EU Tax Insights from IFA 2025 Lisbon: *The EU Corporate Tax Environment in a Changing World*

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1. Navigating EU Corporate Taxation in an Era of Change

The 77th Annual IFA Congress, held in Lisbon, included the traditional IFA/EU Seminar, at a moment of uncertainty and much-needed reflection for EU tax law.
The seminar, chaired by Ana Paula Dourado (University of Lisbon) and with Dieter Bettens (KU Leuven) serving as secretary, brought together leading tax experts to discuss the most pressing challenges facing the corporate tax framework in the European Union.
The session's focus on competitiveness, simplification, and legal certainty reflects the European Union's need to respond to global tax reforms, internal market pressures and businesses' pleas for clarity and predictability in tax laws. Given the breadth of the seminar, this note concentrates on selected issues.

2. Legal Bases: The Architecture of EU Tax Competence

Advocate General Juliane Kokott (European Court of Justice (ECJ)) discussed the European Union's competences for direct taxation, anchored in article 115 of the Treaty on the Functioning of the European Union (TFEU). This provision empowers the Council, acting unanimously, to issue directives for the approximation of laws directly affecting the internal market. Recent and pending initiatives such as the Anti-Tax Avoidance Directive (ATAD) (2016/1164), the Unshell proposal and the Minimum Taxation Directive (2022/2523) demonstrate the Commission's reliance on this legal basis to justify harmonization in the name of the establishment or functioning of the European internal market.
Yet there is a growing use of alternative legal bases, notably article 122 of the TFEU for the energy sector solidarity contribution (surplus tax) and article 192 of the TFEU for the carbon border adjustment mechanism (CBAM). A point of reflection is whether the use of these alternative legal bases (which avoid the unanimity requirement for adoption) is justified. In fact, there is a pending case before the ECJ (C-512/23) in which Poland explicitly challenges the use of article 192 of the TFEU as a legal basis for CBAM and seeks its annulment, arguing that it is a fiscal measure.
Recently, the Commission used article 311 of the TFEU as the legal basis for the CORE proposal, as a new own-resource. While it also requires a unanimous vote in the Council, followed by ratification by the Member States, it is questionable whether such a levy indeed meets the specific requirements of the invoked legal basis.

3. Pillar Two and the European Union: When Playing by the Rules Means Losing the Game?

Ioanna Mitroyanni (European Commission) focused on the European Union's implementation of the OECD/G20 global minimum tax and the challenges that followed.

The European Union took little more than a year from the OECD/G20 Inclusive Framework's Global Agreement in October 2021 to agree upon the Minimum Taxation Directive in December 2022. This swift adoption as a block was one of the earliest and most significant materializations of Pillar Two, as it had a triple objective: (i) to encourage other countries to follow suit; (ii) to ensure its coherent application across the single market; and (iii) to safeguard its compatibility with the EU fundamental freedoms.

- **The US saga:**

Recent developments, including the US Presidential Memorandum (January 2025) and the G7 Statement on Global Minimum Tax (June 2025), have opened the door to an understanding on the coexistence of Pillar Two and the US minimum tax framework through a side-by-side agreement. Such an agreement would entirely exclude US-parented MNEs from the application of the income inclusion rule (IIR) and the undertaxed profits rule (UTPR). In exchange, the United States would eliminate its retaliatory measures proposed as section 899 of the One Big Beautiful Bill Act.

The concrete elements of the side-by-side agreement should be finalized by the end of 2025 and feature technical details on how the two frameworks will coexist, along with provisions on a permanent safe harbour and possibly on the treatment of substance-based tax credits.

The implementation of this agreement in the European Union raises further legal issues. The avenue of article 32 of the Minimum Taxation Directive, which allows for the application of a safe harbour that reduces top-up tax liability to zero if the conditions of a qualifying agreement on safe harbours are met, has raised many questions. Could the side-by-side agreement be considered as a qualifying agreement on safe harbours? Jasper Korving recalled the legislative intent of article 32, which was to allow for the swift adoption of the Directive and to keep an open norm ready to introduce the safe harbours then under discussion at the Inclusive Framework, rather than excluding entire jurisdictions from its scope.

- **Competitiveness and legal issues:**

Dourado raised the need to reflect upon Pillar Two, as it was designed for a multilateral world and as a tool to tackle tax competition. But now, what is its role? What is the role of the European Union in this context? Was it necessary to have an EU Directive implementing it, or would a Member States' unilateral implementation achieve the same effect? The Directive has exceptions, carve-outs and safe harbours – does it fulfil its role? Will there be other (multiple!) regimes that need to be recognized? What will happen to the Directive? Repealing it does not seem to be an option; will it be suspended instead?

Korving discussed the upcoming scrutiny of the UTPR by the ECJ, triggered by a preliminary ruling request from the Belgian Constitutional Court, which highlighted potential conflicts between the UTPR, as it stands in the Directive, and EU law, particularly the right of protection of property, the principles of equality and non-discrimination, the freedom of establishment and the freedom to provide services, as well as the principles of legal certainty and fiscal territoriality. The ECJ's point of departure is that EU secondary legislation is valid, but it takes two different approaches in its assessment: (i) provisions infringing fundamental rights are invalid; however (ii), in the context of the fundamental freedoms, a manifest error is required, and this concept still needs further determination.

4. Simplification: The Commission's Agenda and Challenges

The Commission has embarked on a large-scale project on simplification, which goes beyond taxation, and is a priority of the current mandate. The European Union's simplification objectives include reducing the administrative burden by 25% (35% for small and medium-sized enterprises), enhancing competitiveness, including through decluttering and simplification, and promoting green and digital transitions.

