



Dear Sir/Madam,

The CFE ECJ Task Force has prepared an [Opinion Statement](#) on Case C-135/17, *X GmbH*, in which the Court of Justice of the EU (Grand Chamber) (ECJ) delivered its judgment on 26 February 2019. In general terms, the ECJ largely followed the opinion given by Advocate General Mengozzi on 5 December 2018, and held that the standstill clause also applies if the scope of the domestic CFC legislation is extended after 31 December 1993 to shareholdings which do not involve direct investment.

In addition, the Court stated that Member States cannot rely on the standstill clause if they change their legislation after 31 December 1993 and then later on replace these changes by legislation essentially identical to that applicable on 31 December 1993 unless these changes were never applied due to their repeal with retroactive effect. Concerning the interpretation of Article 63 TFEU, the ECJ transferred in substance its approach in *Cadbury Schweppes* (Case C-194/04) and held that the German CFC legislation does not infringe the free movement of capital unless the Member State of the shareholder is able to verify the accuracy of the information that the shareholding in the company is not the result of an artificial scheme.

CFE Tax Advisers Europe note that the Court's decision in *X GmbH* constitutes a continuation of the Court's prior case-law regarding the meaning of the standstill clause. The CFE welcomes the clarification with regard to the question whether a restriction already existed on 31 December 1993.

The Court further develops its *Cadbury Schweppes* jurisprudence and illustrates how to interpret the terms "wholly artificial arrangements" in relation to the free movement of capital. The Court held that this concept has to be interpreted in a broader way in relation to third countries. It would be helpful if the Court gave further guidance in a future judgment on the meaning of "artificial transfer of profits".

X GmbH will likely also be relevant for the domestic legislation that implemented Articles 7 and 8 of the ATAD in that Member States will have to apply the "substance escape" also to third countries with an exchange of information clause.

We invite you to read the [Opinion Statement](#), and remain available to discuss any questions or comments.

Kind regards,

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