



SCHOOL OF
ECONOMICS AND
MANAGEMENT

The impact of the mandatory Foreign Tax Credit for the Dutch Model B CFC - application:

A legal analysis of C-524/23, *Commission v
Belgium*, and its consequences for Article 8b
CITA 1969 under ATAD

Xander Weemering

DEPARTMENT OF BUSINESS LAW

Master's Thesis in European and International Taxation

15 ECTS

HARN60

26 May 2026

Abstract

This thesis examines the extent to which the judgment of the Court of Justice of the European Union in *Commission v Belgium* (C-524/23), regarding Belgium's failure to comply with the Directive by failing to correctly transpose Article 8(7) of the Anti-Tax Avoidance Directive (ATAD) into its domestic legal framework, impacts the Dutch transfer pricing rules under Article 8b of the Corporate Income Tax Act 1969 (CITA) and whether it necessitates a Foreign Tax Credit for upward transfer pricing adjustments falling within the scope of ATAD's CFC provisions.

Through doctrinal legal research that combines legal-dogmatic, descriptive, evaluative and comparative analysis, the thesis first establishes the legal framework of ATAD's CFC regime under Articles 7 and 8, before analysing the Court's findings in *Commission v Belgium* and the mandatory nature of Article 8(7) ATAD for Model B implementations. Against this background, the Dutch approach for the CFC framework is assessed, which consists of a combination of a partial transposition of Model A and an implicit implementation of Model B. A comparative analysis between the Dutch and Belgian implementations, measured against the ATAD Directive as a neutral benchmark, establishes that both jurisdictions belong to the same 'ideal type' of jurisdictions implementing Model B. As both approaches attribute profits of the CFC on the basis of underlying Transfer Pricing concepts and principles while omitting the inclusion of a mandatory Foreign Tax Credit mechanism, thereby exposing taxpayers under the CFC Model B application with potential economic double taxation

The thesis ultimately concludes that the Court's findings appear to be applicable to the Dutch CFC framework by analogy, which is further strengthened by fact that the Netherlands intervened in *Commission v Belgium* and had its legal theory justifying for the omission of Article 8(7) ATAD in Model B applications rejected within the same judgement. The impact on the Dutch transfer pricing rules is however limited to only (upwards) transfer pricing corrections for entities and permanent establishments that satisfy the CFC conditions under ATAD. What the broader implications are for non-CFC situations under Article 8b CITA, including the potential horizontal discrimination, remain for now an unresolved question that merits further research.

Keywords: Anti-Tax Avoidance Directive, Controlled Foreign Company, Model B, Foreign Tax Credit, Transfer Pricing, Arm's Length Principle, Article 8b CITA, Comparative Tax Law

Table of contents

Abbreviations	7
1 Introduction.....	8
1.1 <i>Background</i>	8
1.2 <i>Purpose and research questions</i>	10
1.3 <i>Delimitations</i>	10
1.4 <i>Method and materials</i>	11
1.5 <i>Outline</i>	12
2. The EU CFC Regime under the Anti-Tax Avoidance Directive	13
2.1 <i>ATAD: a response to the BEPS project</i>	13
2.1.1 <i>Background, main causes and the evolution into the CFC Regime</i>	13
2.1.2 <i>Competence, legal form and harmonization</i>	14
2.1.3 <i>Implementation and the minimum protection standard</i>	15
2.2 <i>The Controlled Foreign Company regime</i>	16
2.2.1 <i>The CFC, art. 7(1) ATAD</i>	16
2.2.2 <i>Model A, Article 7(2)(a) ATAD</i>	17
2.2.3 <i>Model B, Article 7(2)(b) ATAD</i>	18
2.2.4 <i>The Foreign Tax Credit Mechanism, Article 8(7) ATAD</i>	19
2.3 <i>Preliminary conclusions</i>	21
3. A legal analysis of Case C-524/23: <i>Commission v Belgium</i>.....	22
3.1 <i>Belgian implementation of Model B</i>	22
3.1.1 <i>Transposition of Model B into Belgian Law</i>	22
3.1.2 <i>The “Deterrence Theory” and infringement procedure</i>	23
3.2 <i>Findings of the Court</i>	24
3.2.1 <i>Rejection of the deterrence theory</i>	24
3.2.2 <i>The mandatory and exhaustive nature of Article 8(7) ATAD</i>	24
3.3 <i>Preliminary conclusion</i>	25
4 The Dutch implementation of the CFC Regime.....	27
4.1 <i>Introduction to the dual layered approach</i>	27
4.1.1 <i>Article 13ab CITA 1969 as a partial transposition of Model A</i>	27
4.1.2 <i>Article 8b CITA as the representation of Model B</i>	28
4.2 <i>The absence of the Foreign Tax Credit in the Dutch model B implementation</i>	30
4.2.1 <i>The deterrence rationale and existing relief mechanisms</i>	30
4.2.2 <i>Implications of Commission v Belgium for the Netherlands</i>	31
4.2.3 <i>The Leur-Bloem Doctrine and non-CFC situations</i>	31
4.3 <i>Preliminary conclusion</i>	33
5 Comparative analysis: Belgium and the Netherlands.....	34
5.1 <i>The benchmark: ATAD as Tertium Comparationis</i>	34
5.2 <i>Divergent statutory approaches, same functional purpose</i>	34
5.3 <i>Functional comparison, two non-compliant solutions to the same problem</i>	35
5.3.1 <i>The Arm’s Length Principle and Significant people functions</i>	35
5.3.2 <i>The justification and its rejections</i>	35

<i>5.4 Typological classification, the same 'ideal type'</i>	<i>36</i>
<i>5.5 Preliminary conclusion.....</i>	<i>37</i>
6 Conclusion and Discussion.....	38
References.....	40

Abbreviations

ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	Controlled Foreign Company
CITA	Dutch Corporate Income Tax Act 1969
CJEU	Court of Justice of the European Union
EU	European Union
FTC	Foreign Tax Credit
GAAR	General Anti-Abuse Rule
MAP	Mutual Agreement Procedure
MNE	Multinational Enterprise
MTC	Model Tax Convention
OECD	Organization for Economic Co-operation and Development
PE	Permanent Establishment
SPF	Significant People Functions
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

1 Introduction

1.1 Background

The Court's recent Judgment in the Case *Commission v Belgium* regarding Belgium's failure to correctly transpose the Foreign Tax Credit mechanism of Article 8(7) Anti-Tax Avoidance Directive ('ATAD') in its Controlled Foreign Company ('CFC') framework could have significant implications for the compatibility of the Dutch CFC re-attribution framework with ATAD's transposition obligations, potentially having far-reaching consequences for the Dutch Transfer Pricing rules.¹

The Background of ATAD and its CFC regime

The Anti-Tax Avoidance Directive emerged as a coordinated European effort as a response to growing international concerns regarding aggressive tax planning and profit shifting structures by Multinational Enterprises ('MNEs') that was said to question morality and shifted the tax burden effectively on smaller businesses and ordinary taxpayers.² Following the political pressure as a result of public hearings in the United Kingdom and the United States of America, the Organisation for Economic Co-operation and Development ('OECD') with the support of G20 launched its OECD Base Erosion and Profit Shifting ('BEPS') Action plan in 2013 to fill domestic gaps and frictions while respecting tax sovereignty.³ The European Union ('EU'), traditionally reluctant to harmonize direct taxation due to it being considered at the core of the individual Member State's sovereignty, instead decided to create a harmonized framework of anti-abuse measures to prevent further fragmentation and distortions within the internal market and counter balance it if this was instead left alone to each Member State themselves.⁴ Consequently, this led to the adoption of the Council Directive (EU) 2016/1164 in 2016 on the basis of Article 115 TFEU, introducing legally binding measures against corporate tax avoidance practices that directly affected the functioning of the internal market, including the CFC rules based on BEPS Action Plan 3, being one of them.⁵ The CFC regime ultimately aims to prevent profit shifting to low- or no-tax jurisdictions through the re-attribution of certain income to the controlling parent entity. For the reattribution, Member States can decide between a categorical approach (Model A) or a transactional approach (Model B), provided that they simultaneously allow for a Foreign Tax Credit-mechanism under Article 8(7) ATAD as a relief for economic double taxation in situations where the income is allocated to the controlling parent entity's tax base.⁶

Unlike the non-binding recommendations of the OECD, ATAD like other EU directives, instead obliges Member States to transpose the anti-tax avoidance measures into national provisions based on Article 288 TFEU unless the existing

¹ M. Velthoven, S.R. Pancham and R.K. Bane, *De zaak Commissie tegen België: een bommetje onder de Nederlandse transferpricingregels?* (2026), *NLF Opinie*, Vol. 9.

² Allison Christians, *Avoidance, 'Evasion, and Taxpayer Morality'*, (2014), Vol. 44, *Wash. U. J. L. & Pol'y* 039 (2014), p.46. See also, Julie Martin, *UK Lawmakers Lambaste Big 4 Accounting Firms*, 69 *TAX NOTES INT'L* 518 (2013). See also, Frank Vanistendeeal, 'From Abuse to Base Erosion, How Did it Come To This, in Werner Haslehner, Katerina Pantazatou, George Kofler and Alexander Rust (eds), *A Guide To The Anti-Tax Avoidance Directive* (Edward Elgar Publishing 2020), p. 3.

³ OECD, *Action Plan on Base Erosion and Profit Shifting* (2013).

⁴ Proposal Council Directive (EU) 2016/1164, point 5, Detailed explanation of the specific provisions of the Proposal.

⁵ *Ibid*. See also OECD, *Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report*, paras. 74-86.

⁶ See Art. 7 and 8(7) ATAD.

national provisions already satisfied the minimum level of protection as prescribed under Article 3 of the Directive.⁷ Member States were therefore not required to necessarily adopt new legislative measures if the existing provisions could be amended or were already *sufficiently clear, precise and capable of achieving the same objective* as intended by the Directive through directive-compliant interpretation.⁸ Ultimately, Article 3 ATAD established a *de minimis* level of protection that allowed Member States to introduce a stricter set of rules as long as these were in line with the objective of ATAD.⁹

Belgium however, did effectively not fully transpose the CFC Regime with regards to the mandatory Foreign Tax Credit mechanism of Article 8(7) ATAD into its domestic legal framework¹⁰, arguing the possibility of economic double taxation acted as a better deterrent for taxpayers to engage in tax avoidance practices than the ATAD itself provided.¹¹ Following a letter of formal notice and a reasoned opinion, the Court decided to bring the matter before the Court, as Belgium failed to take satisfactory action to eventually comply with the Directive's obligations and objectives.¹²

The Court confirmed in its judgement *Commission v Belgium* that Article 8(7) ATAD is of mandatory nature for both Model A and Model B and contrary to what Belgium argued, the deterrence rationale is not a valid justification to exclude the implementation of the mechanism from the CFC regime on discretionary grounds to safeguard its corporate tax base to a higher level under Article 3 ATAD. Additionally, since the CFC rules of Model B are acting as a *lex specialis*, Belgium could not rely on the general anti-abuse rule such as indirectly laid down in the arm's length principle applied for the application of Model B itself.

Similarly to Belgium, which opted for an explicit transposition of Model B, the Netherlands instead chose for an implicit implementation of Model B by having Article 8b Dutch Corporate Income Tax Act 1969 ('CITA') representing it. As a result, both implementations are ultimately based on Transfer Pricing principles such as the Arm's Length Approach and Significant People Functions.¹³ Article 8b CITA is used not just for CFC re-attribution in the Dutch legal framework, but represents the codification of the Arm's length Principle for all transfer pricing related upward and downward corrections under the Dutch law. Considering the Court's findings, the case judgments could have implications beyond Belgium for the Dutch Transfer Pricing rules.¹⁴

⁷ See Art. 3 ATAD. See also, Werner Haslehner, 'The General Scope of the ATAD and its position in the EU legal order', in *A Guide To The Anti Tax Avoidance Directive* (2020), Elgar Tax Law and Practice, p. 52

⁸ As established in the landmark case of C-41/74, *Van Duyn v Home Office* (1974), ECLI:EU:C:1974:133

⁹ Werner Haslehner, 'The General Scope of the ATAD and its position in the EU legal order', in *A Guide To The Anti Tax Avoidance Directive* (2020), Elgar Tax Law and Practice, p. 36.

¹⁰ Action brought on 11 August 2023 - *European Commission v Kingdom of Belgium* (C-524/23) [2023] OJ C 2023/207.

¹¹ AG Kokott, Opinion on the Case C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, Para. 83 and 94.

¹² *Ibid* 9

¹³ C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, para 115. See also, NL Parliamentary Documents II, 2001/02, 28 034.

¹⁴ M. Velthoven, S.R. Pancham and R.K. Bane, 'De zaak Commissie tegen België: een bommetje onder de Nederlandse transferpricingregels?' (2026), *NLF Opinie*, Vol. 9. See also M. Vergouwen, *Het CFC-arrest en door Nederland toegepaste (eenzijdige) opwaartse verrekenprijs correcties. In hoeverre kunnen belastingplichtigen op basis van het Unierecht een beroep doen op de verrekeningsmogelijkheid van artikel 8, lid 7 ATAD?* (2026), *Nederlands Fiscaal Weekblad*, Vol. 15.

1.2 Purpose and research questions

Against this background, this thesis aims to assess both the legal and practical implications of the Court's judgment Case C-524/23, *Commission v Belgium*, regarding the Dutch transposition of the CFC regime under ATAD, with a specific focus on the implementation of Model B and its interaction with the Dutch Transfer Pricing rules. Although the Netherlands like Belgium did not explicitly incorporate the Foreign Tax Credit mechanism of Article 8(7) ATAD into Article 8b CITA, the Dutch situation is not entirely identical to Belgium's: While Belgium explicitly transposed Model B, the Netherlands adopted a dual-layered approach by implementing an additional partial transposition of Model A through Article 13ab CITA. Whether this structural difference is sufficient enough for the infringement identified by the Court in *Commission v Belgium* not to be equally applicable to the Netherlands, represents more than an academic question. Dutch taxpayers relying on the arm's length principle in both transfer pricing and CFC situations, may be subject to economic double taxation without being provided a domestic relief - potentially exposing the Netherlands to a similar infringement procedure.¹⁵

The central research question of this thesis is therefore:

“To what extent does the CJEU's Judgment in Case C-524/23, Commission v Belgium, impact the Dutch arm's length principle in Article 8b CITA 1969 and necessitate a foreign tax credit for Transfer Pricing Adjustments under ATAD?”

In order to evaluate the implications of the central research question as a whole, the thesis will provide an understanding and thus descriptive overview of ATAD's CFC framework, specifically highlighting Article 7 and 8(7) ATAD. Additionally, a legal analysis will be done regarding the Case *Commission v Belgium* on the Court's findings, which will help understand why Belgium received an infringement procedure regarding the non-transposition of the Foreign Tax Credit mechanism of Article 8(7) ATAD. Thereafter, a detailed analysis of the Dutch implementation of the CFC regime will ultimately contribute to whether or not the Belgian implementation of Model B is comparable enough through a comparative analysis, thus allowing for an application of the Court's judgement through analogy.

