptions of the tax systems of all 26 Swiss cantons. The online title is *European Tax Explorer (Plus)*. It also includes the texts of income tax treaties concluded by all European countries. The online collection Country Surveys has quarterly updates; the chapters are revised as new information becomes available.

More comprehensive coverage of the majority of the jurisdictions can be found in the online collection Country Analyses. A combination of Country Surveys, Country Analyses and the texts of income tax treaties concluded by countries worldwide is offered via the online title *Global Tax Explorer Plus*, which also includes coverage of Africa, Asia-Pacific, Europe, Latin America and the Caribbean, North America and the Middle East.

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April 2026

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European Union

Direct Taxation

Introduction

The European Union comprises the following 27 Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain and Sweden. The United Kingdom was part of the European Union until 31 January 2020 when the withdrawal process from the European Union was concluded (*see* details below).

Member States, Norway, Iceland and Liechtenstein form the European Economic Area (EEA) from 1 January 1994, by the conclusion of the Agreement of 13 December 1993 on the European Economic Area (94/1). The Agreement covers company law directives, customs and social security legislation and all primary and secondary legislation regarding the Treaty on the Functioning of the European Union (TFEU) treaty freedoms (*see* section 1.1.). The European Union has also concluded several agreements with Switzerland on, inter alia, the free movement of persons as well as the automatic exchange of financial account information, which includes an exemption for cross-border payments of dividends, interest and royalties (Amending Protocol to the European Union-Switzerland Agreement (2015)).

A common currency, the euro, has been introduced in Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, the Slovak Republic, Slovenia and Spain.

The following is an overview of the most significant of both the adopted and proposed EU regulations and directives covering direct tax. Topical tax developments at EU level are also covered, including Brexit (*see* below), State aid (*see* section 1.6.), implementation of global minimum taxation (Pillar Two) (*see* section 3.5.), taxation of the digitalized economy, including the reallocation of taxing rights (Pillar One) (*see* section 5.1.), the financial transaction tax (*see* section 5.2.) and the windfall tax for energy companies (*see* section 5.3.). Relevant case law of the Court of Justice of the European Union on fundamental freedoms is covered in section 4.

Brexit

Following a referendum held on 23 June 2016 (the so-called Brexit), the United Kingdom voted to leave the European Union and triggered the formal process of leaving the European Union by invoking article 50 of the Treaty on European Union (TEU) on 29 March 2017. The United Kingdom formally withdrew from the European Union at midnight CET on 31 January 2020. From that date until 31 December 2020, the United Kingdom entered into a transition period, regulated under the Withdrawal Agreement, in which the United Kingdom was not represented in EU institutions, agencies, bodies and offices, but EU law still applied under certain conditions (*see* details below).

During the transition period, the European Union and the United Kingdom negotiated the terms of their future partnership in the framework of the political declaration of 17 October 2019. On 30 December 2020, the United Kingdom and the European Union signed a Trade and Cooperation Agreement (TCA) (*see* details below).

The Withdrawal Agreement

The Withdrawal Agreement was concluded on 30 January 2020 by the Council of the European Union (the Council), after the United Kingdom completed the ratification process on 23 January 2020.

The Withdrawal Agreement contains a transitional period during which the European Union treats the United Kingdom as if it were a Member State (with certain procedural exceptions). Such transitional period ended on 31 December 2020.

The most important aspects of the Withdrawal Agreement relating to direct taxation are the following:

- EU social security regulations (*see* section 6.) will remain applicable to EU and UK citizens that, at the end of the transition period, were residents or were subject to the legislation of the United Kingdom or European Union, respectively, as well as to their family members and survivors;
- the Recovery Directive (2010/24) will apply until 5 years after the end of the transition period between Member States and the United Kingdom for, inter alia, claims that relate to amounts that became due or transactions that took place before the end of the transition period;
- for State aid granted before the end of the transition period, for a period of 4 years after the end of the transition period, the European Commission (the Commission) will be competent to initiate new administrative procedures on State aid governed by Council Regulation (EU) 2015/1589 concerning the United Kingdom. The Commission will continue to be competent after the end of the 4-year period for procedures initiated before the end of that period;
- the ECJ remains competent for all judicial procedures (including appeals and referrals) concerning the United Kingdom registered before the end of the transition period, and those procedures should con-

tinue until a final and binding judgment is given in accordance with EU rules;
– within 4 years from the end of the transition period, the ECJ will still have jurisdiction over infringement cases against the United Kingdom concerning breaches of EU law that occurred before the end of 2020;
– within 4 years from the end of the transition period, the United Kingdom may also bring before the ECJ cases of non-compliance with an administrative decision of an EU institution or body taken before the end of the transition period or, for certain procedures identified in the Withdrawal Agreement, after the end of the transition period; and
– ECJ decisions made before the end of the transition period are still binding. Retained EU law should be interpreted by domestic courts in accordance with previous ECJ case law and any retained general principles of EU law.

The Trade and Cooperation Agreement (TCA)

The Trade and Cooperation Agreement (TCA) lays down a free trade agreement, a partnership on citizens' security and a governance framework for regulating the relations between the European Union and the United Kingdom as from 1 January 2021. The TCA was ratified by UK Parliament on 30 December 2020, and, after the consent of the European Parliament on 27 April 2021, by the Council on 29 April 2021 (OJ L 149, 30.4.2021). The TCA, which applied provisionally from 1 January 2021, entered into force on 1 May 2021.