As key technical issues, Mitroyanni identified :

- **Interaction with Pillar Two:** It is necessary to ensure that preexisting legislation remains consistent in light of Pillar Two, particularly the controlled foreign company (CFC) rules and country-by-country

reporting (however, the latter requires coordination with the OECD, as it is a global standard);

- **The Interest Limitation Rule:** The current provision under the ATAD presents vulnerabilities, especially with respect to businesses experiencing financial difficulties, and imposes considerable constraints on capital-intensive sectors. These factors indicate a need to review the rule's design and application.
- **The Directive on Administrative Cooperation (DAC) 6:** Hallmarks should be revisited, and Unshell may feature therein; and
- **Access to benefits of the Parent-Subsidiary Directive and the Interest and Royalties Directive:** Businesses continue to face administrative burdens and procedural hurdles when trying to access benefits under the Parent-Subsidiary Directive and the Interest and Royalties Directive, which can deter cross-border investment.

By the end of the first semester of 2026, the Commission expects to deliver several outputs, such as revising the DAC and introducing a proposal for a Tax Omnibus Directive, focused mainly on corporate tax rules, with the possibility of including aspects of indirect taxation as well. When hard law is not the best solution, the Commission plans to introduce soft-law initiatives to clarify concepts such as beneficial ownership and promote consistent application across the European Union.
Jakub Jankowski (Polish Ministry of Finance) emphasized the differences between the CFC rules and the Pillar Two IIR and, since they are not functionally equivalent, raised, as a point of reflection, whether the former should indeed be simplified simply because the latter is very complex.
Finally, to promote clarity and consistent interpretation, Krister Andersson (EESC) called for the introduction of an EU-wide advance ruling system, as previously proposed by the EESC. Such a system, based on the Swedish experience, would involve establishing a special European court that would swiftly rule on the interpretation of EU law aspects, notably of the Directives and national transposition, upon request by taxpayers or tax authorities. This process would clarify the Directives' content and prevent varied interpretations among Member States due to differences in terminology or definitions, as it typically takes many years to identify whether Member States' implementation is in line with the Directives' intent.
Andersson also criticised the European Union's use of extraterritorial taxation, calling it "a mistake" that we should learn from. The system used to rely on solid principles, which should be reinstated. Extraterritorial taxation risks overlapping tax impositions from multiple jurisdictions and harms international relations.

5. Harmonization through the ECJ: Has Complexity Taken Over?

The session turned to the ECJ's role in shaping EU tax law, with recent and pending cases illustrating the Court's evolving views on indirect discrimination, cross-border tax relief and anti-abuse provisions.
Case C-18/23, discussed by Jankowski, involved Poland denying a tax exemption to a self-managed foreign investment fund, as only externally managed funds (for investor protection reasons) were eligible for such an exemption. The ECJ found that limiting exemptions only to externally managed funds breaches the free movement of capital, even if domestic law allows only this form. The Court adopted a broad interpretation of indirect discrimination and comparability, suggesting that foreign internally managed funds are in a comparable position to Polish externally managed funds and thus should not be excluded from exemptions. This decision marks a departure from previous case law, as the Court did not accept investor protection as a justification for such discrimination, potentially increasing uncertainty and complexity in investment fund taxation across the European Union.
In respect of the anti-abuse case law, while there appears to be consistency in the elements of abuse, the approach taken in the *Nordcurrent* case (C-228/24) may contribute to legal uncertainty. First, the assessment of abuse is a matter of facts and circumstances, so the outcomes are hard to predict. But in light of this case, this assessment is not limited to the moment of creation of the arrangement. It also encompasses subsequent facts and circumstances if they evolve over time, thereby adding a dynamic aspect to the analysis. Hence, even if a structure was genuine at the moment of its creation, it can be deemed artificial if the facts and circumstances

change.

6. Final Remarks

The EU/IFA Seminar offered the audience clear insights into the most pressing issues in the EU corporate tax framework and a glimpse of the challenges that EU tax experts may expect in the near future.
However, this note would not be complete without highlighting the EU reports of this year's *Cahiers de droit fiscal international*, Subject 1, authored by Adam Zalasiński (European Commission), on Residence for Corporate Income Tax Purposes, and Subject 2, authored by Ivan Lazarov (IBFD), on the Improper Use of Tax Treaties and Source Taxation: Policy, Practice and Beyond.

IBFD references:

- EU tax law developments are reported on the daily IBFD Tax News Service page
- *Constitutional Court Requests ECJ Decide on Compatibility of UTPR with EU Law* (18 July 2025), News IBFD
- PL: ECJ, 27 Feb. 2025, Case C-18/23, *F S.A. v. Dyrektor Krajowej Informacji Skarbowej*, Case Law IBFD
- LT: ECJ, 3 Apr. 2025, Case C-228/24, *Nordcurrent group UAB v. Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos*, Case Law IBFD
- C. Valério, *The CORE of the Matter: A First Look into the Proposed Corporate EU Budget Own Resource*, EU Tax Focus (22 July 2025)
- O. Popa, *Simplification and Decluttering of EU Direct Tax Legislation*, EU Tax Focus (23 June 2025)
- F. Krajcuska, *The substance game: Interpretation of anti-abuse rule contained in Parent-Subsidiary Directive*, EU Tax Focus (14 April 2025)
- D. Schirripa, *The New US Administration Has the European Union Navigating Between Scylla of Pillar 2 and Charybdis of US Retaliation*, EU Tax Focus (19 May 2025)
- C. Valério & D. Arsenovic, *European Union – Direct Taxation*, Global Topics IBFD