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# 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 November 2025), the Supreme Tax Court referred the "switch-over" in Section 20 (2) Foreign Tax Act (“FTA”) to the ECJ: denial of DTA exemption for passive and low-taxed foreign permanent 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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### **Keywords**

EU Law