The Agreement covers trade in goods and services as well as other areas in the European Union's interest, such as investment, competition, State aid, tax transparency, air and road transport, energy and sustainability, fisheries, data protection and social security coordination.

As regards direct taxation, the TCA provides for:
– subsidy control provisions replacing the EU State aid rules, which set forth principles that must be respected for the granting of subsidies and that oblige the parties to establish control, transparency and recovery mechanisms;
– a commitment to applying base erosion and profit shifting (BEPS) minimum standards and international standards for the fight against tax avoidance and tax evasion;
– a minimum level of protection based on OECD standards on anti-avoidance (interest limitation, controlled foreign company (CFC) rules and anti-hybrid rules) and tax transparency (exchange of information on financial accounts, cross-border tax rulings, country-by-country (CbC) reports between tax administrations, and potential cross-border planning arrangements); and
– coordination on social security benefits related to sickness, maternity, paternity, invalidity, old-age, survivors, accidents at work and occupational diseases, death grants, unemployment, and pre-retirement benefits. For these benefits, the TCA establishes non-discrimination between Member States and between EU/UK citizens and own nationals; equal treatment of benefits, income, facts and events; aggregation of periods to determine the entitlement to benefits; and exportability of cash benefits (except for disability and unemployment benefits) in the case of individuals moving to a Member State or the United Kingdom.

The European Parliamentary Research Service (EPRS) published a study (The EU-UK Trade and Cooperation Agreement two years on: Unpacking early evidence – European Implementation Assessment) on the implementation of the TCA on 9 August 2023. The study includes details of UK legislation to end the application of retained EU laws within the United Kingdom (and retained EU Law, with the consequence that general principles of EU law cease to form part of UK law. As regards taxation, it mentions the call for scrutiny to ensure that the TCA does not contain loopholes that allow UK Crown Dependencies (Guernsey, Jersey and the Isle of Man) and UK Overseas Territories (which include Anguilla, Bermuda, the British Virgin Islands, Gibraltar and the Turks and Caicos Islands) to be used as counterparts for developing new harmful tax schemes impacting the functioning of the internal market (given that these territories are excluded from the TCA). It also highlights that taxation is one of the areas where no arrangements were made between the European Union and United Kingdom in the context of the TCA, as taxation is not subject to dispute settlement provisions nor to rebalancing measures.

1. General Principles of EU Law and Taxation

EU law enjoys priority over national laws of Member States. There are three sources of EU law:
– primary law (*see* section 1.1.);
– secondary law (*see* section 1.2.); and
– supplementary law (*see* section 1.3.).

1.1. *Primary law*

Primary law is the supreme source of law within the European Union. It consists of the treaties establishing the European Union, namely:
– the Treaty on European Union (TEU) (2007); and
– the Treaty on the Functioning of the European Union (TFEU) (2007).

These two treaties, which became effective in 2009, consist of the EU founding treaties (the Treaty of Paris (1951), the Treaty of Rome (1957) and the Maastricht Treaty (1992)), as amended by subsequent treaties (the Single European Act (1986), the Treaty of Amsterdam (1997), the Treaty of Nice (2001) and the Treaty of Lisbon (2007)). Under the Treaty of Lisbon, the Maastricht Treaty was renamed the Treaty on the European Union and the Treaty of Rome was renamed the TFEU.

These treaties distribute competences between the European Union and Member States, and lay down the powers of the European institutions (i.e. determine the legal framework within which the EU institutions may operate).

Nationals and legal entities of a Member State can rely on the directly applicable provisions of the TEU and the TFEU.

As regards taxation, the TFEU is the most relevant as its main objectives are establishing a functioning internal market, as well as an economic and monetary union. These objectives cannot be reached if, inter alia, the four fundamental freedoms (*see* section 4.) are hindered. As such, any national tax measures that violate these principles must be abolished.

Primary law also includes the accession treaties of new Member States and the Charter of Fundamental Rights of the European Union.

1.2. *Secondary law*

Secondary sources of EU law are legal instruments that are based on the European Union's primary law (i.e. the treaties, *see* section 1.1.). Secondary law can be divided into two categories:
– unilateral acts: this comprises regulations, directives (e.g. the Parent-Subsidiary Directive (2011/96), *see* section 3.1.), decisions, opinions and recommendations, and in some cases other acts such as communications and White and Green papers; and
– conventions and agreements: this includes international agreements, agreements between Member States and agreements between EU institutions.

Regulations are legal instruments of general application and are binding and directly applicable in each Member State.

Directives are binding in respect of the result to be achieved, but – unlike regulations – the manner of their implementation and enforcement is a matter left for the national authorities to determine. In accordance with the ECJ case law stemming from *van Duyn v Home Office* (Case 41-74), a directive is directly enforceable within a Member State only if:
– that Member State fails to (properly) execute the directive by a designated deadline; and
– the provisions of the directive are unconditional and sufficiently clear (theory of *acte clair*).

If these conditions are fulfilled, the provisions of a directive may have a direct effect, and may be invoked before a court, including those provisions which grant rights to companies and individuals, against Member States.

