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By PwC Deutschland | 01. März 2026

ECJ: Failure by Belgium to transpose Article 8 (7) of the Anti-Tax Avoidance Directive into national law

In a most recent decision, the European Court of Justice held that that Belgium acted in breach of its obligations under the Anti-Tax Avoidance Directive (ATAD) laying down rules against tax avoidance practices that directly affect the functioning of the internal market by failing to adopt the laws, regulations, and administrative provisions necessary to comply with Article 8 (7) of that directive.

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Background

Article 8 ATAD deals with the computation of controlled foreign company (CFC) income, and in para. 7 provides that the Member State of the taxpayer shall allow a deduction of the tax paid by the foreign subsidiary or permanent establishment from the tax liability of the taxpayer in its state of tax residence or location. The deduction shall be calculated in accordance with national law.

The ATAD places Belgium under an obligation to implement so-called controlled foreign corporation - CFC - rules (income attribution). This involves the income earned by the subsidiary abroad being classified as income of the parent company at home (added to its income at home) and subject to the (higher) Belgian tax rate. However, Article 8 (7) ATAD provides a limit to this addback, namely that the subsidiary's (lower) tax paid abroad be deducted from the parent company's (higher) domestic tax liability. In the interest of stronger protection of its tax base, however, Belgium did not want to allow any such deduction relying on the fact that the ATAD provides only forminimum harmonization. The EU Commission considered this to be a failure to fulfil an obligation. On 2 December 2021, the Commission, in a reasoned opinion, called on Belgium to take the measures required to transpose Article 8 (7) within two months. Belgium - for various reasons - maintained its position with regard to the non-transposition of Article 8 (7). As a result, the Commission brought an action before the ECJ in August 2023.

In her **Opinion** of 22 May 2025, **Advocate General Juliane Kokott** concluded that the allegation of failure to fulfil an obligation through non-transposition of Article 8 (7) ATAD when opting for the controlled foreign corporation rules under Article 7 (2)(b) ATAD to be unfounded. However, the ECJ did not share this view (as explained below).

Decision

The ECJ did not accept Belgium's line of reasoning. Since Belgium had not put in place the necessary legal and administrative provisions to comply with Article 8 (7) ATAD regarding the rules to combat tax evasion it had failed to fulfill its obligations under this directive. The ECJ thus confirmed the Commission's position.

Considering all of its observations set forth in its judgment, the ECJ concludes that Belgium was under an obligation to transpose the Directive in its entirety. That obligation had not been fulfilled before the expiry of the two-month period provided for in the Commission's opinion of 2 December 2021. Until then, Belgium had not yet adopted the provisions necessary to comply with Article 8 (7). The ECJ emphasized that the existence of an infringement must be assessed based on the situation in which the Member State concerned found itself at the end of the deadline provided in the opinion, and that subsequent changes cannot therefore be taken into account by the Court.

On the other hand, the wording of Article 8 (7) ATAD is general and does not mention any exception to the obligation provided for therein. Although this provision refers to national

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law for the calculation of the tax deduction, Member States do not have the option of not implementing this provision in their respective legislation. Rather, according to the ECJ, the procedures for calculating this tax deduction must be provided for and determined by national law.

By failure to implement the provision, Belgium ran the risk of double taxation which is contrary to the objective of the Directive to prevent cross-border tax avoidance without hindering fair competition. The ECJ pointed out that the deduction of foreign taxes is essential to achieve the objectives of the ATAD.

Therefore, Member States are not free to apply either Article 7 (2)(b) ATAD or a general anti-abuse rule to income from controlled foreign companies arising from inappropriate arrangements in a form which would prevent the taxpayer from claiming the deduction provided for in Article 8 (7) ATAD.

Source:

ECJ judgment of 25 February 2026 C?524/23 *Commission v Belgium (Directive 2016/1164 - Double imposition)*. -- At the time of publication of this article, the English version was not (yet) available.

Schlagwörter

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