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No (more) EU Parent-Subsidiary Directive exemptions applicable regarding Gibraltar companies

#Gibraltar companies

#No (more) EU participation exemption

#ECJ case law

#Luxembourg

Many international enterprise groups comprise Gibraltar companies, in particular in the financial sector.

The European Court of Justice (ECJ) ruled on 2 April 2020 (case C-458-18) that a Gibraltar company subject to Gibraltar corporation tax cannot be considered as a "company of a member state" within the meaning of the EU Parent-Subsidiary Directive (Council Directive 2011/96/EU).

This means in particular that EU companies paying dividends to such a Gibraltar company will not benefit from a withholding tax exemption on the basis of the EU Parent-Subsidiary Directive, nor from an exemption of dividends or capital gains derived from a participation in such a Gibraltar company on said basis.

The ECJ decision shall in practice be applied immediately.

Hence, possibilities but also challenges relating to Luxembourg companies of an enterprise group in connection with the above should be analyzed in due course.

We are at your disposal for any assistance.