1.3 Delimitations

This research is focused on the extent of the Court's findings in Case *Commission v Belgium*, regarding the Dutch implementation of the CFC regime under Articles 7 and 8 of the latest English consolidated version of the Anti-Tax Avoidance Directive 1, specifically focussing on the implementation of Model B and its interaction with the Dutch Transfer Pricing rules as set out in Article 8b CITA. As the ATAD is a complex directive and consists out of four specific and one general rule, this thesis will only focus its scope on the rules regarding the Controlled Foreign Company Regime, leaving out the Interest Limitation rule, rules on Exit

¹⁵ M. Velthoven, S.R. Pancham and R.K. Bane, De zaak Commissie tegen België: een bommetje onder de Nederlandse transferpricingregels? (2026), *NLF Opinie*, Vol. 9.

Taxation, a General Anti-Abuse Rule, and rules on Hybrid Mismatches.¹⁶ Reference to these other elements will only be made in so far they contribute to the understanding of the Directive's broader purpose or transposition obligations. Within the CFC framework, the analysis of this thesis will focus primarily on the transactional approach (Model B) for CFC profit attribution under Article 7(2)(b) ATAD in conjunction with the Foreign Tax Credit mechanism of Article 8(7) ATAD, given their functional link with both BEPS Action Plan 3, the arm's length principle of Article 9 Model Tax Convention ('MTC') and its Dutch codified version of Article 8b CITA. Model A under Article 7(2)(a) ATAD will be provided with a descriptive overview to the extent necessary to understand the structural differences between the two Models within the CFC Regime and the Directive's architecture. Geographically, this thesis limits its comparison between the domestic legal framework of Belgium and the Netherlands, whereby due to my limited familiarity with the Belgium Tax Law, the analysis is confined to the provisions as referenced and applicable at the time of the Judgement in *Commission v Belgium*. The implementations of the CFC Framework and Transfer Pricing rules of other Member States therefore fall outside the scope of this research. The analysis mainly covers ATAD as adopted in 2016 up to and including the Court's recent judgment in *Commission v Belgium* (C-524/23). Because of this temporal scope, both ATAD 2 and newer Directive's on direct taxation shall be excluded.¹⁷ Regarding the broad topic of Transfer Pricing, the concepts as discussed in this thesis, such as the Arm's Length Principle and the ~~concept of~~ Significant People Functions (SPFs), shall be limited solely to the extent necessary for understanding the framework and structure behind CFCs. Topics such as Transfer Pricing methods, dispute resolution mechanisms and other aspects of Functional and Factual analysis fall outside of the confined elements necessary for the analysis and shall therefore be excluded from this research.

1.4 Method and materials

The research of this thesis will consist of doctrinal legal research through legal dogmatic, evaluative and comparative analysis. Primary sources include CJEU Case Law - most notable being *Commission v Belgium* (C-524/23)¹⁸ -, EU Primary law (TEU, TFEU),¹⁹ relevant EU secondary law such as ATAD and 'preparatory works',²⁰ OECD publications including the Model Tax Convention, Transfer Pricing Guidelines and BEPS Action Plan 3.²¹ Additionally, relevant domestic legislation from both the Netherlands and Belgium and their parliamentary documents will be used. All these mentioned above shall be supplemented by

¹⁶ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices (2016) OJ L193/1, as consolidated on 1 January 2022.

¹⁷ ATAD 2 - Council Directive (EU) 2017/952 - covers comprehensive Hybrid Mismatches rules also covering third-country situations, which were not yet covered in ATAD 1 under Article 9 ATAD, and were effective as of 1 January 2022. The amendment will not be of influence to the research findings as it does not go into hybrid mismatch rules. Additionally, the influence of the Global Minimum Tax Directive - Council Directive (EU) 2022/2523 - shall be left out of this research.

¹⁸ Case C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111.

¹⁹ Consolidated Version of the Treaty on the Functioning of the European Union (2008) OJ C115/47. See also, Consolidated Version of the treaty on European Union (2012) OJ C 326/13.

²⁰ Although Preparatory Works do not constitute binding EU law in itself, they may however serve as a supplementary interpretive aid in determining the scope and objective of EU legislation in general, see further: S. MIETTINEN, & M. KETTUNEN, 'Travaux to the EU Treaties: Preparatory Work as a Source of EU Law' (2015), Vol. 17, *Cambridge Yearbook of European Legal Studies*, 145-167. See also, Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices (2016) OJ L193/1, as consolidated on 1 January 2022.

²¹ OECD, Model Tax Convention on Income and on Capital 2017 (Full Version) (OECD Publishing 2019). See also, OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2022), OECD Publishing. See also OECD, Action Plan on Base Erosion and Profit Shifting (2013), OECD Publishing.

academic literature, journal articles and opinions of the Advocate General.²² Finally, in Chapter 5, the comparative analysis between the Belgian and Dutch implementation of Model B shall be assessed against the standard established by the Court.

1.5 Outline

This thesis consists of six main Chapters. Chapter 2 provides a general overview of the genesis, objectives and legal basis of ATAD with a particular focus on the CFC regime under Article 7 ATAD. The difference between Model A and Model B, the Mandatory Foreign Tax Credit mechanism of Article 8(7) ATAD shall be part of this. Chapter 3 analyses the Court's Judgement in *Commission v Belgium*, providing an examination on the background of the Belgian implementation of the CFC framework, its deterrence theory for omission of the FTC and the rejection of this by the Court, together with the confirmation on the mandatory nature of Article 8(7) ATAD. Against this background, the Dutch framework must be assessed in the following Chapter. Chapter 4 explains the Dutch dual-layered approach of the implementation of the CFC regime, within which article 13ab CITA serves as a partial transposition of Model A and Article 8b CITA represents Model B, explicitly excluding the Foreign Tax Credit mechanism. Hereafter, Chapter 5 conducts a comparative analysis between both the Belgian and Dutch implementation of the CFC Regime, addressing both their comparability and differences, the possibility of application through analogy of the Court's judgement and horizontal discrimination. Ultimately, Chapter 6 provides the conclusion by answering the central research question.

²² AG Kokott, Opinion on the Case C-524/23 *Commission v. Belgium* (2025), ECLI:EU:C:2026:111.

2. The EU CFC Regime under the Anti-Tax Avoidance Directive

This chapter addresses the legal and general nature of ATAD, necessary for the analysis that follows. It begins with a brief examination of ATAD's genesis, its legal basis under Article 115 TFEU and objectives, including the minimum protection standard of Article 3 ATAD and the transposition obligations it ultimately imposed on Member States. Although the Anti-Tax Avoidance Directive consists of five rules in total, this Chapter - and research - focuses exclusively on the CFC regime as codified in Articles 7 and 8 ATAD. Particular attention is devoted to Model A, Model B, its distinction for re-attribution of CFC income, and specifically to the FTC mechanism of Article 8(7) ATAD. The latter forming the central point of the judgment analysed in Chapter 3.

2.1 ATAD: a response to the BEPS project

2.1.1 Background, main causes and the evolution into the CFC Regime

The political momentum behind the ATAD can be traced back to 2012, when multinational enterprises such as Amazon, Google, and Starbucks were requested before the Public Accounts Committee in the United Kingdom. It was revealed that HM Revenue & Customs had collected significantly less corporate tax from these multinationals than expected, while simultaneously imposing stricter measures on small and medium-sized businesses.²³ These multinationals, that initially played 'gatekeeper' by lending assistance to draft anti-avoidance legislation, also systemically abused their position by finding ways around these provisions.²⁴ Through the use of Transfer Pricing practices, royalty payment-structures for intellectual property and intra-group financing structures, these enterprises managed to reduce their UK corporate tax base or shift profits to low- or no tax jurisdictions.²⁵ Beyond raising questions of morality, tax avoidance by multinationals created fundamental concerns regarding fairness and equality, as the tax burden is effectively shifted onto smaller businesses and ordinary taxpayers who lack the means to engage in such complex and costly tax planning strategies, thereby creating competitive advantage to conglomerates.²⁶

Shortly after, in May 2013, the United States Permanent Subcommittee on Investigations held hearings focusing on offshore profit-shifting by Apple, highlighting how MNEs exploited gaps between domestic and international legislation to shift substantial amounts of profits to low- tax jurisdictions and 'tax paradises'.²⁷ These events ultimately caused the OECD, together with the political support of the G20, to draft its 15-Point BEPS Action Plan in 2013, aimed at addressing Base Erosion and Profit Shifting while respecting the tax sovereignty of individual states.²⁸

²³ House of Commons Committee of Public Accountants, *Tax Avoidance: tackling marketed avoidance schemes* (HC 2012-13,716) para 7.

²⁴ Julie Martin, UK Lawmakers Lambaste Big 4 Accounting Firms, 69 TAX NOTES INT'L 518 (2013)

²⁵ House of Commons Committee of Public Accountants, *Tax avoidance: tackling marketed avoidance schemes* (HC 2012-13, 716), para 6.

²⁶ Allison Christians, *Avoidance, Evasion, and Taxpayer Morality*, 44 Wash. U. J. L. & Pol'y 039 (2014), 1, 46.

²⁷ *Offshore Profit Shifting and the U.S. Tax Code - Part 2* (Apple Inc.), p.23, III Apple Case Study, 2. Avoiding taxes by not declaring a tax residency, second paragraph.

²⁸ OECD, *Action Plan on Base Erosion and Profit Shifting* (2013), See also: R. Poza, *The BEPS Project in the European Union: Working up the ATAP Package in, Combating Tax Avoidance in the EU* (2019), Wolter Kluwers, p. 88.

In parallel, the European Commission chose not to leave the design of international tax rules affecting the internal market solely to individual Member States or the OECD.²⁹ Building upon the BEPS recommendations and acknowledging that not all Member States had, at that time, CFC rules in place, the Commission published its Anti-Tax Avoidance Plan in 2016.³⁰ This ultimately led to the creation and adoption of Council Directive (EU) 2016/1164 - commonly referred to as ATAD - on 12 July 2016,³¹ laying down legally binding rules against corporate tax avoidance practices that directly affected the functioning of the internal market. As Haslehner describes, ATAD constitutes “the most significant EU legislative measure for the harmonisation of Member States’ corporate tax law in almost 30 years.”³² The Directive consists of five anti-avoidance measures: the interest limitation rule, exit taxation, the general anti abuse rule, the CFC regime and hybrid mismatch rules.³³ The CFC regime is laid down under Articles 7 and 8 ATAD and finds its heritage in BEPS Action plan 3 and specifically targets profit-shifting of passive income or income arising from non-genuine arrangements to low- or no tax controlled subsidiaries.

2.1.2 Competence, legal form and harmonization

The European Union has traditionally been reluctant to harmonize laws in the field of direct taxation, as this is considered central to individual Member State sovereignty and thus remains politically sensitive.³⁴ Prior to ATAD, only five directives on direct taxation had been adopted: the Parent-Subsidiary Directive, the Merger Directive, the Interest and Royalties Directive, the Directive on Administrative Cooperation, and the EU Recovery Directive - a list since expanded by the Global Minimum Tax Directive.³⁵

The legal basis for ATAD is found in Article 115 TFEU, which permits the adoption of directives for harmonization in taxation matters affecting the functioning of the internal market, including measures that touch on direct taxation where the EU holds no exclusive competence.³⁶ The adoption equally complies

²⁹ Proposal Council Directive (EU) 2016/1164, point 5, Detailed explanation of the specific provisions of the Proposal.

³⁰ European Commission, Communication from the Commission to the European Parliament and the Council: Action Plan to strengthen the fight against tax fraud and tax evasion, COM(2012) 722 final; European Commission, Communication from the Commission to the European Parliament and the Council: Anti-Tax Avoidance Package: Next steps towards delivering effective taxation and greater tax transparency in the EU, SWD(2016) 6 final, 5.

³¹ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (2016), OJ L 193, 19.7.2016 (ATAD I)

³² Werner Haslehner, ‘The general scope of ATAD and its position in the EU legal order’ in Werner Haslehner, Katerina Pantazatou, Georg Kofler and Alexander Rust (eds), *A Guide To The Anti-Tax Avoidance Directive*, (Elgar Tax Law and Practice 2020), p. 32; Werner Haslehner is a professor in European and International Tax law at the Faculty of Law, Economics and Finance of the University of Luxembourg, where he holds the ATOZ Chair in European and International Taxation.

³³ Council Directive (EU) 2016/1164, OJ 2016 L 193/1, (ATAD I).

³⁴ See de Graad, A. & Visser, Klaas-Jan. 2016), ‘ATAD Directive: Some observations Regarding Formal Aspects’ (EC Tax Review 2016) Vol. 25, issue 4, p. 199 and 204. See also, Werner Haslehner, ‘EU-US Relations in the Field of Direct Taxes from the EU Perspective: A BEPS-induced transformation?, in Pasquale, Pistone and Dennis Weber (eds) *Implementation of Anti-BEPS Rules in the EU: A Comprehensive Study (IBFD Publishing 2018)* 37, 46-48, See also: *Cecile Brokenlind, ‘The Anti-Tax Avoidance Directive Under Scrutiny: A Matter of Competence?’*, in Jerome Monsengo and Jan Bjuvberg eds, *International Taxation in a Changing Landschap - Liber Amicorum in Honour of Bertil Wiman* (Wolter Kluwers 2019) 45-46.

³⁵ An overview of different Council Directives regarding Business Taxation can be found on: <https://taxation-customs.ec.europa.eu/taxation/business-taxation_en#directives>, accessed 25 May 2026.

³⁶ Graaf and Visser, ‘ATA Directive: Some Observations regarding formal Aspects’ (2016), Vol. 25, Issue 4, *EC Tax Review*, 199, 204. See also, Andrés Sánchez Lopez, Paula Benétez Regil & Diego Arribas Plaza, The role of negative Harmonization in the European Tax Arena: Special Reference to the Cross Border Loss Relief Regime, in José Manuel Almudi Cid, Jorge, A.Ferreras Gutierrez, Pablo.A. Hernandez Gonzalez-Barreda (eds), *Combating*

with the principles of subsidiarity and proportionality under Article 5 TEU. As the Commission emphasised in its proposal, a unilateral and divergent implementation of BEPS recommendations by each individual Member States risked fragmenting the internal market through national policy clashes, distortions, tax obstacles and new mismatches that could be exploited by MNEs.³⁷ A coordinated EU-level approach was therefore considered necessary to ensure consistency across the internal market.

Unlike earlier directives on direct taxation, which primarily aimed at eliminating obstacles within the internal market that potentially violated the EU fundamental freedoms,³⁸ ATAD instead establishes a *de minimis* requirement of anti-abuse measures.³⁹ Where the OECD BEPS recommendations are non-binding in nature, ATAD instead imposes legally binding obligations on Member States to transpose and apply anti-avoidance rules in their domestic legal frameworks, thereby establishing a minimum level of protection against corporate tax avoidance while preserving the collective competitiveness of the internal market and the fundamental freedoms.⁴⁰

2.1.3 Implementation and the minimum protection standard

Similar to other directives, ATAD requires its provisions to be transposed into national law pursuant to Article 288 TFEU, with a transposition deadline of 31 December 2018.⁴¹ Where existing national provisions already satisfied the minimum standard prescribed by Article 3 ATAD, Member States were not required to adopt new legislative measures,⁴² provided that those provisions were sufficiently clear and precise to allow affected taxpayers to know the full extent of their rights and obligations,⁴³ and that they produced - when interpreted in light of ATAD's objectives - the same result as required by the Directive.⁴⁴ Article 3 ATAD establishes a *de minimis* level of protection, allowing Member States to introduce provisions, extending the subjective scope of the rules that implement ATAD which lead to a higher level of taxation than the Directive requires, as long as these remain aligned with the ATAD's objectives.⁴⁵ In other words, existing national provisions covering the same subject matter, objectives and context may constitute a valid implementation of ATAD if they are sufficiently open-ended to allow for a directive-compliant interpretation.⁴⁶ Opting for a less protective measure where ATAD offers discretion - such as the choice between Model A and Model B for the reattribution of CFC income - does not in itself constitute a

Tax Avoidance in the EU: Harmonization and Cooperation in Direct Taxation (Wolter Kluwers International 2019), p.61.

