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By PwC Deutschland | 25. Oktober 2026

ECJ: Definition of double taxation under the EU Dispute Resolution Directive

In response to a request for a preliminary ruling from Latvia, the European Court of Justice (ECJ) must examine how the term “double taxation” is to be interpreted within the meaning of the EU Dispute Resolution Directive. The mere fact that the same income could, in the abstract, fall within two (or more) tax jurisdictions is not, in any event, sufficient to establish double taxation within the meaning of the Dispute Resolution Directive, according to the Advocate General in her Opinion.

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Background

The Dispute Resolution Directive (DRR) is an EU Directive that lays down rules for swiftly and effectively resolving disputes related to the interpretation and application of tax treaties for both businesses and citizens. The Directive came into force as of 1 July 2019.It applies to any complaint submitted from 1 July 2019 onwards.

‘Double taxation’ means the imposition by two or more Member States of taxes covered by an agreement or convention referred to in Article 1 in respect of the same taxable income or capital when it gives rise to either: (i) an additional tax charge; (ii) an increase in tax liabilities; or (iii) the cancellation or reduction of losses that could be used to offset taxable profits.

Facts of the case referred

Specifically, the case concerns the taxation of income that a Dutch company derived from the sale of shares in several companies resident in Latvia. Both the Republic of Latvia and the Netherlands invoked their respective right for taxation which led to a disagreement between the respective authorities regarding the interpretation of the double taxation treaty between the two Member States in the context of the EU Dispute Resolution Directive. While the income was effectively taxed in Latvia, it was exempt from tax in the Netherlands.

Opinion

The Advocate General (AG) believes that the concept of “double taxation” contained in Article 2(1)(c) of the relevant Directive (EU) 2017/1852 does not extend to cases in which the same income is subject to the tax systems of two Member States but is exempt from tax in one of those States.

The AG takes the view that the wording of Article 2(1)(c) of the DRD indicates rather clearly that, for a situation of double taxation within the meaning of that provision to occur, not only must the income or capital at issue be subject to tax competences of two (or more) Member States but the exercise of those parallel powers must also lead to actual taxation in the States concerned. In other words, the mere fact that the same income may be subject to two (or more) tax jurisdictions in the abstract is not enough for a situation of double taxation within the meaning of the Dispute Resolution Directive to arise.

This conclusion, as put by the AG, stems from the use of the word ‘imposition’ contained in Article 2(1)(c) of the DR Directive and from the wording (i) ‘an additional tax charge; (ii) an increase in tax liabilities; or (iii) the cancellation or reduction of losses that could be used to offset taxable profits’ used in that provision.

First, the word ‘imposition’ implies the idea that taxes (on the given income or capital) are levied as opposed to being merely hypothetically due. Second, the wording ‘an additional tax charge’, ‘an increase in tax liabilities’ or ‘the cancellation or reduction of losses that could be used to offset taxable profits’ does not describe a situation of the same income or capital being subject to competing tax competences but rather identifies the specific economic consequences (for the taxpayer) that such an overlap must trigger. Each set of those elements confirms the GA that the term ‘double taxation’ is to be understood in the

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sense of the actual levying of taxes.

ECJ case reference **C?497/25** *Maxima LT* - Opinion of 22 October 2026.

Schlagwörter

dispute resolution, double tax treaty, mutual assistance