

Domestic Legal Rules Requalifying Share-deal Real Estate Transfer Taxes and the Prohibition of Indirect Taxes on Capital Restructurings

Opinion Statement ECJ-TF 2/2026 on the decision of the CJEU of 04 June 2026 in Case C-837/24, *NOVA IBEROMOLDES – SGPS, S.A. v Autoridade Tributária e Aduaneira*

**Prepared by the CFE ECJ Task Force
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This is an Opinion Statement prepared by the CFE ECJ Task Force¹ on the *NOVA IBEROMOLDES – SGPS, S.A. v Autoridade Tributária e Aduaneira* (hereinafter: the "*Nova Iberomoldes Case*"), in which the Court of Justice of the EU (First Chamber) delivered its decision on 4 June 2026.²

The judgment clarifies the scope of Directive 2008/7/EC³ concerning indirect taxes on the raising of capital, in particular, in what concerns the dialectic relationship between the prohibition laid down in Article 5 (of charging any form of indirect tax whatsoever on certain transactions, including restructuring operations) and the derogations set forth in Article 6 of the Directive (namely the possibility of levying taxes on real estate transfers). The Court held that the Directive precluded national real estate transfer tax legislation under which the formation of a capital company, whose share capital is paid up by means of shares held in other companies owning immovable property, is subject to a tax assessed on the indirect transfer of immovable property by reference to the value of that property.

The Court did not follow the Opinion of Advocate General Kokott,⁴ who had proposed that the Portuguese tax should not be regarded as a prohibited indirect tax on the raising of capital within the meaning of the Directive, since an indirect change of ownership in immovable property by means of a majority shareholding should fall within the exception laid down in Article 6 of the Directive.

The judgment raises issues that go far beyond the Portuguese tax system. It holds that where a transfer of shares is itself a contribution of capital or a restructuring operation under Directive 2008/7/EC, the characterisation of a levy on that transfer is determined under EU Law, and it is not altered by a national provision treating the transfer as a transfer of the underlying immovable property. It applies the settled principle that the exceptions in Article 6 are exhaustive and must be interpreted strictly. It also addresses the role of anti-abuse considerations under the Directive, holding that Member States may prevent fraudulent or abusive practices but may not rely on general presumptions of abuse. In essence, the judgment does not prevent Member States from taxing share deals in real-estate owning companies as such. It prevents them from applying such a charge to contributions of capital and restructuring operations that the Directive exempts from any form of indirect tax, unless the particular transaction is shown to be abusive.

This Opinion Statement seeks to explain and analyse the CJEU's reasoning in the *Nova Iberomoldes case*, particularly with respect to its impact on the design of domestic real estate transfer tax systems that assimilate share-deals involving underlying immovable property to such transfers of immovable property.

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² Judgment of 4 June 2026, *NOVA IBEROMOLDES – SGPS, S.A. v Autoridade Tributária e Aduaneira* (C-837/24), ECLI:EU:C:2026:44.

³ Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital, OJ L 46, 21.2.2008, pp. 11–22.

⁴ Advocate General Kokott, Opinion delivered on 12 February 2026, *NOVA IBEROMOLDES – SGPS, S.A. v Autoridade Tributária e Aduaneira*, C-837/24, ECLI:EU:C:2026:93

I. Background, Facts, and Issues

1. The *Nova Iberomoldes* case raises a question that had not previously been considered by the Court under Directive 2008/7/EC concerning indirect taxes on the raising of capital.⁵ It concerns the application of a domestic real estate transfer tax deeming rule to a share-for-share contribution forming part of a restructuring operation. Specifically, the dispute concerns the compatibility of the Portuguese real estate transfer tax with the Directive when a company is formed, and its share capital is paid up through the contribution of shares in companies that own immovable property. Portuguese law treats certain transactions of this kind as taxable transfers of the underlying real estate, despite the absence of any direct transfer of immovable property.
2. Under Portuguese Law, the Imposto Municipal sobre as Transmissões Onerosas de Imóveis (hereinafter IMT)⁶ is levied on transfers for consideration of the right of ownership, or parts of that right, over immovable property located in Portugal.⁷
3. At the time of the facts (2019), Art. 2(2)(d) of the IMT Code treated as equivalent to a transfer of immovable property the acquisition of interests or shares in certain companies or partnerships owning immovable property, where, as a result of that acquisition, a shareholder or partner comes to hold at least 75% of the share capital or partnership interests, or where the number of shareholders or partners was reduced to a married couple or cohabiting couple.⁸ In such cases, the taxable amount is determined by reference to the value of the immovable property, or to its balance sheet book value if that is higher, with rates ranging from 1% to 8%.⁹
4. NOVA IBEROMOLDES – SGPS, S.A. was formed on 28 March 2019 as a public limited company incorporated under Portuguese law. The company was formed through a share-for-share contribution: its sole shareholder paid up the entire share capital through non-cash contributions, consisting of shareholdings in several companies. One of those companies became a wholly-owned subsidiary of Nova Iberomoldes. Part of that company's assets consisted of two immovable properties.¹⁰
5. Following a tax audit of the sole shareholder, the Portuguese tax authority took the view that the contribution transaction carried out in connection with the incorporation of Nova Iberomoldes triggered IMT. Although no immovable property had been directly transferred, the authorities concluded that the transaction was subject to IMT according to the supra-mentioned provision.