Decisions are binding upon those to whom they are addressed, and are directly applicable. Recommendations and opinions are not binding.

1.3. *Supplementary law*

These sources of EU law, which are not specifically mentioned in the treaties, comprise ECJ case law, international law and general principles of law.

The decisions of the ECJ are official, legally binding interpretations of EU law. The interpretation of EU law by the ECJ plays a major role in the absence of harmonization in the field of direct taxation. In this regard, the interpretation of the four fundamental freedoms (i.e. the free movement of goods, the free movement of persons (including the free movement of EU citizens, the free movement of workers and the freedom of establishment), the freedom to provide services and the free movement of capital and payments) and the interpretation of State aid rules, both regulated under the TFEU, have resulted in an extensive body of case law aimed at preventing cases of discrimination against cross-border activities of companies and distortions in the internal market (*see* section 4.).

Fundamental rights, as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as those that result from the constitutional traditions common to Member States, are recognized as general principles of EU law.

1.4. *European Union's (shared) competence to legislate on direct tax matters*

According to article 4(2)(a) of the TFEU, the European Union shares competence with the Member States in certain areas such as the internal market – which encompasses taxation. It is a shared competence with pre-emption, which means that if the European Union exercises the shared competence in a certain area, the Member States lose the competence to do so or contradict what was regulated by the European Union in that area. For example, as the European Union has laid down rules against tax avoidance by taxpayers that are subject to corporate tax through the ATAD, the Member States are prevented to legislate against the standards established therein.

In the area of direct taxation, Member States maintain broad sovereignty rights. The recurring legal basis for the Union to legislate on direct tax matters is article 115 of the TFEU, which establishes a special legislative procedure (consultation procedure) for the approximation of legislation that directly affects the establishment or functioning of the internal market. Such procedure requires unanimity among Member States for the adoption of such acts by the Council of the European Union (*see* section 1.4.) and consultation of the European Parliament and the European Economic and Social Committee. In recent years, however, the European Commission is increasingly using alternative legal bases in tax-related proposals. One example is article 122 of the TFEU, which was used for the introduction of a temporary solidarity contribution (windfall profits tax) on the energy sector under the Regulation on an Emergency Intervention to Address High Energy Prices (2022/1854) (*see* section 5.3.).

Even when the European Union has not exercised its competence to legislate, Member States must nevertheless exercise their taxing powers consistently with EU law (*see* section 1.1.) and, in particular, with State aid rules (*see* section 1.6.) and the fundamental freedoms (*see* section 4.).

1.5. *Decision-making with regard to tax policy*

Currently, taxation is one of the few policy areas where decision-making requires unanimity among Member States.

Examples of difficulty in achieving unanimity in tax policies, e.g. the attempt to introduce a common consolidated corporate tax base (CCCTB) or a digital services tax (*see* section 5.1.), have opened the discussion on

alternative decision-making mechanisms in the area of taxation.

The EU treaties provide for possibilities such as:
– the "enhanced cooperation" procedure, foreseen in article 20 of the TEU and articles 326 to 334 of the TFEU, which can be initiated where the Council fails to secure the necessary level of agreement, but a group of nine or more Member States submit a request to the Commission indicating they want to undertake action in the relevant area. If the Commission agrees, it may submit a proposal to the Council, which has the power to authorize Member States to proceed with the enhanced cooperation after obtaining the consent of the European Parliament. The acts adopted within this framework only apply to participating Member States. Enhanced cooperation will generally only come into play when the discussions have halted, but significant agreement exists between a substantial number of Member States on the type of rules that they would like to see introduced. However, this mechanism is seen as a last resort since it still results in fragmentation within the single market;
– the use of general *passerelle* clauses under article 48(7) of the TEU. The clause provided in the first subparagraph allows for the shift from unanimity to qualified majority voting. The second subparagraph allows shifting from a special legislative procedure – such as the consultation procedure under article 115 of the TFEU, typically followed for direct tax proposals – to the ordinary legislative procedure. The activation of any of the general *passerelle* clauses require a unanimous decision by the European Council, after obtaining the consent of the European Parliament. Moreover, any Member State's national parliament may oppose the decision, which in essence constitutes a veto, preventing its adoption; and
– article 116 of the TFEU, which can be used if the differences between Member States legislation cause distortions of competition in the internal market, which cannot be removed in concertation with Member States. This provision allows for a qualified majority voting under the ordinary legislative procedure, but its use is limited by strict conditions. Consequently, this provision is not the adequate legal basis for tax law initiatives addressing general tax policy issues. It could, however, be used for initiatives targeting aggressive tax planning, tax avoidance and tax evasion that are liable to affect the functioning of the single market.

Within the options available under the treaties, the Commission proposed a gradual shift to qualified majority voting (QMV) (COM(2019) 8 final of 15 January 2019). In particular, the Commission suggested that QMV be initially introduced for measures designed to improve cooperation and mutual assistance between Member States in fighting tax fraud and evasion, as well as for administrative initiatives which would benefit EU businesses (e.g. harmonized reporting obligations) and those in which taxation supports other policy goals (e.g. fighting climate change, protecting the environment or improving public health). The Council could subsequently consider extending the QMV (from 2025) to measures designed to modernize already harmonized EU rules (e.g. VAT and excise duty rules), or to major tax projects such as the above-mentioned CCCTB and a new system for the taxation of the digital economy.

