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# EU Direct Tax Newsalert

## Ruling on applicability of EU Parent-Subsidiary Directive to Gibraltar companies

On 2 April 2020, the Court of Justice of the European Union (CJEU) issued its judgment in *GVC Services (Bulgaria) EOOD vs. the Director of the 'Appeals and Tax and Social Security' Directorate of Sofia, Bulgaria* ( C-458/18).

The ruling concerns the interpretation of Article 2(a) (i) and (iii) of Council Directive 2011/96/EU ( the Directive) on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive (EU) 2015/121 of 27 January 2015, and its Annex I, Part A and Part B. In particular the case considers how the Directive should be applied to Gibraltar.

As regards EU law, for the periods under consideration, Gibraltar is a European territory for whose external relations a Member State (the United Kingdom) is responsible within the meaning of Article 355(3) TFEU and accordingly, to which the provisions of the Treaties apply.

### Facts

GVC Services (Bulgaria) EOOD ("GVC Services") is a Bulgarian single-member limited-liability company. Its share capital was wholly owned by PGB Limited ("PGB") a company registered in Gibraltar.

During the period from 13 July 2011 to 21 April 2016, GVC Services paid dividends to PGB free from withholding tax on the basis that EU law was applicable to Gibraltar and accordingly the requirements of Article 2 of the Directive were satisfied. This turn was on the basis that the Gibraltar parent could be equated with a company incorporated in the United Kingdom and being subject to corporation tax in Gibraltar was to be equated with corporation tax in the United Kingdom, as referred to in Annex I, Part B, to the Directive.

The Bulgarian tax authorities on the other hand considered that the dividends should have been subject to withholding tax and raised a notice of assessment. They contended that the

Directive contained an express and exhaustive list both of the companies (Annex I, Part A) and of the taxes (Annex I, Part B) to which it applied. The Directive could therefore not be extended to companies incorporated in Gibraltar and liable to tax there.

The assessment was appealed to the Sofia Administrative Court which in turn referred the matter to the CJEU for a preliminary ruling.

It should be noted that the Commission has on a number of occasions stated that in their view the Directive applies to Gibraltar and indeed they submitted observations in the current case.

### The Judgment

The CJEU determined that, for reasons of legal certainty, it was not possible to extend the scope of the Directive by analogy to companies other than companies listed in Annex I, Part A, as the material scope of the Directive has been defined by means of an exhaustive list.

In their written observations, the United Kingdom Government stated that companies incorporated under its law did not include companies incorporated in Gibraltar and similarly the tax imposed in Gibraltar did not constitute a 'corporation tax in the United Kingdom'.

In light of this, the CJEU ruled that companies incorporated in Gibraltar and subject to tax there do not meet the requirements of the Directive

### Takeaway

This judgment is important for the application of the Directive to Gibraltar companies. Similar consideration may arise regarding inter alia the EU Interest and Royalty Directive.

It should be noted however that the judgment is without prejudice to the question of whether the imposition of withholding tax is a breach of the fundamental freedoms in the Treaty which the CJEU did not consider further.