³⁷ Proposal Council Directive (EU) 2016/1164, point 1, Consistency with existing policy provisions in the policy area.

³⁸ The Merger Directive, 1990/434/EEC amended by 2005/19/EC, the Parent-Subsidiary Directive, 1990/435/EEC amended by 2003/123/EC, 2014/86/EU and 2015/121/EU and the Interest and Royalty Directive, 2003/49/EC.

³⁹ Proposal ATAD & Ana Paula Dourado, 'The EU Anti-Tax Avoidance Package: Moving Ahead of BEPS' (2016) Vol 44, Issue 6 & 7, INTERTAX, 440, 441.

⁴⁰ *Ibid.* See also Christiana. H.J.I Panayi, 'The ATAD's CFC rule and its Impact on the Existing Regimes of EU Member States', Pistone, P., and Weber, D., (eds.) *The Implementation of Anti-BEPS rules in the EU: A Comprehensive Study* (IBF 2018), p.362-364.

⁴¹ See Art.11(1) ATAD.

⁴² Werner Haslehner, 'The General Scope of the ATAD and its position in the EU legal order', in Werner. Haslehner Katerina. Pantazatou, Georg Kofler. and Alexander Rust. (eds), *A Guide To The Anti Tax Avoidance Directive* (Elgar Tax Law and Practice 2020), p. 52.

⁴³ CJEU, Case C-582/08, *Commission v UK* [2010], ECLI:EU:C:2010:429, Para. 47. See also *Commission v Poland*, C-29/14, EU:C:2015:379, para. 37.

⁴⁴ See, by analogy, Case C-718/18, *Commission v Germany* [2021], ECLI:EU:C:2021:662, para 118 and 119.

⁴⁵ *Ibid* 38, 2.12, p. 36. See also *Ibid* 36, p. 109.

⁴⁶ *Ibid* 39, See also For interpretation on the basis of the provision's wording, context and objectives, see judgment C-533/08, *TNT Express Nederland* [2010], ECLI:EU:C:2010:243, para 44.

violation of the minimum standard.⁴⁷ However, as will become apparent from the analysis in Chapter 3, this discretion does not extend to withholding relief mechanisms that are explicitly mandated by the Directive, such as the Foreign Tax Credit mechanism under Article 8(7) ATAD.

2.2 The Controlled Foreign Company regime

The CFC Regime under Articles 7 and 8 ATAD target a specific form of tax avoidance whereby a profits, either arising from passive income that are geographically mobile or from non-genuine arrangements that are established for the essential purpose of obtaining a tax advantage, are shifted to a controlled subsidiary in a low or no tax jurisdiction. To counteract this, Articles 7 and 8 ATAD operate in conjunction: Article 7 establishes the conditions under which an entity or permanent establishment qualifies as a CFC and determines which and when such income is subject to retribution, while Article 8 governs the computation of that income and the relief mechanisms that follow against double taxation.⁴⁸ Most notably, the mandatory Foreign Tax Credit mechanism under Article 8(7) ATAD. Both provisions are in line with BEPS Action Plan 3 and together form an integrated framework in which obligations cannot be applied selectively at discretion.⁴⁹ The structure of this section follows that architecture: in 2.2.1 the definition under Article 7(1) ATAD is explained, after which in 2.2.2. and 2.2.3 the two reattribution models under Article 7(2) ATAD shall be examined. Thereafter, the computation rules and FTC mechanism under Article 8 ATAD shall form the final part of this chapter before coming to the preliminary conclusion.

2.2.1 The CFC, art. 7(1) ATAD

According to Article 7(1) ATAD, a Member State shall treat an entity or permanent establishment as a CFC if two cumulative conditions are satisfied: an ownership or control test and a low-taxation requirement.⁵⁰ Under the ownership or control test, the taxpayer - either alone or together with its associated enterprises - must hold a direct or indirect participation of more than 50% of the voting rights, capital or profit entitlements of the entity in question. Under the low-taxation requirement, the actual corporate tax paid by the entity or PE must be lower than the difference between the corporate tax that would have been charged under the tax system of the taxpayer's Member State and the actually paid tax - meaning the tax burden borne by the entity is less than 50% of what it would have paid had it been established in the taxpayer's jurisdiction.

Article 7(1) ATAD appears to establish an exhaustive minimum standard, leaving Member States no discretion in its core application, though they remain free to apply more restrictive conditions as permitted by Article 3 ATAD. In practice, Member States have a choice between implementing either the categorical approach of Model A or the transactional approach of Model B for the reattribution of CFC income under Article 7(2) ATAD in their domestic legal framework.⁵¹

It must however be noted that the application of CFC rules in principle restrict the Freedom of establishment under Article 49 TFEU, as it subjects only entities qualifying as CFCs to possible additional rules on taxation on the basis of their

⁴⁷ *Ibid* 42, 2.12, p. 36.

⁴⁸ Marjaana Helminen, *EU Tax Law: Direct Taxation (IBFD 2025)*, p.69.

⁴⁹ OECD, Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report.

⁵⁰ See Art. 7(1) ATAD.

⁵¹ Council Directive (EU) 2016/1164, Recital 12.

cross-border structure. This restriction can however be justified by reasons in the public interest and if these more restrictive measures are designed to target ‘wholly artificial arrangements’ that do not reflect genuine economic activity,⁵² thus upholding the principle of proportionality - a requirement emphasized by the Court in *Cadbury Schweppes* and which indirectly shaped the interpretation of Model B, as discussed in section 2.2.3 below.⁵³

2.2.2 Model A, Article 7(2)(a) ATAD

The categorical approach under Article 7(2)(a) ATAD focuses on specific categories of non-distributed income which is commonly referred to as ‘passive income’ in literature.⁵⁴ The term passive should not however be understood as income earned without activity, but rather as income generated by CFCs that add little or no economic value to the group - e.g. a shell company set up in a low-tax jurisdiction with its primary purpose to hold assets.⁵⁵ Since ATAD itself does not provide exact definitions of these income categories, the provision carries a broad scope for interpretation.⁵⁶ According to BEPS Action Plan 3, these categories are considered ‘more likely to be geographically mobile and therefore more likely to raise the concerns that CFC rules are designed to address.’⁵⁷

Model A specifically targets tainted categories of income earned by CFCs lacking substantial economic activity and these categories including interest, royalties, dividends, income from financial leasing, insurance income and income from invoicing activities with little or no added economic value. Under this approach, the attribution to the controlling entity is based primarily on the legal classification of the income concerned rather than on the substance of the underlying arrangement.⁵⁸

Once an entity qualifies as a CFC under article 7(1) ATAD and the Member State applies the categorical approach of Model A, the relevant income is then included in the tax base of the controlling entity unless it is generated through ‘substantial economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances’.⁵⁹ This carve-out acts as an important safeguard limiting the scope of the CFC regime to income lacking genuine economic substance and similarly reflects the *Cadbury Schweppes* requirement that CFC rules target only wholly artificial arrangements.⁶⁰

⁵² Proposal Council Directive (EU) 2016/1164, point 2, PROPORTIONALITY AND PREAMBLE 10.

⁵³ CJEU, Case C-196/04 *Cadbury Schweppes* [2006], ECLI:EU:C:2006:544, para. 47 and 75.

⁵⁴ See, for example, Stefanie Geringer ‘Substance Carve-Out and Function-Risk Analysis in the ATAD’s CFC Rule as Two Sides of the Same Coin: Strengths and Limits of a Uniform Concept of Abuse’ (2023) Vol. 60 Common Market Law Review 141,152. See also; Jens Schönfeld Bonn ‘CFC Rules and Anti-Tax Avoidance Directive’ (2017), Vol. 26, Issue 3, EC Tax Review, pages 145-152.

Anti-Tax Avoidance Directive (2017), EC Tax Review, Vol. 26, Issue 3.

⁵⁵ OECD Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report, paras. 77-78; See also Art. 7(2)(a) ATAD. See also CJEU, Case C-196/04 *Cadbury Schweppes*, ECLI:EU:C:2006:544, para. 68.

⁵⁶ Isabella de Groot, ‘Country note: Implementation of the Controlled Foreign Company Rules in the Netherlands’ (2019), Vol. 47, Issue 8. INTERTAX, p. 770, 773 .

⁵⁷ OECD, Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report, paras. 74–86

⁵⁸ See ATAD (n 6), Art. 7(2)(a).

⁵⁹ See last sentence of ATAD (n 6), Art. 7(2)(a).

⁶⁰ CJEU, Case C-196/04 *Cadbury Schweppes* [2006], ECLI:EU:C:2006:544, para. 68.

2.2.3 Model B, Article 7(2)(b) ATAD

2.2.3.1 Scope and Function of Model B

Model B, as laid down in article 7(2)(b) ATAD, provides Member States with a transactional approach to the reattribution of CFC income. Unlike Model A, which targets specifically listed categories of income based on their legal classification, Model B applies to all non-distributed income regardless of its legal form, but limits its application to income arising from non-genuine arrangements. It therefore focuses on the artificiality of the arrangement itself rather than the nature of the income generated. Model B has been criticised in literature for being relatively ineffective, as it has been argued that it “*does not go beyond the mere application of the arm’s length principle for pricing of intra-group transactions*”.⁶¹ A crucial distinction however exists: unlike the arm’s length principle under Article 9 OECD MTC, Model B introduces an additional subjective anti-abuse test requiring that the arrangement was established for the essential purpose of obtaining a tax advantage.⁶² This distinction - between an objective transfer pricing correction and a subjective anti-abuse standard - is central to understanding both the Dutch implementation of Model B and the implication of the *Commission v Belgium* Judgement, as will be examined in Chapters 3 and 4.

2.2.3.2 Non-genuine arrangements and Significant People Functions

Beyond qualifying as a CFC under Article 7(1) ATAD, Model B requires two cumulative conditions to be met: first, the existence of a “non genuine arrangement” and second, that the arrangement was “*put in place for the essential purpose of obtaining a tax advantage*”. The first condition operates as an artificiality test. Under Article 7(2)b ATAD, an arrangement is deemed non-genuine “*to the extent that the entity or permanent establishment would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out*”.⁶³

The concept of ‘significant people functions’ (SPFs) originates from the OECD Guidelines and plays a central role in the functional and factual analysis used for profit attribution under Articles 7 and 9 OECD MTC.⁶⁴ Recognised in the 1995 OECD TPG and further developed through the 2008 and 2010 Authorized OECD Approach (AOA) on the attribution of profits to permanent establishments, significant people functions refer to those human activities that are relevant to the assumption of risk and the economic ownership of assets within a group structure.⁶⁵ As these functions vary depending on the nature of the business, their identification requires a case-by-case factual analysis.⁶⁶ Ultimately, only the income connected to SPFs performed by the controlling parent entity should be attributed to that

⁶¹ Lorenzo, F., Michel, B., ‘EU public consultation on the Anti-Avoidance Directive’ (*Tax Justice Network*, November 2024), <<https://taxjustice.net/2024/11/07/eu-public-consultation-on-the-anti-avoidance-directive/>> accessed 25 May 2026.

⁶² F.E. Alvarez, ‘*The ATAD CFC - All Roads Lead To Cadbury Schweppes*’ (2020), Kluwer International Tax Blog.

⁶³ See Art. 7(2)(b) ATAD.

⁶⁴ Caroline Silberstein & Manon Guillaume, ‘*Does Intangible Ownership Move with the People That Perform the DEMPE Functions?*’ (2022), Vol. 29, No. 7, Intl. Transfer Pricing Journals IBFD, 1, 3.

⁶⁵ OECD guidelines 1995 para 1.20.

⁶⁶ OECD (2010), *2010 Report on the Attribution of Profits to Permanent Establishments*, OECD Publishing, Paris, para 17-19.

parent's tax base, thereby aligning taxation with value creation in line with BEPS Actions 8-10.⁶⁷

2.2.3.3 The subjective Anti-Abuse Test

The second condition under Model B requires that the non-genuine arrangement was established with the "essential purpose" of obtaining a tax advantage. This double (subjective-objective) anti-abuse test, which found its origin in *Emsland-Stärke*,⁶⁸ is notably stricter than the standard contained in the General Anti-Abuse Rule (GAAR) under Article 6 ATAD, which merely requires that obtaining a tax advantage constitutes the "main purpose" or "one of the main purposes" of the arrangement. The terminology used in Model B aligns with the Court's reasoning in *Cadbury Schweppes*,⁶⁹ where arrangements were required to pursue a tax advantage as their 'central purpose' in order to fall within the scope of CFC rules compatible with the freedom of establishment. Since CFC rules inherently restrict the freedom of establishment under Article 49 TFEU, their application can only be justified where they specifically target 'wholly artificial arrangements' that do not reflect genuine economic activity in the jurisdiction of the CFC.⁷⁰ Point 12 of the ATAD preamble provides an exception for CFCs carrying out *substantive economic activity*,⁷¹ introduced to ensure compatibility with the fundamental freedoms and to be interpreted in line with the anti-abuse doctrine developed in *Cadbury Schweppes*.⁷² As Model B of ATAD constitutes secondary EU law, its interpretation must therefore remain confined to cross-border arrangements comprising 'wholly artificial arrangements set up for tax purposes'.⁷³ Furthermore, since Model B operates as a *lex specialis* within the ATAD framework, it prevails over the general anti-abuse rule of Article 6 ATAD in situations falling within its scope - a point confirmed by the Court in *Commission v Belgium* and further examined in Chapter 3.

2.2.4 The Foreign Tax Credit Mechanism, Article 8(7) ATAD

Article 8(7) ATAD imposes a mandatory obligation on Member States to grant a Foreign Tax Credit to the controlling parent entity for taxes already paid by the CFC on income that is reattributed under Article 7(2) ATAD, thus preventing economic double taxation.⁷⁴ The deduction corresponds to the amount of tax paid by the CFC and is subtracted from the domestic tax liability of the controlling entity, thereby preventing the same income from being taxed twice - once at the level of the CFC and again upon reattribution to the parent. It is therefore not

⁶⁷ Council Directive (EU) 2016/1164, article 8(3) ATAD, see also: OECD (2015), *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, p. 14. E.g. A Dutch head office with a PE in Spain that performs marketing functions in favor of the Dutch head office. During the Functional and Factual analysis it can be concluded that the Spanish PE does not carry out any SPFs but rather qualifies as a routine marketing office. As a result, the profit attribution to the Spanish PE should be limited to a routine return for its intercompany services in favor of the Dutch head office, therefore aligning with the Arm's Length Principle.

⁶⁸ CJEU C-110/99, *Emsland-Stärke GmbH v Hauptzollamt Hamburg-Jonas* [2000], ECLI:EU:C:2000:65, para. 52-53.