On 9 June 2022, the European Parliament adopted a resolution proposing the abolition of unanimity in the Council (2022/2705(RSP)). On 11 July 2023, it proposed the use of the *passerelle* clauses while EU Treaties are not amended (2022/2142(INI)).

According to the programme of the Spanish Presidency of the Council for the second semester of 2023, the Spanish presidency had planned to advance the debate on *passerelle* clauses to extend the use of qualified majority voting on essential EU policies, such as taxation. However, no relevant progress was achieved on this point. In this regard, the European Parliament reiterated its call to amend the EU treaties in a resolution adopted on 22 November 2023, by which it sent a proposal to the Council and the Commission, as well as to the parliaments and governments of the Member States (2022/2051(INL)).

On 20 March 2024, the Commission adopted a communication on pre-enlargement reforms and policy reviews (COM(2024) 146 final), stressing the increased challenges in achieving unanimous decisions in the context of an enlarged European Union. The Commission notes how the autonomous use of *passerelle* clauses has been unsuccessful in tackling current limitations – as its activation itself requires a unanimous decision from the Council of the European Union or the European Council – and proposes its activation in combination with "appropriate and proportionate safeguards" to accommodate "strategic national interests".

1.6. *Harmful tax competition*

1.6.1. State aid

Tax measures introduced by Member States are subject to State aid rules regulated under the TFEU. Any aid granted by a Member State or through State resources that distorts competition and trade within the European Union by favouring certain companies or the production of certain goods is incompatible with the internal market. Member States must notify the Commission of all new aid measures, and wait for the Commission's decision before they put the measure into effect (*see State Aid procedures* below). Aid granted without the Commission's prior authorization constitutes unlawful State aid.

State aid rules only apply to measures that meet all of the following criteria:
– there is a transfer of state resources;
– an economic advantage is conferred on a firm;
– the measure is selective or specific; and
– the measure affects competition and trade.

Transfer of state resources

In order to qualify as State aid, the advantage must be granted:
– by a Member State;
– through Member State resources (including national, regional and local bodies; and public institutions

(such as banks and foundations)) – *see Germany v. Commission*, Case C-248/84, (1987) ECR 4013; or
– by private or public intermediate bodies appointed by a Member State.

Transfer of state resources can take many forms, including fiscal expenditures (e.g. grants and subsidies or state capital investments), a loss of tax revenues (e.g. via accelerated depreciation allowances or reduced tax rates) or otherwise (e.g. loan guarantees; provisions of a legislative, regulatory or administrative nature; or the practices of tax authorities).

Economic advantage conferred on a firm

The (tax) measure should give the recipient an economic advantage that they would not have received in the normal course of business. The advantage may be provided through a reduction in the undertaking's tax burden in several ways, including:
– a reduction in the tax base (e.g. special deductions or accelerated depreciation);
– a partial or total reduction in the amount of tax (e.g. tax exemptions or tax credits); and
– deferment, cancellation or rescheduling of tax debt.

Examples of economic advantages can be:
– an undertaking buys or rents publicly owned land for less than the fair market price;
– an undertaking is granted a loan by a private party (bank) with a state guarantee;
– an undertaking is selling products, services or assets to a Member State for a price exceeding the fair market price;
– an undertaking receives capital injections from a Member State under conditions that are not at arm's length;
– an undertaking receives public services at fees that are not at arm's length; or
– an undertaking receives a tax payment deferral not based on the applicable domestic law.

A measure does not constitute unlawful State aid in cases where a Member State makes funds available to an undertaking under the same terms and conditions that would be provided in the normal course of events by a private investor applying ordinary commercial criteria (the so-called Market Economy Operator Principle) (Case C-278/92, *Spain v. Commission*, [1994] ECR I-4103).

Selectivity or specificity

The aid measure must be specific or selective in that it favours certain undertakings, thereby affecting the balance between certain undertakings and their competitors, or the production of certain goods.

Tax measures that are open to all undertakings in a Member State are in principle "general measures", and do therefore not constitute State aid. To qualify as such, general measures must be effectively open to all undertakings on an equal-access basis, and they may not in effect be reduced in scope through, for example, a discretionary power (that goes beyond the simple management of tax revenue) of the Member State to grant them or via other factors that restrict their practical applicability – *see France v. Commission (Kimberly Clark Sopalin)* (C-241/94).

The criterion of "selectivity" is also met if the relevant measure only applies to part of the Member State's territory, as is the case for regional, local and sectorial measures. In the same way, measures that only favour:
– national products which are exported – *see* Joint Cases 6/69 and 11/69 *Commission v. France* [1969] ECR 561;
– sectors that are subject to international competition;
– an entire sector of the economy;
– undertakings with special (legal) status (e.g. public versus private undertakings); or
– undertakings with a specific function (e.g. holding and/or finance functions),

may constitute State aid.

Nevertheless, Member States may still choose the economic and tax policy they consider most appropriate and spread the tax burden across different industry sectors in a way they feel is most beneficial (intersectoral measures). If they apply without distinction to all undertakings and to the production of all goods and services, the following measures are examples of measures that do not constitute State aid:
– tax measures of a pure technical nature (e.g. tax rates, depreciation rules, deferment schedules, tax exemptions and tax credits, and use of losses regulations); and
– measures pursuing general economic policy objectives through a reduction of the tax burden related to certain production costs (e.g. in respect of R&D, employment, and investments in environment).

