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By PwC Deutschland | 21 November 2025

tax & legal newsflash - ECJ referral on the “switch-over” clause in Section 20(2) Foreign Tax Act

In its decision of 3 June 2025, (IX R 39/21 - published on 20 No-vember 2025), the Supreme Tax Court referred the "switch-over" in Section 20 (2) Foreign Tax Act (“FTA”) to the ECJ: de-nial of DTA exemption for passive and low-taxed foreign per-manent establishments and partnerships. The core question of the referral is whether it should be possible for the taxpayer – in the context of CFC taxation under Section 7 FTA et seq. – to provide "counter-evidence" in accordance with Section 8 (2) FTA.

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