⁶⁹ CJEU, Case C-196/04, *Cadbury Schweppes* [2006], ECLI:EU:C:2006:544, para. 72

⁷⁰ *Ibid*, para. 75; See also, CJEU Case C-201/05, *Test Claimants in the CFC and Dividend Group Litigation* [2008], ECLI:EU:C:2008:239, para. 81.

⁷¹ Council Directive (EU) 2016/1164, preamble point 12.

⁷² Isabella de Groot, 'Country note: Implementation of the Controlled Foreign Company Rules in the Netherlands', (2019), Vol. 47, Issue 8. INTERTAX, 770, 783.. See also Wattel, P., 'Constitutional Foundations: EU Tax Competences, Treaty Basis for Tax Integration; Sources and Enactment of EU Tax Law'.

⁷³ Isabella de Groot, 'The Switch-Over Provision in the Proposal for an Anti-tax Avoidance Directive and Its Compatibility with the EU Treaty Freedoms' (2016), Vol. 25, Issue 3. EC Tax Rev, 162, 202. See also A. Rust, *Double Taxation within the European Union*, (2011), Kluwer Law International, p. 41.

⁷⁴ *Ibid*

necessarily a ‘deduction’ from the taxable income but rather a subtraction from the tax debt. Although the provision grants Member States some discretion in calculating the deduction in accordance with national law - allowing, for example, for the treatment of loss years - this discretion does not affect the mandatory nature of the obligation itself. Article 8(7) ATAD thus establishes a minimum level of protection against economic double taxation that applies regardless of which approach for reattribution the Member State has chosen under Article 7(2) ATAD.⁷⁵ Whether Member States may rely on Article 3 ATAD to exclude this mechanism in the name of safeguarding its corporate tax base to a higher degree forms part of the examination in Chapter 3.

2.2.4.1 Direct Effect of Article 8(7) ATAD

Following the Court's recent Judgment in *Commission v Belgium*, Article 8(7) ATAD appears to produce direct effect. The provision is sufficiently clear, precise and unconditional in imposing an obligation to allow a deduction of the tax paid by the CFC.⁷⁶ The fact that the second sentence of Article 8(7) ATAD leaves Member States some margin of discretion in calculating the deduction does not undermine its unconditional character,⁷⁷ provided that the Directive imposes a precise obligation as to the result to be achieved and therefore guarantees a minimum level of protection.⁷⁸ Consequently, where a Member State has failed to implement the FTC mechanism, affected taxpayers may invoke Article 8(7) ATAD directly before national courts. It should be noted that when Articles 7 and 8 ATAD are read in conjunction, the deduction is in principle confined to situations where both the control and low-taxation requirements under Article 7(1) ATAD are satisfied, potentially signaling the FTC is not available beyond the CFC context.

2.2.4.2 Abuse of Law and Halifax

Since the application of Article 8(7) ATAD applies to both Model A and Model B,⁷⁹ yet only Model B explicitly requires that the reattributed income arises from non-genuine arrangements established for the essential purpose of obtaining a tax advantage, a specific question arises regarding the interaction between the FTC mechanism and the EU doctrine of abuse of law in Model B situations. The Court held in the landmark case regarding tax-avoidance *Halifax* that taxpayers may not rely on EU law where abuse is present, and the existence of an artificial arrangement satisfying the subjective test of Article 7(2)(b) ATAD might at first glance suggest that such abuse is present⁸⁰ - thereby potentially precluding reliance on Article 8(7) ATAD altogether. However, the *Halifax* doctrine additionally requires that the tax advantage obtained be contrary to the purpose of the relevant EU provision.⁸¹ This second requirement is decisive. Since Article 8(7) ATAD is specifically designed to operate in conjunction with Model B - meaning it is expressly intended to apply in situations involving non-genuine arrangements that are established for the essential purpose of obtaining a tax advantage - reliance of the FTC mechanism in such circumstances is not contrary to the Directive's objective. That is, combating tax avoidance and avoiding creating other obstacles

⁷⁵ M. Vergouwen, *Het CFC-arrest en door Nederland toegepaste (eezijdige) opwaartse verrekenprijs correcties. In hoeverre kunnen belastingplichtigen op basis van het Unierecht een beroep doen op de verrekeningsmogelijkheid van artikel 8, lid 7 ATAD?*, NLF-W, 2.2.

⁷⁶ Case C-524/23, *Commission v. Belgium* [2026], ECLI:EU:C:2026:111, para, 86.

⁷⁷ See Art. 8(7) ATAD: “The deduction shall be calculated in accordance with national law”.

⁷⁸ Case C-230/23, *Reprobel v Copaco* [2024], ECLI:EU:C:2024:951, para 50; See also: Case C-337/13, *Almos Agrárkülkereskedelmi* [2014] ECLI:EU:C:2014:328, para 34, See also; Case C-387/19, *RTS* [2021], ECLI:EU:C:2021:13, para 47.

⁷⁹ Case C-524/23, *Commission v. Belgium* [2026], ECLI:EU:C:2026:111, para, 105.

⁸⁰ Case C-255/02, *Halifax* [2006], ECLI:EU:C:2006:121, para 68.

⁸¹ *Ibid* 57, para 86. See also W. Haslehner, K. Pantazatou, G. Kofler and A. Rust, *A Guide To The Anti-Tax Avoidance Directive* (2020), Elgar Tax Law And Practice, p. 12.

to the internal market, such as double taxation.⁸² The abuse of law doctrine therefore does not preclude taxpayers from invoking Article 8(7) ATAD in Model B situations, a conclusion that further reinforces the mandatory character of the provision as confirmed by the Court in *Commission v Belgium*.

2.3 Preliminary conclusion

This Chapter's purpose was to establish the legal and contextual foundation necessary for the analysis that follows. ATAD emerged as a coordinated EU level response to combat aggressive tax planning by MNEs within the EU, adopting legally binding anti-avoidance measures on the basis of Article 115 TFEU where the non-binding OECD BEPS reports provided just recommendations. Through Article 3 ATAD, the Directive established a *de minimis* level of protection that permits Member States to introduce stricter measures, provided that these remain aligned with ATAD's objectives and the EU fundamental freedoms - a discretion that, as will become apparent in Chapter 3, has clear limits.

Within the CFC framework under ATAD, Articles 7 and 8 ATAD operate as an integrated system. Article 7(1) ATAD establishes the two cumulative conditions - the ownership test and the low-taxation requirement - that must be satisfied before an entity qualifies as a CFC. Once those conditions are met, Member States may choose between two models for the reattribution of CFC income under Article 7(2) ATAD. Despite their differences - Model A targeting specifically listed categories of passive income which are 'more likely to be geographically mobile' based on their legal classification,⁸³ Model B focuses instead on all non-distributed income but confines its reattribution to income arising from non-genuine arrangements established for the essential purpose of obtaining a tax advantage - both models are subject to the same mandatory relief under Article 8(7) ATAD. As the application of Model B is limited to '*wholly artificial arrangements set up for tax purposes*', it does not in principle breach the freedom of establishment under Article 49 TFEU as interpreted in *Cadbury Schweppes*.⁸⁴ Ultimately, Article 8(7) ATAD imposes a mandatory obligation for Member States to grant a Foreign Tax Credit for taxes already paid by the CFC, regardless of which model was chosen, thereby preventing economic double taxation upon reattribution.

⁸² Council Directive (EU) 2016/1164, Recital 5. See also, Case C-524/23, *Commission v. Belgium* [2026] ECLI:EU:C:2026:111, para. 92 and 93.

⁸³ OECD, Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report, para 86. See also European Commission, Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market COM/2016/026 final, point 5 other elements, detailed explanation of the specific provisions of the Proposal, CFC.

⁸⁴ European Commission, Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market COM/2016/026 final, point.

3. A legal analysis of Case C-524/23: *Commission v Belgium*

The recent judgement of the Court in Case C-524/23, *Commission v Belgium*, represents a significant case within academic discussions regarding the transposition of the CFC Regime in Dutch law and its implications for the Dutch Transfer Pricing rules.⁸⁵ Central to this judgement, is whether Article 8(7) ATAD - which obliges Member States to grant a Foreign Tax Credit for taxes already paid by the CFC against the domestic tax liability of the controlling parent entity to prevent economic double taxation - applies to all Member States equally regardless of the approach for the re-attribution of CFC income chosen.⁸⁶ Belgium's answer, that opted for the implementation of Model B Article 7(2)(b) ATAD, was a clear no. The CJEU however, contrary to the Opinion of the Advocate General Kokott, answered this question with a clear yes.⁸⁷

This chapter will analyse the judgment *Commission v Belgium* in a three step manner: Section 3.1 will describe the implementation of the CFC Regime of Belgium in brief and its refusal to include Article 8(7) ATAD in its transposition, including the infringement procedure that consequently led to this judgement. Section 3.2 will focus entirely on the Court's reasoning, examining the rejection of the 'deterrence theory' that Belgium put forward for excluding the Foreign Tax Credit mechanism. Additionally it will go into the Court's reasoning of the mandatory character of Article 8(7) ATAD, regardless of which Model the Member State implemented for the re-attribution of the CFC income. Finally, section 3.3 will provide a preliminary conclusion of the judgements significance and its importance for the analysis that follows in the following chapters.

3.1 Belgian implementation of Model B

3.1.1 Transposition of Model B into Belgian Law

For the implementation of ATAD, the government of Belgium opted for an explicit transposition of the transactional approach of Model B under Article 7(2)(b) ATAD. Under this approach, the non-distributed income of the CFC would be reattributed to the controlling entity if such income arises from non-genuine arrangements that have been established for the essential purpose of obtaining a tax advantage. Belgium transposed this approach of the CFC Regime by amending the Belgium Tax Code through the Law on the Reform of Corporate Tax of 25 December 2017,⁸⁸ ultimately incorporating the provisions that would reattribute income arising from such arrangements to the Belgian controlling company. In practice, the reattribution under the Belgian CFC regime would operate similarly to

⁸⁵ M. Velthoven, S.R. Pancham and R.K. Bane, De zaak Commissie tegen België: een bommetje onder de Nederlandse transferpricingregels? (2026), *NLF Opinie*, Vol. 9. See also M. Vergouwen, *Het CFC-arrest en door Nederland toegepaste (eenzijdige) opwaartse verrekenprijscorrecties. In hoeverre kunnen belastingplichtigen op basis van het Unierecht een beroep doen op de verrekeningsmogelijkheid van artikel 8, lid 7 ATAD?* (2026), *Nederlands Fiscaal Weekblad*, Vol. 15.

⁸⁶ AG Kokott, Opinion on the Case C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, Para 23.

⁸⁷ C-524/23, *Commission v. Belgium* [2026], ECLI:EU:C:2026:111, para 105 and 108.

⁸⁸ Be: Parliamentary Documents 2017/18, DOC 54, 2864/002.

transfer pricing corrections based on the arm's length principle and Significant People Functions.⁸⁹

Importantly, despite being required by Article 8(7) ATAD, Belgium deliberately excluded the Foreign Tax Credit into its legal framework when implementing the reattribution approach of Article 7(2)(b) ATAD, initially arguing its application was limited to only Model A applications.⁹⁰ Therefore, income that had already been taxed at the level of the CFC could potentially be taxed again in Belgium upon the re-attribution of profits to the controlling parent entity. As will follow from the next section, the Belgian legislator deemed double taxation in cases of wholly artificial arrangements to deter any engagement in such practices and to better protect its corporate tax base a desirable potential outcome.⁹¹

3.1.2 The “Deterrence Theory” and infringement procedure

Besides arguing that Article 8(7) ATAD was only applicable to Member States implementing Article 7(2)(a) ATAD Model A, Belgium justified the exclusion of the Foreign Tax Credit on the basis of deterrence.⁹² According to it, the objective of the CFC regime was not just to neutralize the tax advantages resulting from engaging in artificial arrangements but also to discourage taxpayers from even engaging in these practices.⁹³ Additionally, in the event profit was shifted to tax havens, the undertakings would not have suffered any disadvantages as that income would potentially not have been taxed in the first place.⁹⁴

The Belgium government further strengthened its position of non-transposition of the FTC in Article 3 ATAD, which preserves Member States with the possibility to apply domestic provisions aimed at safeguarding a higher level of protection for their domestic corporate tax base, thus arguing that it allows for an exclusion of Article 8(7) ATAD thereof.⁹⁵ This position was shared by AG Kokott, writing that the non-transposition would only constitute a failure to fulfill the obligation by Belgium in so far that it would not contribute to a further attainment of the objective of the directive or exceed what was necessary in order to achieve the objective.⁹⁶ Thus, such additional tax burden would only reinforce the preventative and deterrent effect of the CFCs anti-abuse regime, ultimately protecting the Belgian corporate tax base to a higher level than provided by the minimum standard.⁹⁷

The European Commission however, rejected these arguments. In her view, the wording of Article 8(7) ATAD is general and not exclusively focused on either Model A or Model B and instead imposed a mandatory obligation on all Member States to provide for a Foreign Tax Credit to be implemented.⁹⁸ Following a letter of formal notice in 2020 and a reasoned opinion a year later, to which Belgium did

⁸⁹ *Ibid*, p. 11 “Verder houdt Model B volgens ons niets meer in dan een nadere omschrijving van wat reeds is opgenomen in de door BEPS actiepunten 8 tot 10 gereviseerde OESO-guidelines inzake controles verrekenprijzen”.

⁹⁰ Case C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, Para. 33.

⁹¹ Robert Goulder, ‘*The EU, Belgium and ATAD: What’s So Wrong With Gold Plating*’ (2016), Vol. 122, Tax Notes Int’l, 487, 488. See also: Case C-524/23, *Commission v Belgium*, ECLI:EU:C:2026:111, Para. 16.

⁹² C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, Para. 35.

⁹³ *Ibid*, Para. 44.

⁹⁴ *Ibid*, Para. 16.

⁹⁵ *Ibid*, Para. 47, See Also Art. 3 ATAD .

⁹⁶ AG Kokott, Opinion on the Case C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, Para. 83 and 94.

⁹⁷ C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, Para. 47.

⁹⁸ *Ibid*, para 34.

not take satisfactory action, the Commission decided to bring the matter before the Court on 19 April 2023.⁹⁹

3.2 Findings of the Court

3.2.1 Rejection of the deterrence theory

In her opinion, AG Kokott accorded substantial weight to Belgium's deterrence argument, taking the view that the 'protection for domestic corporate tax bases' from profit-shifting objective referred to in Article 3 of the ATAD, could be achieved to a greater degree if no Foreign Tax Credit-mechanism was transposed. She further reasoned that avoiding double taxation is not the main objective of ATAD, as double taxation results only from the directive itself when such a credit mechanism for CFCs is to be implemented. Therefore, denying the FTC is not failing to comply with the Directive, but it is rather protecting its taxbase in a more robust manner than the Directive requires, which Article 3 ATAD permits.¹⁰⁰

Contrary to the opinion of AG Kokott, the CJEU held that ATAD represents a dual objective: combating tax avoidance practices that distort the functioning of the internal market on one hand and avoid creating obstacles to that market - such as double taxation - on the other. That desire to strike a balance reflects the principle of proportionality, requiring that the measures are appropriate for achieving the objective pursued and must not go beyond what is necessary to achieve them. As these objectives are both embedded in the Directive's architecture, they cannot be traded off against each other at the discretion of the Member State.¹⁰¹ That is why the CFC framework established by Articles 7 and 8 ATAD are operating in conjunction, not in exclusion; where Article 7 established the conditions for income attribution, Article 8 ATAD governs the computation of the re-attributed amount and the relief mechanism that follows from that.¹⁰²

The Court ultimately rejected the argument that preventing double taxation is just a subsidiary concern that Member States may disregard in the pursuit of a more resilient anti-avoidance policy.¹⁰³ Denying the Foreign Tax Credit under Article 8(7) ATAD as a way of deterrence, was accordingly not a legitimate regulatory objective in line with ATAD but rather non-compliance of transposition obligations.¹⁰⁴

3.2.2 The mandatory and exhaustive nature of Article 8(7) ATAD

Having rejected Belgium's teleological justification for the non-transposition of the FTC-mechanism, the Court then proceeded to examine the wording and structure of Article 8(7) ATAD. Emphasising that Article 8(7) ATAD states that the Member State of the taxpayer 'shall allow a deduction' of the tax paid by the CFC from the tax liability of the controlling parent entity and that such a deduction shall

⁹⁹ Action brought on 11 August 2023 - *European Commission v Kingdom of Belgium* (C-524/23) [2023] OJ C 2023/207. See also, C-524/23, *Commission v. Belgium* [2026], ECLI:EU:C:2026:111, para 17.