Effect on competition and trade

State aid must have a potential effect on the competition and trade between Member States. It is sufficient in this respect if it can be shown that the recipient undertaking carries on an economic activity and that this undertaking operates in a market in which there is trade between Member States.

In the opinion of the Commission, small amounts of aid (*de minimis* aid) do not affect competition and trade.

From 1 January 2024, the ceiling for aid covered by the *de minimis* rule is, in general, EUR 300,000 in a 3-year period – *see* Commission Regulation (EU) 2023/2831 of 13 December 2023.

State aid procedures

After receiving a notification or information concerning alleged unlawful aid, the Commission may start a preliminary investigation to determine if:
– the measure is not aid under EU law (and so it may be implemented);
– the measure constitutes aid that is compatible with EU law; or
– there are serious doubts as to the compatibility of the notified measure with EU State aid rules.

If the Commission has serious doubts (or faces procedural difficulties in obtaining relevant information) about the compatibility of a Member State's aid with EU State aid rules, it must open a formal in-depth investigation under article 108(2) of the TFEU.

The decision to initiate this procedure is then sent to the relevant Member State. This decision contains a summary

of the factual and legal bases for the investigation, and includes a preliminary assessment of the measure's compatibility with EU State aid rules. The Member State concerned has the opportunity to respond to this decision.

At the end of the formal investigation, the Commission adopts a final decision. There is, however, no legal time frame within which the in-depth investigation must be completed. The possible outcomes of the investigation are: (i) a positive decision (there is no aid or the aid is compatible); (ii) a conditional decision (the aid is in principle compatible, but implementation must fulfil conditions stated in the decision); or (iii) a negative decision (aid is incompatible and cannot be implemented).

If a negative decision is related to aid that has already been paid out, the Member State must recover that aid (with interest) from the beneficiary (unless such recovery would be contrary to EU law). In this way, the undue advantage granted to a beneficiary is reversed. The Commission then opens a "recovery" case to enforce the implementation of its decision – *see* Commission Notice on the recovery of unlawful and incompatible State aid C/2019/5396, OJ C 247, 23.7.2019. Beneficiaries of incompatible aid are not protected by the principle of legitimate expectations, insofar as precise, unconditional and consistent assurances have not been provided. State practice, the administration's silence and the Commission's inaction do not constitute such a guarantee (*see*, for example, *Renco Valore and Others v. Commission* – C-806/23 P).

As regards taxation, incompatible State aid may, however, exist in the following situations (Commission Notice C/2016/2946):
- a preferential treatment of undertakings for collective investments;
- rulings misapplying domestic tax law – available only for certain companies – or providing a more favourable tax treatment compared to other taxpayers which are in a similar factual and legal situation (tax rulings);
- tax settlements that disproportionately reduce the tax due without a clear justification;
- depreciation incentives for certain types of assets or undertakings, if they are not based on the guiding principles for the depreciation rules; and
- reduced excise duties.

Some of the more notable procedures and decisions (many of which concern tax rulings) regarding State aid include *UK CFC Group Financing Exemption* (Case SA.44896 – T-363/19 and T-456/19; Joined Cases C-555/22 P, C-556/22 P and C-564/22 P), *Gibraltar corporate income tax regime* (Case SA.34914 (2013/C) – T-37/23), *IKEA* (Case SA.46470), *Nike* (Case SA.51284 – T-648/19), *McDonald's* (Case SA.38945), *Amazon* (Case SA.38944 – T816/17 and T318/18; C-457/21 P), *Starbucks* (Case SA.38374 – T-760/15), *Apple* (Case SA.38373 – C-465/20 P) and *FIAT* (Case SA.38375 – T-755/15 and T-759/15; C-885/19 P). For details on the decisions covering TP issues, *see* section 7.

Compatible State aid

In some circumstances, government interventions are necessary for a well-functioning economy. Accordingly, the TFEU, in article 107(2) and (3), also leaves room for some policy objectives for which State aid can be given that is considered compatible with the internal market. Examples of such aid include financial compensation for the damages caused by natural disasters or exceptional occurrences or to remedy a serious disturbance in the economy of a Member State. In this regard, the Commission adopted the State aid Temporary Framework to enable Member States to grant several types of aid, including (selective) tax advantages to mitigate the adverse effects of the COVID-19 pandemic. For instance, Member States could decide to take measures, such as implementing wage subsidies and suspending payments of corporate and value added taxes or social contributions. The Framework was amended seven times and was in place until, at the latest, 31 December 2023. Similarly, the Commission adopted a State aid Temporary Crisis Framework to enable Member States to support the economy in the context of Russia's invasion of Ukraine until 31 December 2022 (OJ C 131I/1, 24.3.2022), which was extended until 30 June 2024.