¹⁰⁰ C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111, para 86, 87 and 94.

¹⁰¹ *Ibid*, para 86, 91 and 93.

¹⁰² *Ibid*, para 75.

¹⁰³ *Ibid*, Para. 107.

¹⁰⁴ *Ibid*, Para. 110 and 116.

be calculated in accordance with national law.¹⁰⁵ The wording of the provision is mandatory in nature and does not contain any derogation clause, nor does its application depend on the model selected by the Member State under Article 7(2) ATAD.¹⁰⁶

In reaching this conclusion, the Court emphasised particular significance to Article 8 ATAD as a whole and pointed out that while Article 8(1) and (2) ATAD explicitly reference to either Model A or B, Articles 8(3) and (7) ATAD however do not explicitly refer to any application. Interpreting this provision systemically, the Court inferred that the Foreign Tax Credit Mechanism under Article 8(7) ATAD must be implemented regardless whichever Model opted for under Article 7 of the Directive.¹⁰⁷

Additionally, the Court emphasised the distinction between the General Anti-Abuse Rule of Article 6 ATAD and Article 7(2)(b) ATAD, highlighting that the latter constitutes to a *lex specialis* and thus prevails over the GAAR. Referring to recital 11 of the Directive, it emphasized that Article 6 ATAD serves a residual function to tackle abusive tax practices and so Member States are not free to apply a general anti-abuse rule meeting the criteria of Article 6 ATAD to deny the taxpayers a FTC under article 8(7) ATAD for situations falling within the scope of Article 7(2)(b) ATAD.¹⁰⁸

This conclusion signals that ATAD's dual objectives are not just guidelines to be followed but rather form a structural constraint on Member State's discretion.¹⁰⁹ While Article 3 ATAD allows Member States to introduce stricter anti-avoidance provisions, this discretion does not allow for measures that are contrary to the obligations as set out in the Directive. Therefore, not including a double-taxation relief under Article 8(7) ATAD in the implementation of Model B goes beyond the level of discretion and results in a failure to fulfil its obligations.¹¹⁰

3.3 Preliminary conclusion

The Court's judgement in *Commission v Belgium* sets a clear boundary as whether Article 8(7) ATAD imposes a mandatory obligation or whether its application may be excluded through Member State discretion and the logic of the chosen CFC attribution Model. The answer provided by the Court is clear: the ATAD CFC regime is an integrated framework, whose obligations and provisions work in conjunction and therefore cannot be neutralised through reliance on any derogation clause but instead are binding in nature.¹¹¹ The Court confirmed that ATAD's dual objective of combating tax avoidance while simultaneously avoiding creating obstacles such as double taxation to the internal market are equally as important and together define the scope in which Member States may impose legislation.¹¹² Consequently, although Article 3 ATAD allows Member States to adopt stricter anti-avoidance measures and extend income attribution beyond the Directive's floor, they may not rely on Article 3 ATAD to withhold a relief mechanism that is expressly mandated by the Directive itself in the name of deterrence.¹¹³

¹⁰⁵ *Ibid*, Para. 72.

¹⁰⁶ *Ibid*, Para. 73 and 79.

¹⁰⁷ *Ibid*, Para. 79.

¹⁰⁸ *Ibid*, Para. 81 and 82.

¹⁰⁹ *Ibid*, Para. 86.

¹¹⁰ *Ibid*, Para. 109, See also Case C-8/81, *Becker* [1982], ECLI:EU:C:1982:7.

¹¹¹ C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111,, Para. 109.

¹¹² *Ibid*, Para. 113.

¹¹³ *Ibid*, Para. 109 and 110.

Finally, by holding that Article 8(7) ATAD applies mandatory to both Model A and B, and constituted a *lex specialis* within the harmonised CFC framework, the Court removed the argument that a functionally equivalent domestic mechanism, such as the arm's length principle applied under Model B itself as a general anti-abuse rule, allows for a non-transposition of the FTC-mechanism.¹¹⁴

At last, the Court concludes that only by implementation of Article 8(7) ATAD thereof, combating economic double taxation for situations within the European Union and those involving third countries is possible as it cannot force third countries to prevent double taxation.¹¹⁵ Consequently, following from the landmark case law *Becker v Finanzamt*, where a directive leaves Member States a margin of discretion, individuals may still rely on provisions that are sufficiently clear, precise and separate from the discretionary elements if the Member State failed to implement the directive correctly, therefore providing affected taxpayers with direct effect of such a provision.¹¹⁶

Whether the Dutch representation of Article 8b CITA as the domestic equivalent of Model B, without the inclusion of an FTC mechanism, similarly constitutes to a structural infringement comparable to that identified by the Court in this judgement, forms the central issue of the comparative analysis in chapter 5. Before such a comparison can be made however, it is necessary to first examine the Dutch implementation of the CFC framework independently, which will be done in Chapter 4.

¹¹⁴ *Ibid*, Para. 114 and 115.

¹¹⁵ *Ibid*, Para. 115.

¹¹⁶ See Case C-8/81, *Becker* [1982], ECLI:EU:C:1982:7.

4 The Dutch implementation of the CFC Regime

The previous chapters established the legal framework of ATAD's CFC regime and the Court's confirmation in *Commission v Belgium* that Article 8(7) ATAD imposes a mandatory obligation for Member States to grant a Foreign Tax Credit regardless of which reattribution approach is chosen and the level of discretion provided for under Article 3 ATAD. Against that background, this chapter examines how the Netherlands implemented the CFC Regime into its domestic legal framework and whether that implementation satisfies the conditions and obligations as identified by the Court. Section 4.1 introduces the Dutch dual-layered approach, examines the partial transposition of Model A into Article 13ab CITA and the representation of Model B in Article 8b CITA, including their statutory basis, relationship to ATAD and the question of functional equivalence. Section 4.2 then provides an analysis for the absence of the Foreign Tax Credit mechanism in the Dutch Model B implementation, whereby it examines the deterrence rationale and the implications of *Commission v Belgium* for the Netherlands and the limits of a directive-compliant interpretation under the *Leur-Bloem* doctrine.

4.1 Introduction to the dual layered approach

The Dutch government's response to ATAD's transposition obligation was shaped by the view that the Netherlands *de facto* already applied Model B through the arm's length principle as codified in Article 8b CITA, and therefore did not deem it necessary to take any additional legislative measures to comply with the Directive in that regard.¹¹⁷ Alongside this existing provision, the Dutch government introduced Article 13ab CITA as an additional targeted CFC measure based on Model A, entering into force on 1 January 2019, and therefore went beyond what was necessary under ATAD.¹¹⁸ This overreach is in principle allowed because pursuant to Article 3 ATAD, Member States may introduce more stringent measures as long as these do not breach the fundamental freedoms.¹¹⁹ Together, these two provisions form the Dutch CFC Framework: Article 13ab CITA functions as a targeted anti-abuse backstop for passive income shifted to low-taxed or blacklisted jurisdictions,¹²⁰ while Article 8b CITA operates as the broader arm's length standard applicable to all transfer pricing situations including those falling within the scope of CFCs under ATAD.

4.1.1 Article 13ab CITA 1969 as a partial transposition of Model A

Article 13ab CITA was introduced as an additional CFC measure and came into effect on 1 January 2019. It functions as a targeted anti-abuse tool aimed at reattributing non-distributed passive income of low-tax controlled subsidiaries to their Dutch controlling parent entity, operating as an ultimate back stop where Article 8b CITA alone would not be sufficient to counteract the relevant profit-shifting structure. The application of Article 13ab CITA involves two cumulative qualification conditions that have to be met for an entity or PE in order to qualify as a CFC: under the Ownership text, the taxpayer - either alone or together with

¹¹⁷ NL: Parliamentary Documents II 2018/2019, 35 030, no. 3, point 3 (Explanatory Memorandum).

¹¹⁸ NL: Parliamentary Documents II 2017-2018, 34 959, no. 3, point 4. See also Robert Jean Klopogge & Olivier Elsenburg, 'More Anti-Abuse Tools as Dutch Government Announces Strengthening the CFC Rule' (2022), Vol. 48, Issue 1. Int'l Tax J 31).

¹¹⁹ Article 3 ATAD, Council Directive (EU) 2016/1664.

¹²⁰ NL: Parliamentary Documents II 2017-2018, 32 140, no. 34, question 24, p.12.

related entities or individuals - must hold a direct or indirect interest representing at least 50% of the entity's voting rights, nominal paid-up share capital, or profit rights. Under the Residence test, the home jurisdiction of the entity must either appear on the Dutch blacklist of low-taxing states and non-cooperative jurisdictions or have a statutory corporate tax rate of less than 9%.¹²¹ This blacklist is reviewed annually and incorporates the EU list of non-cooperative jurisdictions. The use of such a list is explicitly allowed under point 12 of the ATAD preamble, provided that they are based on criteria consistent with ATAD, such as corporate income tax rates.¹²²

It should be noted that the Dutch definition for the low-taxation requirement diverges from Article 7(1)(b) ATAD. Where ATAD applies a comparative Effective Tax Rate test - requiring that the actual tax paid be less than 50% of what would be charged in the controlling parent entity's jurisdiction¹²³ - the Dutch transposition instead prescribes a fixed statutory rate threshold of 9% or less.¹²⁴ This divergence is permitted under Article 3 ATAD as a stricture measure, though it applies only to the Model A transposition under Article 13ab CITA and not to CFC situations falling under Article 8b CITA.

Once an entity or PE satisfies both conditions and thus qualifies as a CFC, the tainted income subject to reattribution is determined by reference to the exhaustive list of Article 7(2)(a) ATAD, directly transposed in Article 13ab(1) CITA. Consistent with the Directive, the Netherlands left these income categories undefined, preserving a broad scope of application.¹²⁵ Where an upward transfer pricing adjustment results from application of Article 13ab CITA, a foreign tax credit is available under Article 23e CITA,¹²⁶ thereby satisfying the relief obligation for Model A situations.

4.1.2 Article 8b CITA as the representation of Model B

4.1.2.1 Statutory basis and the Arm's Length principle.

The primary mechanism through which the Netherlands considers itself to have implemented Model B is Article 8b CITA 1969, which codifies the arm's length principle for all transfer pricing situations under Dutch law. The Dutch government took the position that, since the arm's length principle already governed the reattribution of income between associated entities, no additional legislative measures were deemed necessary to comply with Model B under ATAD.¹²⁷

Article 8b CITA is directly based on Article 9 of the OECD Model Tax Convention, which laid down the arm's length principle and requires that transactions between associated enterprises be priced as if they were conducted between independent parties. Where conditions deviate from this standard, profits that would otherwise have accrued to one enterprise may be reattributed in the profits and taxed accordingly.¹²⁸ Without this principle, MNEs would be free to set

¹²¹ See Art. 13ab(3)(d) and (e), CITA 1969, See also: *Regeling laagbelastende staten en niet-coöperatieve rechtsgebieden voor belastingdoeleinden* (Netherlands Ministerial Regulation, Strict 2019, 69810).

¹²² Council Directive (EU) 2016/1164, preamble point 12: "It should be acceptable that, in transposing CFC rules into their national law, Member States use white, grey or black lists of third countries, which are compiled on the basis of certain criteria set out in this Directive and may include the corporate tax rate level, or use white lists of Member States compiled on that basis."

¹²³ See Art. 7(1)(b) ATAD.

¹²⁴ See Art. 13ab(3)(e) CITA 1969.

¹²⁵ NL Parliamentary Documents II 2018/19, 35 030, 3, p. 30.

¹²⁶ See Art. 23e CITA 1969.

¹²⁷ NL Parliamentary Documents II 2018/2019, 35 030, No. 3, p. 3.

¹²⁸ See Art. 9.1 second paragraph OECD MTC.

the pricing of their internal transactions in such a way that potentially shift all its profits to a low-tax jurisdiction, either internationally or domestically to entities that are then taxed at the lowest effective tax rate or are loss-generating within the group.¹²⁹ Article 9.2 OECD MTC additionally provides for a corresponding (downward) adjustment on the profits to be made in a counterparty's jurisdiction where the upward adjustment has been made under Article 9.1 OECD MTC and 'to the tax charged therein' to prevent economic double taxation - a mechanism that is comparable to the intentions of Article 8(7) ATAD.¹³⁰

Despite the arm's length principle already being applied in Dutch practice before its official codification, international pressure from OECD Member States led the Dutch legislator to ultimately codify the principle in Article 8b CITA in 2002, with the intention of aligning the provision as closely as possible with Article 9 OECD MTC and ensuring consistency with international tax practice.¹³¹ The OECD Transfer Pricing Guidelines (TPG) are accordingly of direct relevance to the interpretation of Article 8b CITA.¹³² Importantly, Article 8b CITA is characterised as an open norm - it established the general arm's length standard without prescribing specific methods or formulas for determining an arm's length outcome.¹³³ This dynamic approach was intentional, providing the Dutch Tax Authority with flexibility to align profit attribution with evolving OECD standards, including the concept of Significant People Functions,¹³⁴ which plays a key role in profit attribution under Model B of ATAD.

4.1.2.2 The relationship between Article 8b CITA and Model B ATAD

While the Dutch government considers Article 8b CITA to represent a functional equivalent of Model B, a material difference exists between the two provisions.¹³⁵ Model B under Article 7(2)(b) ATAD targets exclusively non-genuine arrangements established for the essential purpose of obtaining a tax advantage, incorporating an additional subjective anti-abuse test that is absent from the general arm's length principle. Article 8b CITA, by contrast, is applicable to all transfer pricing situations where transactions deviate from arm's length conditions, regardless of the taxpayer's subjective intent or the tax rate applicable to the controlled entity. As a result, Article 8b CITA is much broader in scope than Model B - covering both high-taxed and low-taxed CFCs as well as arrangements that cannot be characterised as non-genuine - and in this sense goes beyond the minimum standard required by ATAD.¹³⁶

Another material difference, that concerns the treatment of double taxation that arises from the current application of CFC rules between multiple Member States. As the Dutch government rightfully pointed out, where several Member States apply the CFC measures simultaneously to the same controlled entity, ATAD provides no resolution mechanism to resolve the double taxation that might

¹²⁹ Svitlana Buriak and Ivan Lazarov S.Buriak and I. Lazarov, 'Between State Aid And The Fundamental Freedoms: The Arm's Length Principle And EU Law' (2019), Vol. 56, Issue 4. Common Market Law Review, 905, 906.

¹³⁰ See Art. 9.2 OECD MTC and commentary on Art. 9 OECD MTC, para 5.

¹³¹ NL Parliamentary Documents II, 2001/02, 28 034, No. 3, p.19.

¹³² *Ibid*, p.20.

¹³³ NL: Parliamentary Documents II 2018/2019, 35 030, no. 7, at 6-7 and NL: Parliamentary Documents I 2018/2019, 35 030, C, Art. 3, p. 2.

¹³⁴ H. Lohuis e.a., 'Wetsvoorstel Wet implementatie eerste EU-richtlijn antibelastingontwijking (ATAD1)', *NTRF* 2018/2247, par. 2.

¹³⁵ Isabella de Groot, 'Country note: Implementation of the Controlled Foreign Company Rules in the Netherlands', (2019), Vol. 47, Issue 8. INTERTAX, 770, 773.

¹³⁶ *Ibid*, 2.2.

arise.¹³⁷ Despite hierarchy rules the OECD recommends in such situations, which were not implemented in the provisions of article 7 and 8 ATAD, Article 8b CITA in this regard is seen as being more flexible regarding double tax relief. However, the Dutch government also refrained from introducing a double tax relief, thus reinforcing the prohibited nature of the additional CFC rule under Article 13ab CITA.¹³⁸

This broader application is however permitted under Article 3 ATAD, which allows the Netherlands to safeguard a higher level of domestic corporate tax base protection.¹³⁹ It must be noted however that the absence of a subjective anti-abuse requirement in Article 8b CITA also means that the provision cannot be said to result in a precise (partial) transposition of Model B in a strict sense - it is instead a functional equivalent but materially broader provision. On the SPF analysis, the two provisions however operate consistently and thus both attribute income to the entity performing the economically relevant functions in relation to the relevant assets and risks. In situations falling within the scope of ATAD, Dutch courts and governments are nonetheless required to give Article 8b CITA a directive-compliant interpretation to conform with the wording and purpose of the Directive, provided that such an interpretation does not result in a *contra legem* reading.¹⁴⁰ The sole fact that Article 8b CITA predates ATAD does also not affect this obligation, as the duty of a directive-compliant interpretation applies equally to pre-existing national legislation.¹⁴¹

4.2 The absence of the Foreign Tax Credit in the Dutch model B implementation

As established in Chapter 3, Article 8(7) ATAD imposes a mandatory obligation on all Member States to grant a Foreign Tax Credit for taxes already paid by the CFC to prevent double taxation - which creates an obstacle within the internal market¹⁴² - regardless of which reattribution model was implemented. The Netherlands has not explicitly incorporated this mechanism into Article 8b CITA for CFC situations falling within the scope of Model B under ATAD.¹⁴³ While such a relief is available under Article 23e CITA for (upward) adjustments arising under art Article 13ab CIITA - satisfying the obligation for Model A situations - no equivalent mechanism has been put in place for Model B situations that are governed by Article 8b CITA.

4.2.1 The deterrence rationale and existing relief mechanisms

One argument that has been put forward for not incorporating the FTC for Article 8b CIITA for Model B situations and supported the Netherlands is that double taxation should not arise in the first place if the concept of a non-genuine arrangement is applied uniformly across Member States¹⁴⁴ - since income would in principle be taxed either at the level of the CFC or upon reattribution to the parent,

¹³⁷ J.M.A. Cid, 'Harmonization of Controlled Foreign Corporation Rules in the European Union: The Spanish Perspective' in J.M.A. Cid, J.A.F. Gutiérrez and P.A.H. González-Barreda (eds), *Combating Tax Avoidance in the EU: Harmonization and Cooperation in Direct Taxation* (Wolters Kluwer 2019), p. 171, See also NL: Parliamentary Documents II 2018/2019, 35 030, no. 3, p. 6.

¹³⁸ Isabella de Groot, 'Country note: Implementation of the Controlled Foreign Company Rules in the Netherlands', (2019), Vol. 47, Issue 8. INTERTAX, 770, 781.

¹³⁹ See ATAD, preamble 12.

¹⁴⁰ CJEU 4 July 2006, Case C-212/04, Adeneler [2006], ECLI:EU:C:2006:443, para. 110.

¹⁴¹ CJEU 13 Nov. 1990, Case C-106/89, Marleasing SA [1990], ECLI:EU:C:1990:395, para. 8.

¹⁴² A. Rust, *Double Taxation within the European Union*, (2011), Kluwer Law International, p. 17

¹⁴³ NL: Parliamentary Documents II 2018/2019, 35 030, no. 3, p.28.

¹⁴⁴ AG Kokott, Opinion on the Case C-524/23, *Commission v Belgium* [2026] ECLI:EU:C:2025:381, para 59.

but not simultaneously in both jurisdictions.¹⁴⁵ Where disputes regarding economic double taxation on profits nevertheless arise, Member States are expected to resolve these through the principle of sincere cooperation under Article 4(3) TEU and the EU Dispute Resolution Mechanism Directive.¹⁴⁶ In cross-border situations beyond the EU borders, double tax treaties generally provide an *ex post* solution through the Mutual Agreement Procedure under Article 25 OECD MTC.¹⁴⁷

A second and more substantive justification builds on the deterrence rationale as advanced by Belgium and supported by AG Kokott in *Commission v Belgium*, discussed in Chapter 3. In her view, granting a FTC in Model B situations would so significantly reduce the financial consequences of engaging in non-genuine arrangements that it would effectively become an invitation to ‘have a go at it’ and attempt profit-shifting, since in the worst case the taxpayer pays the same tax as it would without the arrangement and in the best case the arrangement goes undetected.¹⁴⁸ It could therefore be argued that the Netherlands consciously opted for a stricter approach by not incorporating the FTC into Article 8b CITA, thereby protecting the integrity of its corporate tax base and also to discourage the profit-shifting behaviour ATAD aims to prevent.¹⁴⁹ This position was further confirmed by the Netherlands’ intervention in *Commission v Belgium*, where it argued that Article 8(7) ATAD is unnecessary under Model B in its entirety, on the basis that the arm’s length principle already rectifies the profit allocation by attributing income to those that perform the SPFs, thereby avoiding double taxation without needing a separate FTC mechanism.¹⁵⁰ As noted in Chapter 3 however, the Court explicitly rejected this reasoning in *Commission v Belgium*, holding that the deterrence rationale does not constitute a valid justification for excluding such a mechanism which is explicitly mandated by the Directive.

4.2.2 Implications of *Commission v Belgium* for the Netherlands

Despite not implementing the FTC-mechanism, a directive-compliant interpretation is required in all situations that fall within the scope of ATAD when applying Article 8b CITA. As a result, it could be observed that the FTC-mechanism of Article 8(7) ATAD is therefore only applicable to upward transfer pricing adjustments in situations that satisfy the CFC conditions under Model B.¹⁵¹ Following the Court’s recent Judgement in *Commission v Belgium* (C-524/23), the absence of such a Foreign Tax Credit mechanism in CFC situations falling under Article 8b CITA could potentially impose a failure by the Netherlands to fulfill its transposition obligations of ATAD similar to Belgium’s if both the Belgian and Dutch implementations pose to be of comparable nature.¹⁵²

4.2.3 The Leur-Bloem Doctrine and non-CFC situations

A directive-compliant interpretation of Article 8(7) ATAD is required in situations falling within the scope of ATAD - that is, transfer pricing adjustments under Article 8b CITA that satisfy the CFC conditions of Article 7(1) ATAD. This raises

¹⁴⁵ *Ibid*, para 55.

¹⁴⁶ *Ibid*, para 57. See also; Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (OJ 2017 L 265, p. 1).

¹⁴⁷ AG Kokott, Opinion on the Case C-524/23, *Commission v Belgium* [2026] ECLI:EU:C:2025:381, para 58. See also: Commentary on article 9 OECD MTC, par. 11. See also A. Rust, Double Taxation within the European Union, (2011), Kluwer Law International, p. 214.

¹⁴⁸ AG Kokott, Opinion on the Case C-524/23, *Commission v Belgium*[2026] ECLI:EU:C:2025:381, para 69.

¹⁴⁹ NL: Parliamentary Documents I 2018/2019, 35 030, C, Point. 3, p.4.

¹⁵⁰ C-524/23, *Commission v Belgium*[2026], ECLI:EU:C:2026:111, para 56 - 58 .

¹⁵¹ Isabella de Groot, 'Country note: Implementation of the Controlled Foreign Company Rules in the Netherlands', (2019), Vol. 47, Issue 8. INTERTAX, 770, 771.

¹⁵² Action brought on 11 August 2023 - *European Commission v Kingdom of Belgium* (C-524/23) [2023] OJ C 2023/207.

the question whether this interpretation could be extended further, to transfer pricing adjustments under Article 8b CITA involving entities that do not satisfy those conditions - such as transfer pricing adjustments involving sister or parent entities not satisfying the 50% control or ownership threshold.

Such an extension appears inconsistent with the intention of the Dutch legislator, which did not align Article 8b CITA unconditionally with ATAD in situations falling outside the Directive's scope. Following the *Leur-Bloem* doctrine, established by the Court in 1997, the Court of Justice is only competent to interpret EU law in situations outside the Directive's scope where the national legislator intended to treat such domestic situations in the same manner as cross-border situations that fall within EU law.¹⁵³ The determination of that legislative intent is exclusively reserved for national courts.¹⁵⁴ Where no such unconditional alignment exists, the Court would need to declare itself incompetent,¹⁵⁵ meaning that the interpretation given to Article 8(7) ATAD in *Commission v Belgium* would not extend by force of EU law to non-CFC transfer pricing adjustments under Article 8b CITA

This limitation however creates a tension from the perspective of equal treatment. Restricting the FTC exclusively to situations that satisfy the CFC conditions of Article 7(1) ATAD could result in materially comparable transfer pricing adjustments under Article 8b CITA being treated differently depending solely on whether the 50% threshold and low-taxation requirement is met. Drawing on the *Sopora* Case,¹⁵⁶ it has been argued in literature that such a difference in treatment arising from a national provision creates concerns regarding horizontal discrimination under the freedom of establishment of Article 49 TFEU, as taxpayers in objectively comparable situations would be treated differently.¹⁵⁷ How the Court would assess such an interaction in this specific context remains at present unclear.¹⁵⁸

The possibility of applying Article 8(7) ATAD by analogy to non-CFC situations under Article 8b CITA must also be rejected. As Haslehner observes, provisions of ATAD cannot be applied by analogy to situations that fall outside of the Directive's scope.¹⁵⁹ This conclusion is supported by the Court's approach in *Gaz de France*, where it held that the legal effects of a directive are generally limited to cases falling within its scope, refusing to extend the Parent-Subsidiary Directive by analogy to a company not listed in its annex.¹⁶⁰ The Court reached a comparable conclusion in *Audiolux*, declining to extend shareholder rights under Directive 77/91 EEC to minority shareholders by analogy, and rejecting the existence of a general principle that could support a broader application that would require equal

¹⁵³ CJEU, Case C-28/95, *Leur-Bloem* [1997], ECLI:EU:C:1997:369, para 34.

¹⁵⁴ *Ibid.* para 33. See also See also Max Velthoven, *The General Anti-Abuse Rule of Article 6 of the EU Anti-Tax Avoidance Directive* (IBFD Doctoral Series 82 2025), p. 159-160. para. 4.7.3.3.

¹⁵⁵ M. Vergouwen, *Het CFC-arrest en door Nederland toegepaste (eenzijdige) opwaartse verrekenprijs correcties. In hoeverre kunnen belastingplichtigen op basis van het Unierecht een beroep doen op de verrekeningsmogelijkheid van artikel 8, lid 7 ATAD?*, NLF-W, 2.2, p. 25'.

¹⁵⁶ F.P.G. Pötgens, 'Sopora: over horizontale discriminatie en overcompensatie', NTFR-B 2015/15, par. 3. See also G.T.K. Meussen in BNB 2015/133, point 13, See also: I.M. de Groot in FED 2015/34, point 1.

¹⁵⁷ See also CFE ECJ Task Force, *CFE - Opinion Statement ECJ-TF 3/2015 on the Decision of the European Court of Justice in C.G. Sopora (Case C-512/13), on "Horizontal Discrimination"*, European Taxation Vol. 57 No. 1 (2016), Journals IBFD, p. 94-98, see also AG Kokott, Opinion on the Case C-512/13, *C.G. Sopora* [2015], ECLI:EU:C:2015:108, Para. 28.

¹⁵⁸ *Ibid* 156, p.28.

¹⁵⁹ Werner Haslehner, 'The General Scope of the ATAD and Its Position in the EU legal order', in Werner Haslehner, Katerina Pantazatou, Georg Kofler and Alexander Rust (eds), *A Guide To The Anti-Tax Avoidance Directive*, (Elgar Tax Law and Practice 2020) p. 59.

¹⁶⁰ CJEU, Case C-247/08, *Gaz de France* [2009], ECLI:EU:C:2009:600, Para. 43.

treatment with dominant shareholders.¹⁶¹ In coming to these conclusions, the Court analysed both the objective of the relevant directive and the detailed drafting of the provisions in order to identify if a possible general principle of law existed, that could possibly provide a broader application. When extending this approach to the provisions of ATAD, the rules of ATAD are, as Haslehner concludes, very precisely defined and designed, they cannot be applied beyond their intended scope to all corporate taxpayers¹⁶² - falling under Article 8b CITA.

4.3 Preliminary conclusion

This Chapter examined the Dutch implementation of the CFC Regime under ATAD through its dual-layered approach, assessing both implementations (and exclusions) against the obligations and objectives as established in Chapters 2 and 3.

Article 13ab CITA forms a partial transposition of Model A and functions as a targeted backstop for certain passive income shifted to low-taxed or blacklisted jurisdictions. While it diverges from ATAD's low-taxation test by using a fixed 9% corporate tax rate threshold, this is permitted under Article 3 ATAD as a stricter measure. Additionally, the Foreign Tax Credit provided for under Article 23e CITA 1969 also satisfies the FTC obligation for Model A situations.

It can be concluded that Article 8b CITA is broader in scope than Model B, by being applicable to all transfer pricing situations regardless of their subjective intent or what tax rate the controlled entity is subject to. While this broader scope is permitted under Article 3 ATAD, it means that Article 8b CITA does not result in being a precise transposition of Model B, but rather a functionally related and materially broader representation. On the SPF analysis, the two provisions operate similarly, though, the artificiality requirement that the Article 8b CITA lacks creates a distance relative to Model B's anti-abuse architecture. Furthermore, the Netherlands has not explicitly provided for a FTC-mechanism of Article 8(7) ATAD for CFC situations falling within the scope of Model B under Article 8b CITA. While the Dutch government based the representation of Model B on a pre-existing general provision combined with the discretion offered by Article 3 ATAD may leave limited room for a directive-compliant interpretation. The absence of an explicit FTC mechanism for ATAD-scope CFC situations does give rise to a potential risk of structural infringement following *Commission v Belgium*. Beyond the CFC context, the *Leur-Bloem* doctrine however limits the extension of Article 8(7) ATAD to non-CFC transfer pricing adjustments under Article 8b CITA, though this limitation itself raises some unresolved questions regarding horizontal discrimination. Whether the Dutch implementation of the CFC regime Model B is comparable enough to Belgium's, such that the Court's findings in *Commission v Belgium* could be applied by analogy, forms the subject of analysis in the next Chapter.