In other instances, State aid plans are moving towards a longer-term basis. The European Commission adopted the Temporary Crisis and Transition Framework (OJ C 101/3, 17.03.2023, amended by OJ C C/2023/1188, 21.11.2023 and OJ C C/2024/3113, 2.5.2024) to support measures in key sectors for the transition to a net-zero economy, in line with the Green Deal Industrial Plan. The new Temporary Crisis and Transition Framework, in addition to amending and prolonging in part the State aid Temporary Crisis Framework related to Russia's invasion of Ukraine (until 30 June 2024 in general, but until 31 December 2024 for agriculture, fishery and aquaculture sectors), also introduced other measures to accelerate investments in key sectors for the transition towards a net-zero economy (until 31 December 2025).

Another example of State aid which can be considered compatible with the internal market is the framework for research, development and innovation (RDI Framework), which sets out the rules under which Member States can grant State aid to companies for RDI activities, while ensuring a level playing field (C(2022) 7388 final). Under the RDI Framework, Member States can provide aid for R&D projects, feasibility studies, construction of research facilities and testing and experimentation infrastructures and innovation activities. Member States must notify this type of aid to the Commission.

On 25 June 2025, the European Commission adopted a Communication on a Framework for State Aid measures to support the Clean Industrial Deal – the Clean Industrial Deal State aid framework (CISAF) (C(2025) 7600). CISAF aims to enhance the effectiveness of State aid in supporting the objectives of the Clean Industrial Deal (COM(2025) 85 final), including by ensuring the compatibility of tax incentives adopted by Member States with State aid rules.

The CISAF provides for simplified compatibility conditions for state measures designed to facilitate specific investments and activities. First, the aid must incentivize the development of economic activities or areas that contribute to the objectives defined in the Clean Industrial Deal Communication (positive condition). Under this condition, the aid must have an incentive effect, fostering the beneficiary to undertake an investment or activity

that, in the absence of the aid, would not be undertaken or would be carried out in a restrictive or different manner. Second, such aid should not adversely affect trading conditions to an extent contrary to the common interest (negative condition). Under this condition, the Commission assesses, among others, the necessity, appropriateness, proportionality and potential negative effects of the aid.

In line with the Clean Industrial Deal, the CISAF applies to the following measures:
– aid to accelerate the roll-out of clean energy and support electricity costs;
– aid for the decarbonization of industry,
– aid to ensure sufficient manufacturing capacity in clean technologies, including tax incentives in the form of accelerated depreciation, to support the acquisition of clean technology assets required for the transition to a net-zero economy;
– schemes to support specific Innovation Fund projects; and
– aid to reduce risks of private investments related to Clean Industrial Deal objectives.

Under the CISAF, the Commission expressly refers to the possibility of excluding from State aid measures entities that use tax havens to avoid contributing their fair share of tax to society. Member States are also encouraged to establish conditions for the granting of aid that address broader social and environmental policy objectives.

The CISAF replaces the Temporary Crisis and Transition Framework and applies from 25 June 2025 until 31 December 2030. The CISAF are complementary and additional to the existing State aid rules still in force, including the Guidelines on State aid for Climate, Environmental protection and Energy (CEEAG), the Regional Aid Guidelines and the General Block Exemption Regulation.

Additionally, on 7 July 2025, the Commission issued a Recommendation on tax incentives to support the Clean Industrial Deal and in light of the Clean Industrial Deal State aid Framework (C(2025) 4319 final). The Recommendation establishes common principles to guide Member States when introducing and designing tax incentives to contribute to the objectives of the Clean Industrial Deal. To guarantee the compatibility with the internal market, the Recommendation refers to the conditions laid down in CISAF. Additionally, the advocated tax incentives should be cost-effective, well targeted, simple to use and administer, not applicable to investments in fossil fuel infrastructure and/or machinery consuming fossil fuels, while providing legal certainty and timely support to the companies making the investments. The tax incentives specifically recommended are (i) tax credits to ensure sufficient manufacturing capacity in clean technologies and for industrial decarbonization; (ii) enhanced tax credits for investment projects with a contribution to resilience; (iii) accelerated depreciation for tax purposes to support demand for clean technology equipment, up to full and immediate expensing; and (iv) enhanced accelerated depreciation for acquiring clean technology equipment that contributes to resilience. Member States are invited to inform the European Commission of the implementing measures by 31 December 2025.

On 10 October 2025, the Council adopted conclusions on tax incentives to support the Clean Industrial Deal (13501/25), welcoming the Commission's recommendation. The Council noted that tax incentives should be seen as one possible element to be considered by Member States in an evolving policy mix to support the development of clean energy, industrial decarbonization and clean technology, but stressed that the competence in the field of taxation lies solely with the Member States. The conclusions included considerations in terms of scope (technological), types (expenditure-based considered as more cost-effective than income-based) and simplicity of tax incentives.

Foreign Subsidies Regulation (2022/2560)

With effect from July 2023, the European Commission is also able to investigate subsidies granted by non-EU public authorities to companies operating in the European Union under the Foreign Subsidies Regulation (2022/2560). To support its implementation, the European Commission adopted rules establishing certain practical aspects of the proceedings (Implementing Regulation (EU) 2023/1441) and issued non-binding clarifications on the application of articles 4(1), 6 and 27(1) (SWD(2024) 201 final).

On 6 January 2026, the European Commission published Foreign Subsidies Regulation Guidelines (C/2026/42), to increase predictability and transparency, by clarifying certain concepts and procedures. The clarifications notably address the assessment of distortions, including in the context of public procurement, the balancing test between negative and positive effects, and the use of call-in mechanisms for concentrations and public procurement procedures.