¹⁶¹ CJEU, Case C-101/08, *Audiolux* [2009], ECLI:EU:C:2009:626.

¹⁶² Werner Haslehner, 'The General Scope of the ATAD and Its Position in the EU legal order', in Werner Haslehner, Katerina Pantazatou, Georg Kofler and Alexander Rust (eds), *A Guide To The Anti-Tax Avoidance Directive*, (Elgar Tax Law and Practice 2020), p. 59.

5 Comparative analysis: Belgium and the Netherlands

5.1 The benchmark: ATAD as *Tertium Comparationis*

This Chapter assesses whether the Dutch implementation of Model B is sufficiently comparable - both materially and functionally - to the Belgian implementation found to be in breach of ATAD's transposition obligation in *Commission v Belgium*, and thus if the Court's reasoning applies equally to the Netherlands its representation of Model B. The analysis does not go as far to a full examination of the Belgian Tax law but instead shall limit to determine whether the structural and material similarity between the two implementations of Model B are sufficiently similar for the Court's findings to apply to the Dutch CFC framework with equal results.

In order to avoid the methodological risk of measuring one national system against the other and thereby privileging either one of the two, the comparison is made against a neutral benchmark. The ATAD Directive itself serves as the *tertium comparationis*,¹⁶³ a neutral external reference point against which both implementations are examined.¹⁶⁴ This functional method of comparative analysis is not the analysis of the Belgian or Dutch implementation itself but rather focuses on the common problem of not including the mandatory FTC-mechanism to prevent double taxation when reattributing CFC income under their approach of Article 7(2)(b) ATAD, thus comparing the two systems against a common criterion. This approach is suitable as both Belgium and the Netherlands are bound by the same obligation to transpose the Directive's provisions into its domestic legal framework, ultimately combating tax avoidance whilst simultaneously avoiding creating obstacles for the internal market.¹⁶⁵ The relevant question is therefore not how their domestic rules differ from one another but rather how each implemented the CFC profit attribution rules under Article 7(2)(b) ATAD in accordance with the mandatory FTC-mechanism against economic double taxation.

5.2 Divergent statutory approaches, same functional purpose

The most obvious difference between the two implementations lies in their legislative form. While Belgium transposed Model B explicitly into a new dedicated provision - Article 185/2 of the Belgium Income Tax Code 1992 - through the Law on the Reform of Corporation Tax in December 2017,¹⁶⁶ thus creating a clear provision against which the thoroughness of the transposition could be examined. The Netherlands, on the other hand, deemed it unnecessary to introduce a new dedicated provision but instead relied on its already existing general codification of the Arm's Length Principle in Article 8b CITA, arguing that this provision *de facto* already served the Directive's objectives.¹⁶⁷

¹⁶³ M. Van Hoecke, *Methodology of Comparative Legal Research* (2020), *Law and Method* (2015) Boom Juridisch, p. 27; M. Van Hoecke is Professor of Comparative Law at Queen Mary University of London, and Professor of Legal Theory and Comparative law at Ghent university.

¹⁶⁴ Danny Pieters, '*Functions of Comparative Law and Practical Methodology of Comparing, Or How the Goal Determines the Road!*' (2009), p. 24 and 25; Prof. dr. D. Pieters is a professor emeritus at the University of Leuven, taught comparative law and security law. At present, he is a judge at the Belgian Constitutional Court.

¹⁶⁵ See Art. 1(1) ATAD in conjunction with Recital 5 of Council Directive (EU) 2016/1164 OJ 2016 L 193/1.

¹⁶⁶ Be: Parliamentary Documents 2017/18, DOC 54, 2864/002, Art. 185/2 Income Tax Code.

¹⁶⁷ NL: Parliamentary Documents II 2018/2019, 35 030, no. 3, at 3.

The different legislative approaches are less significant in substance but more so in form as Belgium's explicit transposition created a visible gap where the FTC was not included, the Dutch pre-existing provision did it implicitly. Article 8b CITA does not incorporate a specific relief against double taxation arising from the reattribution of CFC income falling within the scope of ATAD but instead is an 'open norm' which relies on Transfer Pricing concepts.¹⁶⁸ For both jurisdictions, taxpayers whose situations fall within Model B are therefore potentially subject to economic double taxation without having access to a FTC-mechanism.¹⁶⁹ If we measure both implementations against the Directive's dual objective, combating tax avoidance while avoiding creating obstacles to the internal market such as double taxation, both implementations are similarly structurally insufficient.¹⁷⁰

5.3 Functional comparison, two non-compliant solutions to the same problem

5.3.1 The Arm's Length Principle and Significant people functions

Despite their different statutory approaches, both implementations nevertheless rely on Transfer Pricing concepts such as the Arm's Length Principle and SPFs, derived from the OECD TPG in order to identify where value is created, risk is borne and therefore where profit should be attributed.¹⁷¹ Under both the Belgian and Dutch implementations of Model B, the income of the CFC is attributed to the controlling parent entity on the basis that the CFC would not have owned the relevant assets or risks assumed if the SPF were not performed by the controlling parent entity. It can therefore be argued that both implementations are therefore similar in function, employing the same technique for reattribution of CFC income and thereby producing the same economic outcome - namely aligning taxation with value creation and combating tax-avoidance as intended by the OECD BEPS.¹⁷²

A material difference however lies in the absence of the subjective anti-abuse test in the Dutch representation of Model B. Unlike Article 185/2 Income Tax Act of Belgium, which is an explicit transposition of Article 7(2)(b) ATAD, thus including the subjective and objective anti-abuse test, Article 8b CITA applies to all Transfer Pricing corrections regardless of the taxpayer's motive. Although this broader and thus stricter scope is permitted under Article 3 ATAD, it is by no means a relief of the obligation to align itself with the Directive's obligation falling within the scope of ATAD Model B due to a directive-compliant interpretation.¹⁷³

5.3.2 The justification and its rejections

Where the different implementations diverge however, is in the justification that each Member State put forward in excluding the mandatory FTC under Article 8(7) ATAD. Belgium relied on the possibility of economic double taxation for entities engaging in profit-shifting behaviour, creating a deterrent effect whilst safeguarding its corporate tax base. A higher level of protection it considered possible under Article 3 ATAD. Thus basing her justifications on policy. The

¹⁶⁸ NL: Parliamentary Documents II 2018/2019, 35 030, no. 7, at 6–7 and NL: Parliamentary Documents I 2018/2019, 35 030, C, Art. 3, p. 2.

¹⁶⁹ C-524/23, *Commission v Belgium*[2026], ECLI:EU:C:2026:111, para 102.

¹⁷⁰ *Ibid*, Para. 107.

¹⁷¹ Be: Parliamentary Documents 2017/18, DOC 54, 2864/002, p11.

¹⁷² Council Directive (EU) 2016/1164, Recital 2 and 12.

¹⁷³ C-524/23, *Commission v Belgium*[2026], ECLI:EU:C:2026:111.Para. 109.

Netherlands put forward the argument in its intervention in *Commission v Belgium* that under its arm's length principle approach for Model B, it already naturally prevented economic double taxation. Since income attributed to the controlling entity never belonged to its controlled subsidiary in the first place, double taxation could not arise, making Article 8(7) ATAD irrelevant in Model B applications.¹⁷⁴

Although both Member States had different justifications for the non-inclusion of the FTC-mechanism, the Court's reasoning rejected, however, both lines of argument. It instead confirmed that Article 8(7) ATAD is of mandatory nature and that the level of discretion as provided in the second sentence of the provision extends itself only to the calculation of the tax credit and not the existence of it.¹⁷⁵ Thus making the provision mandatory whilst rendering the deterrence rationale invalid under Article 3 ATAD.¹⁷⁶ Additionally, the Court further held that Article 8(7) ATAD governs the taxation while Articles 7(2)(b) and 8(2) only rule about the attribution of the CFC income,¹⁷⁷ thus rejecting the Dutch argument. Importantly, the Court reasoned that the Arm's Length Principle under Model B alone cannot eliminate the risk of double taxation where a CFC is located in a third country outside EU.¹⁷⁸ Since particular third-country jurisdictions are not bound by the Directive, only the implementation of Article 8(7) ATAD could prevent potential economic double taxation.¹⁷⁹ The rejection of the legal theory as put forward by the Netherlands could potentially mean that it is no longer able to rely on this reasoning in future cases that fall within the scope of ATAD - as it is deemed no longer to be in line with the Directive's objectives. In the context of this comparison, both provisions operate sufficiently comparable within the CFC context that the exclusion of the Foreign Tax Credit mechanism potentially leads to materially identical consequences in both of these jurisdictions.

5.4 Typological classification, the same 'ideal type'

The functional analysis done so far, indicate that both Belgium and the Netherlands, prior to the Court's judgement could belong to the same "ideal type", which is characterized by a regime that implements the Model B approach of ATAD - by attributing CFC income based on Transfer Pricing principles and SPFs - but structurally omitting the FTC-mechanism which the Directive requires as a mandatory counterpart against possible economic double taxation. According to Buijze, creating ideal types "increases the comparability of jurisdictions regarding cross-border taxation" and "allows for a generalisation beyond the study of one specific jurisdiction."¹⁸⁰ Within this 'ideal type' however, the internal justifications as forwarded by both Belgium and the Netherlands for the exclusion of a FTC in Model B CFC applications differ, although both fall short. Despite this difference, being categorized into the same 'ideal type', could mean the findings of the Court's findings regarding the failure of transposition of Article 8(7) ATAD could be applied beyond just Belgium to all jurisdictions falling within the ideal type - The Netherlands included.¹⁸¹

¹⁷⁴ C-524/23, *Commission v Belgium*, ECLI:EU:C:2026 [2026]:111.para 57.

¹⁷⁵ *Ibid*, para 72 and 73.

¹⁷⁶ *Ibid* para, 110.

¹⁷⁷ C-524/23, *Commission v Belgium*, ECLI:EU:C:2026:111 [2026]. para 61, See also Art. 7(2)(b) and 8(2) ATAD.

¹⁷⁸ *Ibid*. para 114.

¹⁷⁹ *Ibid*, para 62.

¹⁸⁰ Renate Buijze, *The Categorisation of Tax Jurisdictions in Comparative Tax Law Research*, (2016), No. 4, Erasmus Law Review, 189, 198.

¹⁸¹ *Ibid*, p. 189.

5.5 Preliminary conclusion

The analysis conducted in this Chapter indicates that both the Belgian and Dutch implementations of Model B for the reattribution of CFC profits and the exclusion of the mandatory FTC-mechanism are sufficiently comparable, materially, functionally and in terms of their underlying justification - when examined against the objectives of ATAD. Both jurisdictions implemented Model B, either explicitly or implicitly and thus relying on the same methodology used for profit attribution, of CFCs based on Transfer Pricing concepts and as a result producing the same economic outcome. The additional fact that both the Netherlands and Belgium deliberately chose not to include what the Court later confirmed to be mandatory FTC under Article 8(7) ATAD, albeit on different justifications, only confirms that they belong to the same 'ideal type' of Model B jurisdictions. The intervention made by the Netherlands in *Commission v Belgium* confirms that the Dutch omission of the FTC was a deliberate decision, which the Court directly addressed and rejected, thus putting the Dutch justification on equal footing with Belgium - without requiring to undergo a separate infringement procedure. As a result, it can therefore be said that the Court's finding in *Commission v Belgium*, appears applicable to the Dutch framework in situations falling within the scope of ATAD's CFC rules due to a directive-compliant interpretation. Consequently, the Dutch implementation of Model B in its current form, therefore, seems, in light of *Commission v Belgium*, not to include the measures necessary to comply with Article 8(7) ATAD.

6 Conclusion and Discussion

The thesis sought to examine the extent to which the Court's recent judgement in the case *Commission v Belgium* (C524/23), regarding Belgium's failure to correctly transpose Article 8(7) ATAD in its national implementation of CFC Model B, impacts the Dutch codified Arm's Length Principle in Article 8b CITA and whether it necessitates a Foreign Tax Credit for Transfer Pricing adjustments falling within the scope of ATAD.

The Dutch implementation of the ATADs CFC Regime

The dual-layered approach adopted by the Dutch government led to the implementation of a combination of Model B as a primary CFC profit reattribution measure and Model A serving as an additional backstop in ATAD's CFC regime in the Dutch legal framework. While partially transpositioning Model A - following a categorical approach that targets specific types of ~~passive~~ income that are geographically mobile based on a predefined list under Article 13ab CITA, including a Foreign Tax Credit mechanism under Article 23e CITA - the government opted for an indirect implementation of Model B. Article 8b CITA, which functions as the Dutch representation of Model B in situations falling within the scope of ATAD, acts as a codified provision of the Arm's Length Principle based on Article 9 of the OECD MTC. As both Model B of Article 7(2)(b) ATD and Article 8b CITA ultimately rely on Transfer Pricing concepts for aligning profit attribution with value creation, such as the SPF used during the Functional and Factual analysis, the Dutch government deemed it unnecessary to transpose Model B into a new dedicated legal provision. As a result, compared to Model B, Article 8b CITA as an 'open norm' targets not just income that satisfies the subjective-objective test, but all income that is not at arm's length. Therefore being applicable to all situations, also those falling outside of the scope of ATAD's CFC rules, regardless of the taxpayer's motives. Although the stricter approach is permitted for ATAD situations under Article 3 ATAD, the absence of a FTC-mechanism as described in Article 8(7) ATAD for Model B applications raises some questions regarding the correctness of the Dutch transposition in light of the Court's Judgement and the obligation of a directive-compliant interpretation for situations falling within ATAD's scope.

Comparing the Belgian and Dutch implementation of ATADs Model B

Although the Belgian and Dutch implementation of Model B differ structurally, as Belgium explicitly transposed Model B into its legal framework using a dedicated provision and the Netherlands instead relying on a pre-existing general provision, both implementations are sufficiently comparable, materially, functionally and in terms of their underlying justification when examined against the objectives of ATAD. Both implementations of Model B ultimately rely on the same Transfer Pricing logic regarding the attribution of profits, thus producing the same economic outcome and both deliberately opted to exclude the mandatory FTC-mechanism of Article 8(7) ATAD, even though both countries put forward different justifications. Belgium argued it was to protect the integrity of its corporate tax base and to discourage entities from engaging in profit shifting behaviour ATAD aims to prevent, the possibility of economic double taxation as a deterrence-based policy could therefore be permitted under Article 3 ATAD. The Netherlands, which intervened directly in *Commisison v Belgium* argued that the Arm's Length Principle under Model B naturally prevents economic double taxation from arising, as income that is attributed to the controlling entity was never supposed to be taxed in the CFCs jurisdiction in the first place, thus making Article 8(7) ATAD for Model B applications entirely obsolete.

The Court rejected the arguments of both Member States within the same judgement, instead confirming that Article 8(7) ATAD is of mandatory nature and the discretion in its second sentence extends only to the calculation rules for the credit thereof, not the existence of the FTC in itself and argued that the Arm's Length approach alone cannot eliminate the risk of double taxation where a third-country CFC is not bound by the Directive. As a result of the Dutch legal theory used for its absence of the FTC-mechanism being rejected within the same Case, it does not need a separate infringement procedure to put its rejected justifications on the same footing as Belgium's. As both jurisdictions therefore belong to the same 'ideal type' of Model B jurisdictions, the Court's findings and reasoning in *Commission v Belgium* appears to be applicable by analogy to the Dutch Model B CFC Regime.

“To what extent does the CJEU's Judgment in Case C-524/23, Commission v Belgium, impact the Dutch Arm's Length Principle in Article 8b CITA 1969 and necessitate a foreign tax credit for Transfer Pricing Adjustments under ATAD?”

The judgement does not automatically invalidate the Dutch transfer pricing rules as laid down in Article 8b CITA, as a directive-compliant interpretation does not go beyond the scope of the Directive. However, insofar Article 8b CITA operates as the Dutch implementation of Model B, it can be argued that it does not satisfy the requirements for a correct implementation of Model B as it does not explicitly allow for a Foreign Tax Credit in CFC situations falling within the scope of ATAD where economic double taxation is present. As a result of this structural gap, taxpayers falling within the scope of ATAD's CFC regime in the Netherlands who are subject to economic double taxation can invoke direct effect of the first sentence under Article 8(7) ATAD directly before the Dutch courts. Following from settled case law and the the Court's judgement in *Commission v Belgium*, the provision of Article 8(7) ATAD is of mandatory nature and limits the Member State's discretion solely to the calculation of the FTC and not its existence, thus making the provision sufficiently clear, precise and unconditional as to the results to be achieved.

It must however be noted that the impact of the judgement on Dutch (upward) Transfer Pricing corrections under Article 8b are however limited to those that satisfy the CFC conditions of Article 7(1) ATAD. Following from the *Leur-Bloem* doctrine and the Court's reasoning in both *Gaz de France* and *Audiolux*, the FTC however cannot be extended to non-CFC transfer pricing adjustments under Article 8b CITA by analogy, as these fall outside of ATAD's scope due to its provisions being precisely defined and designed. May double taxation however arises in either situation, then disputes regarding taxation are generally already resolved either through the EU Dispute Resolution Mechanism, the principle of sincere cooperation or *ex post* through MAP-procedures. The Judgment therefore does not have far reaching implications for the Dutch Transfer Pricing rules *persé*, as its implications are limited to only the (upward) transfer pricing corrections falling within the scope of ATAD's situations under Article 8b CITA.

Discussion

What these limitations mean for (upward) Transfer Pricings corrections falling outside of the scope of ATAD under Article 8b CITA, which possibly identifies horizontal discrimination under the freedom of establishment of Article 49 TFEU, remain an interesting but unresolved question for further research.

References

Official documents

European Commission

European Commission, Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market [2016] COM/2016/026 final.

Action brought on 11 August 2023 - *European Commission v Kingdom of Belgium* (C-524/23) [2023] OJ C 2023/207

EU Primary Law

Consolidated Version of the Treaty on the Functioning of the European Union (2008) OJ C115/47.

Consolidated Version of the treaty on European Union (2012) OJ C 326/13

EU Secondary Law

Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices (2016) OJ L193/1, as consolidated on 1 January 2022

Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, OJ 2016 L 144/1

Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union OJ 2017 L 265, as consolidated on 14 October 2017

Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ 2022 L328/1, as consolidated on 22 December 2022

Council Directive (EU) 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, OJ 2009 L310/34 as consolidated on 1 July 2013

Council Directive (EU) 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different member OJ L345/29, as consolidated on 17 February 2015

The Interest and Royalty Directive, 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ 2003 L. 157/49

Domestic Official documents and legislation

NL: Parliamentary Documents II, 2001/02, 28 034, No. 3.

NL: Parliamentary Documents II 2017-2018, 34 959.

NL: Parliamentary Documents II 2017–2018, 32 140.

NL: Parliamentary Documents II 2018/2019, 35 030, no. 3.

NL: Parliamentary Documents II 2018/2019, 35 030, no. 7.

NL: Parliamentary Documents I 2018/2019, 35 030, C.

Be: Parliamentary Documents 2017/18, DOC 54, 2864/002.

NL: Corporate Income Taxation Act (CITA) 1969.

Regeling laagbelastende staten en niet-coöperatieve rechtsgebieden voor belastingdoeleinden (Netherlands Ministerial Regulation, Strict 2019, 69810).

US Senate Permanent Subcommittee on Investigations, *Offshore Profit Shifting and the U.S. Tax Code - Part 2 (Apple Inc.)*, (Subcommittee Memorandum, 21 May 2013).

House of Commons Committee of Public Accountants, *Tax avoidance: tackling marketed avoidance schemes* (HC 2012-13, 716).

OECD

OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (1995), OECD Publishing.

OECD (2010), *2010 Report on the Attribution of Profits to Permanent Establishments*, OECD Publishing.

OECD, *Action Plan on Base Erosion and Profit Shifting* (2013), OECD Publishing.

OECD, *Designing Effective Controlled Foreign Company Rules, Action 3 – Final Report* (2015), OECD Publishing.

OECD, *Model Tax Convention on Income and on Capital 2017 (Full Version)* (OECD Publishing 2019).

OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2022), OECD Publishing.

Literature

Brokenlind, C, 'The Anti-Tax Avoidance Directive Under Scrutiny: A Matter of Competence?', in J. Monsengo and J. Bjuvberg (eds), *International Taxation in a Changing Landscape - Liber Amicorum in Honour of Bertil Wiman* (Wolters Kluwer International 2019).

Cid J.M.A 'Harmonization of Controlled Foreign Corporation Rules in the European Union: The Spanish Perspective', in J.M.A. Cid, J.A. Ferreras Gutiérrez and P.A.H. González-Barreda (eds), *Combating Tax Avoidance in the EU: Harmonization and Cooperation in Direct Taxation* (Wolters Kluwer International 2019).

Fayos C, 'The Scope of the Directive and the Principle of Subsidiarity', in J.M.A. Cid, J.A. Ferreras Gutiérrez and P.A.H. González-Barreda (eds), *Combating Tax Avoidance in the EU: Harmonization and Cooperation in Direct Taxation* (Wolters Kluwer International 2019).

Haslehner W, 'The General Scope of the ATAD and Its Position in the EU legal order', W. Haslehner, K. Pantazatou, G. Kofler, A. Rust (eds), *A Guide To The Anti-Tax Avoidance Directive* (Edward Elgar Publishing 2020).

Haslehner W, 'EU-US Relations in the Field of Direct Taxes from the EU Perspective: A BEPS-induced transformation?', in P. Pistone and D. Webe (eds) *Implementation of Anti-BEPS Rules in the EU: A Comprehensive Study* (IBFD Publishing 2018).

Helminen M, *EU Tax Law: Direct Taxation* (IBFD 2025).

López A.S, Benítez Régil P and Arribas Plaza D, 'The role of negative Harmonization in the European Tax Arena: Special Reference to the Cross Border Loss Relief Regime', in J.M.A. Cid, J.A. Ferreras Gutiérrez and P.A.H. González-Barreda (eds), *Combating Tax Avoidance in the EU: Harmonization and Cooperation in Direct Taxation* (Wolter Kluwer International 2019).

Panayi CHJI P, 'The ATAD's CFC rule and its Impact on the Existing Regimes of EU Member States', P. Pistone, and D. Weber (eds.) *The Implementation of Anti-BEPS rules in the EU: A Comprehensive Study* (IBFD 2018).

Rust A, 'Double Taxation', in A. Rust (eds) *Double Taxation within the European Union*, (Kluwer Law International 2011).

Roland I, 'MAP and Arbitration as Remedies for Double Burdens: Evolutionary Law-Making through Procedural rather than Substantive Rules?', in A. Rust (eds) *Double Taxation within the European Union*, (Kluwer Law International 2011).

Vanistendeeal F, 'From Abuse to Base Erosion, How Did it Come To This, in W. Haslehner, K. Pantazatou, G. Kofler and A. Rust (eds), *A Guide To The Anti-Tax Avoidance Directive* (Edward Elgar Publishing 2020).

Velthoven, M.J. *The General Anti-Abuse Rule of Article 6 of the EU Anti-Tax Avoidance Directive*, (IBFD Doctoral Series 82, 2025).

Wattel, P., 'Constitutional Foundations: EU Tax Competences, Treaty Basis for Tax Integration; Sources and Enactment of EU Tax Law', in S. Douma, O. Marres, H. Vermeulen, and D. Weber (eds), *European Tax Law* (Wolters Kluwer International 2025).

Articles

A. Christians, 'Avoidance, Evasion, and Taxpayer Morality' (2014), Vol 44, Washington University Journal of Law & Policy.

A. de Graaf, & K.J.Visser, 'ATA Directive: Some Observations regarding formal Aspects' (2016), Vol. 25, Issue 4, *EC Tax Review*.

A.P. Dourado, 'The EU Anti-Tax Avoidance Package: Moving Ahead of BEPS' (2016) Vol 44, Issue 6 &7, *INTERTAX*.

C. Silberztein & M. Guillaume, 'Does Intangible Ownership Move with the People That Perform the DEMPE Functions?'(2022), Vol, 29, No. 7, *Intl. Transfer Pricing Journals IBFD*.

D. Shaviro 'The Case Against Foreign Tax Credits' (2011), Vol. 3, Issue 1, *Journal of Legal Analysis*.

D. Pieters, 'Functions of Comparative Law and Practical Methodology of Comparing, Or How the Goal Determines the Road'! (2009), in *Syllabus Research Master in Law*, Leuven-Tilburg.

F.P.G. Pötgens, 'Sopora: over horizontale discriminatie en overcompensatie', (2015)Vol. 4, *NtFR-Beschouwingen 2015/15*.

G. Ginevra, "The EU Anti-Tax Avoidance Directive and the Base Erosion and Profit Shifting (BEPS) Action Plan: Necessity and Adequacy of the Measures at EU Level," (2017) Vol. 45, no. 2, *Intertax*.

G.T.K. Meussen, 'Zaak Sopora. 150 kilometer-criterium voor 30%-regeling. Vrij verkeer van werknemers. Extraterritoriale kosten. Systematische overcompensatie?' *BNB 2015/133*.

H. Lohuis e.a., 'Wetsvoorstel Wet implementatie eerste EU-richtlijn antibelastingontwijking (ATAD1)',(2018), *NtFR 2018/2247*.

I.M. de Groot, 'Country note: Implementation of the Controlled Foreign Company Rules in the Netherlands', (2019), Vol. 47, Issue 8. *INTERTAX*.

I.M. de Groot, 'The Switch-Over Provision in the Proposal for an Anti-tax Avoidance Directive and Its Compatibility with the EU Treaty Freedoms' (2016), Vol. 25, Issue 3. *EC Tax Rev*.

I.M. de Groot, 'De 30%-regeling is niet in strijd met EU-recht, tenzij deze systematisch tot een duidelijke overcompensatie leidt'(2015), *FED 2015/34*.

J. Martin, 'UK Lawmakers Lambaste Big 4 Accounting Firms', Vol. 69 *Tax Notes International L 518* (2013).

J. Schönfeld, 'CFC Rules and Anti-Tax Avoidance Directive' (2017), Vol. 26, Issue 3, EC Tax Review.

M. Vergouwen, 'Het CFC-arrest en door Nederland toegepaste (eenzijdige) opwaartse verrekenprijs correcties. In hoeverre kunnen belastingplichtigen op basis van het Unierecht een beroep doen op de verrekeningsmogelijkheid van artikel 8, lid 7 ATAD?' (2026), Vol. 15, Nederlands Fiscaal Weekblad.

M.J. Velthoven, S.R. Pancham and R.K. Bane, 'De zaak Commissie tegen België: een bommetje onder de Nederlandse transferpricingregels?' (2026), Vol. 9, NLF Opinie, Vol. 9.

M. Van Hoecke, 'Methodology of Comparative Legal Research', *Law and Method* (Boom Juridisch 2015).

R. Buijze, 'The Categorisation of Tax Jurisdictions in Comparative Tax Law Research', (2016), No. 4, Erasmus Law Review.

R.J. Kloprogge & O. Elsenburg, 'More Anti-Abuse Tools as Dutch Government Announces Strengthening the CFC Rule', (2022) Vol. 48, Issue 1, International Tax Journal.

R. Goulder, 'The EU, Belgium and ATAD: What's So Wrong With Gold Plating' (2016), Vol. 122, Tax Notes Int'l

S. MIETTINEN, & M. KETTUNEN, 'Travaux to the EU Treaties: Preparatory Work as a Source of EU Law' (2015), Vol. 17, Cambridge Yearbook of European Legal Studies..

S. Buriak and I. Lazarov, 'Between State Aid And The Fundamental Freedoms: The Arm's Length Principle And EU Law' (2019), Vol. 56, Issue 4. Common Market Law Review.

Case Law

Court of Justice of the European Union

CJEU, Case C-41/74, *Van Duyn v Home Office* [1974], ECLI:EU:C:1974:133.

CJEU, Case C-8/81, *Becker* [1982], ECLI:EU:C:1982:7.

CJEU, Case C-106/89, *Marleasing SA* [1990], ECLI:EU:C:1990:395.

CJEU, Case C-28/95, *Leur-Bloem* [1997], ECLI:EU:C:1997:369.

CJEU C-110/99, *Emsland-Stärke GmbH v Hauptzollamt Hamburg-Jonas* [2000], ECLI:EU:C2000:65.

CJEU, Case C-255/02, *Halifax* [2006], ECLI:EU:C:2006:121.

CJEU, Case C-212/04, *Adeneler* [2006], ECLI:EU:C:2006:443.

CJEU, Case C-101/08, *Audiolux* [2009], ECLI:EU:C:2009:626.

CJEU, Case C-247/08, *Gaz de France* [2009], ECLI:EU:C:2009:600.

CJEU, Case C-582/08, *Commission v UK* [2010], ECLI:EU:C:2010:429.

CJEU, C-533/08, *TNT Express Nederland* [2010], ECLI:EU:C:2010:243.

CJEU, Case C-337/13, *Almos Agrárkülkereskedelmi* [2014], ECLI:EU:C:2014:328.

CJEU, Case C-512/13, *C.G. Sopora* [2015], ECLI:EU:C:2015:108.

CJEU, Case C-29/12, *Commission v Poland* [2015] EU:C:2015:379.

CJEU, Case C-196/04 *Cadbury Schweppes* [2016], ECLI:EU:C:2006:544.

CJEU, Case C-201/05, *Test Claimants in the CFC and Dividend Group Litigation* [2018], ECLI:EU:C:2008:239.

CJEU, Case C-387/19, *RTS* [2021], ECLI:EU:C:2021:13.

CJEU, Case C-718/18, *Commission v Germany* [2021], EU:C:2021:662.

CJEU, Case C-230/23, *Reprobel v Copaco* [2024], ECLI:EU:C:2024:951.

CJEU, Case C-524/23, *Commission v Belgium* [2026], ECLI:EU:C:2026:111.

Opinions of the Advocate General

AG Kokott, Opinion on the Case C-512/13, *C.G. Sopora* [2015], ECLI:EU:C:2015:108.

AG Kokott, Opinion on the Case C-524/23 *Commission v. Belgium* [2025], ECLI:EU:C:2026:111.

Web blogs

Lorenzo, F., Michel, B., 'EU public consultation on the Anti-Avoidance Directive' (*Tax Justice Network*, November 2024), <<https://taxjustice.net/2024/11/07/eu-public-consultation-on-the-anti-avoidance-directive/>> accessed 25 May 2026.