1.6.2. The Code of Conduct Group (Business Taxation)

Purpose and functioning

The Code of Conduct Group (Business Taxation) (CoCG) was established in March 1998 to "assess the tax measures that would fall within the scope of the code [of conduct for business taxation] and to oversee the provision of information on those measures" (*see* Council Conclusions of 9 March 1998, OJ 98/C 99/01). The CoCG is composed of representatives of the EU Member States and the European Commission.

The Code of Conduct for business taxation (the Code) is a soft law instrument designed to curb harmful tax measures. First adopted in January 1998 (OJ C 2, 6.1.1998), the Code was established to assess harmful tax measures. A revised Code was adopted in 2022 (OJ 2022/C 433/01), which applies from January 2024.

Harmful tax measures, which may take the form of laws, regulations or administrative practices, are those that (i) affect, or may affect, in a significant way, the location of business activity in the European Union (general gateway criterion); and (ii) provide for a significantly lower effective level of taxation than those levels that generally apply in the Member State in question (preferential tax measures). Since the 2022 revision, in addition to preferential tax measures, the tax features of general application of a Member State are also under the Group's scrutiny.

The assessment of the harmful nature of the preferential measures should notably take into account whether the advantages are ring-fenced from the domestic market, whether real economic activity and substantial economic presence in the Member State are required, whether they are aligned with internationally accepted principles for profit determination, and whether they lack transparency.

Tax features of general application are considered potentially harmful if they create opportunities for double non-taxation or if they can lead to double or multiple use of tax benefits in relation to the same expenses, amount of income or chain of transactions, leading to low or no tax liability, or to deferred taxation as a feature of a distribution tax system (specific gateway criterion). The harmful nature of these features is attested by the absence of appropriate anti-abuse provisions (or other safeguards) and if it affects in a significant way the location of business activity in the European Union.

Under the Code, Member States also undertook standstill commitments, which entail that no new harmful tax measures are introduced, and rollback commitments, which imply the re-examination of existing laws and established practices in light of the Code principles, and eliminating any harmful measure as soon as possible. Member States inform each other of their own domestic measures that fall within the scope of the Code, which are subject to a review process. If Member States fail to notify potentially harmful measures, another Member State or the Commission may bring them to the attention of the Group. The 2022 revision also clarified the review process in the CoCG.

The CoCG regularly publishes an overview of preferential tax regimes in (i) the European Union; (ii) dependent or associated territories of Member States to which EU treaties do not apply; and (iii) other jurisdictions (published in the Council's document register).

The General Court, in *Nouwen v. Council* (T-255/24), annulled the decision of the Council of the European Union by which the Council had denied the applicant access, in full or in part, to certain documents of the CoCG. The Council of the European Union had based its refusal of access on article 4(1)(a) of Regulation (EC) 1049/2001 regarding public access to the documents of European institutions.

However, the General Court noted that the documents in question were not part of a file relating to ongoing administrative or judicial proceedings (which could justify the denial of access) and, in the absence of specific rules governing access to documents relating to the revision of the Code of Conduct, the Council of the European Union could not rely on Council conclusions on the establishment and work of the CoCG, from which would follow that the entire work of the CoCG should be confidential. The scope of the obligations of an EU institution, such as the Council of the European Union, cannot depend on acts adopted by the institution itself.

Valid grounds for denial of access to certain documents include the protection of public interest, such as protection of international relations, and of the financial, monetary or economic policy of the European Union or that of a Member State.

The list of non-cooperative jurisdictions

In May 2016, as a response to the Commission's Communication on an External Strategy for Effective Taxation (COM/2016/024 final), the Council of the European Union confirmed its commitment to fighting "tax fraud, evasion and avoidance, and (…) money laundering which erode Member State's tax base", by agreeing to establish an EU list of non-cooperative jurisdictions (the list) (9452/16). On 8 November 2016, the ECOFIN set out criteria for screening jurisdictions and the process for the establishment of an EU list of non-cooperative jurisdictions (14166/16).

The screening focused on the following three areas:
- tax transparency: implementation of, or commitment to, exchange of information under various standards, e.g. the Common Reporting Standard, OECD Exchange of Information on Request and the OECD Multilateral Convention on Mutual Administrative Assistance. The inclusion of an additional criterion on beneficial ownership information is currently under discussion;
- fair taxation: the existence of harmful preferential regimes, the facilitation of offshore structures and arrangements attracting profits that do not reflect real economic activity in the jurisdiction and, from 2022, tax features of general application which can be considered as harmful if they lead to double non-taxation or the double/multiple use of tax benefits; and
- implementation of BEPS measures: implementation of, or commitment to, the agreed OECD anti-BEPS minimum standards.

Jurisdictions that, after screening, do not meet all three criteria are placed on the list of EU non-cooperative jurisdictions.

The list, first adopted on 5 December 2017, is generally updated twice a year and currently contains the following jurisdictions (last updated on 10 October 2025): American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

Jurisdictions that undertake commitments may be featured in the state of play document (Annex II, also called the grey list) and are subject to close monitoring.

2. Harmonization of Company Law

Company Law is partially harmonized in the European Union. A large part of the harmonized legislation was codified under Directive 2017/1132 relating to certain aspects of company law. This directive covers issues such as formation, capital and disclosure requirements, and operations (such as mergers and divisions) of companies. Directive 2017/1132 was amended by:
- Directive 2019/1151 as regards the use of digital tools and processes in company law;
- Directive 2019/2121 on cross-border conversions, divisions and mergers; and
- Directive 2019/1023 on restructuring and insolvency, to allow Member States to allow exceptions from certain articles of Directive 2017/1132, when this is necessary to establish preventive restructuring frameworks.

The European Parliament and the Council are currently negotiating a further amendment to the Directive, to expand and upgrade the use of digital tools and processes in company law (COM(2023) 177 final).

EU company law also regulates corporate governance issues, notably under Directive 2007/36, as amended, on the exercise of certain rights of shareholders in listed companies. It abolishes the main obstacles to a cross-border vote in listed companies that have their registered office in a Member State and establishes certain rights for shareholders.

Additionally, there are several types of legal entities that can be formed under European law, coexisting with national ones. Specifically, these are:
– the European company (*Societas Europaea*, SE) (*see* section 2.1.);
– the European economic interest grouping (EEIG) (*see* section 2.2.); and
– the European cooperative society (*Societas cooperativa Europaea*, SCE) (*see* section 2.3.).

Additionally, the European Commission has proposed new rules to establish a new legal form of non-profit associations specifically designed for cross-border purposes, the European cross-border association (ECBA) (COM(2023) 516 final). To become effective, the proposal needs to be adopted by European Parliament and the Council. Once adopted, Member States will have 2 years to transpose the Directive into national law.

2.1. *European company*

Under Council Regulation 2157/2001/EC of 8 October 2001 (SE Regulation), effective from 8 October 2004, it is possible to form an SE. The SE is intended to facilitate cooperation within the European Union and the cross-border reorganization of companies within the EEA across the frontiers of Member States. The SE Regulation applies not only to Member States, but also to EEA states. The name of an SE must be preceded or followed by the abbreviation SE.

Under the SE Regulation, an SE can be established by a merger, by the formation of a holding company or by the creation of a joint subsidiary. The minimum share capital is EUR 120,000. The SE Regulation does not contain provisions concerning groups of companies.

An SE is resident in the Member State of its real seat, which is not necessarily the Member State of its statutory seat.

For tax purposes, SEs are treated the same as public limited liability companies that are formed under the national laws of a Member State. Losses of an SE's foreign permanent establishment can be offset against the SE's profits. If, however, such a permanent establishment becomes profitable later, those profits may be taxed in the Member State of the SE up to the amount of losses previously deducted. The SE Regulation does not contain any provisions on the tax treatment of losses suffered by subsidiaries.

2.2. *European economic interest grouping*

Under Council Regulation (EEC) 2137/85 of 25 July 1985, fully effective from 1 July 1989, it is possible to form a European economic interest grouping (EEIG).

The purpose of an EEIG is to facilitate or develop the cross-border economic activities within the European Union of its members, and to improve or increase the results of these activities.

An EEIG may not be formed for the purpose of making profits for itself. In the event that an EEIG earns profits as an ancillary result of its activities, the taxation system applicable to such profits is comparable to that commonly applied to partnerships; the EEIG itself is not to be taxed, but its profits may be taxed in the hands of its members.

2.3. *European cooperative society*

Under Council Regulation (EC) 1435/2003 of 22 July 2003, effective from 18 August 2006, it is possible to form a European cooperative society (SCE). Like SEs (*see* section 2.1.), SCEs may be established in EU Member States, Iceland, Liechtenstein and Norway (i.e. in the EEA).

An SCE has legal personality (with subscribed capital divided into shares), and must have members from (at least) two different Member States. The amount of capital or number of members is variable.

Each Member State must treat an SCE as a cooperative formed in accordance with the laws of the Member State where its registered office is located.

For tax purposes, an SCE is treated the same as a cooperative society that is formed under the national laws of a Member State.

3. Harmonization of Corporate Taxation

There are six directives that seek to harmonize certain tax provisions in the field of direct taxation among different Member States. These are:
– the Parent-Subsidiary Directive (2011/96) – which aims to, inter alia, eliminate tax obstacles to cross-border distributions of intra-group profits (*see* section 3.1.);
– the Interest and Royalties Directive (2003/49) – which aims to eliminate withholding taxes on cross-border interest and royalty payments between related companies (*see* section 3.2.);
– the Merger Directive (2009/133) – which aims to eliminate tax hurdles to cross-border corporate reorganizations (*see* section 3.3.);
– the Anti-Tax Avoidance Directive (2016/1164) (ATAD) and the Amending Directive to the 2016 Anti-Tax Avoidance Directive (2017/952) (ATAD2) – which contain anti-abuse measures against common forms of aggressive tax planning (*see* section 3.4.);
– the Minimum Taxation Directive (2022/2523) – which introduces a minimum-level taxation for large groups in the European Union (*see* section 3.5.); and
– the Directive on Faster and Safer Relief of Excess Withholding Taxes (2025/50) (FASTER) – which provides for the relief of excess withheld tax and the issuance of a digital tax residence certificate (*see* section 3.6.).