⁵ It is not the first time that a transfer of real estate is assessed within the framework of the Directive, which already took place in *Inmogolf*. However, there is a crucial distinction between this case and *Inmogolf*, (which will be further discussed *infra*). *Inmogolf* concerned the taxation of an independent transfer of securities in a company owning real estate, and did not involve a capital-raising or restructuring transaction protected by Directive 2008/7/EC. See Order of 6 October 2010, *Inmogolf* (C-487/09, ECR 2010 p. I-9119) ECLI:EU:C:2010:586.

⁶ Imposto Municipal sobre as Transmissões Onerosas de Imóveis – IMT (“Municipal Immovable Property Transfer Tax”), enacted by Decree-Law, n.º 287/2003. Despite its designation as a municipal tax, IMT is a nationally legislated and administered tax. Municipalities enjoy only a limited power to adjust rates in narrowly defined circumstances. While the tax is assessed and collected by the State through the Portuguese Tax Authority, the resulting revenue accrues to the municipality in which the property is situated.

⁷ Article 2(1) of the IMT and *Nova Iberomoldes*, *supra* n. 2, para. 14.

⁸ Under Art. 2(2)(d) of the IMT Code.

⁹ Article 12(4)(19)(a) and Article 17 of the IMT Code.

¹⁰ *Nova Iberomoldes*, *supra* n. 2, para. 16.

6. Nova Iberomoldes – SGPS, S.A. challenged the assessment before the Portuguese Arbitration Centre¹¹, seeking its annulment. It argued that the Portuguese deeming provision was an infringement of Directive 2008/7/EC, because:
- a. The share deal was part of the formation of a capital company, which constituted a contribution of capital within the meaning of Article 3(a) of the Directive;
 - b. Such transactions could not be subject to any form of indirect tax under Article 5(1)(a) of the Directive;
 - c. Moreover, it would not fall within any of the exceptions laid down in Article 6 of the Directive since:
 - i. The shares in question were not securities for the purpose of Article 6(1)(a);
 - ii. The IMT was not a “transfer duty” under Article 6(1)(b). In the alternative, the IMT rate structure would breach the single-rate principle and the 1% threshold set out in Article 8(3).¹²
7. The Portuguese tax authority argued that Directive 2008/7/EC did not preclude the taxation at issue. It relied, in particular, on Article 6(1)(a), which permits Member States to charge duties on the transfer of securities. It also argued that the IMT Code subjects certain transactions involving the indirect transfer of immovable property to tax, to prevent the indirect acquisition of immovable property through the acquisition of shares in companies that own such property from escaping tax.¹³
8. The referring court submitted six questions to the CJEU. The first question inquired whether IMT, insofar as it treats the acquisition of at least 75% of the shares or interests in a property-owning company as a transfer of immovable property, should be regarded as an indirect tax on the raising of capital for the purposes of Directive 2008/7/EC. The second question asked whether the transaction at issue should be characterized as a contribution of capital under Article 3 or as a restructuring operation under Article 4. The third question queried whether Article 5(1)(a) or (e) precluded the levying of IMT on such a transaction. The fourth and fifth questions concerned the exceptions in Article 6(1)(a), (b) or (c) and whether the transaction could fall within one of these. The sixth question asked whether, if the Portuguese rule were compatible with the Directive, Articles 8(3) and 11 would preclude the Portuguese rules on rates and taxable amount.¹⁴

¹¹ Centro de Arbitragem Administrativa CAAD, which is to be considered as Court for the purposes in which this concept is used in the context of Art. 267 TFEU and, as such, allowed to refer preliminary questions to the Court of Justice. See Judgment of 12 June 2014, *Ascendi Beiras Litoral e Alta, Auto Estradas das Beiras Litoral e Alta* (C-377/13) ECLI:EU:C:2014:1754.

¹² *Nova Iberomoldes*, supra n. 2, para. 19.

¹³ *Nova Iberomoldes*, supra n. 2, para. 20.

¹⁴ *Ibid.*, para. 21

II. The Judgment of the Court of Justice

9. The Court considered the first to fifth questions jointly. It reformulated them as asking, in essence, whether Article 3(a), Article 4(1)(b), Article 5(1)(a) and (e), and Article 6(1)(a) to (c) of Directive 2008/7/EC must be interpreted as precluding national legislation under which a transaction involving the formation of a capital company, whose share capital is fully paid up by means of shareholdings held in other companies owning immovable property, is subject to a tax assessed by reference to the tax reference value of that immovable property or, where applicable, its balance sheet book value.¹⁵
10. The Court first recalled that Directive 2008/7/EC provides for complete harmonisation of the cases in which Member States may levy indirect taxes on the raising of capital. It also recalled that the objective of that harmonisation is to eliminate, as far as possible, factors which may distort conditions of competition or hinder the free movement of capital. For that reason, the raising of capital may be subject to indirect taxes only under the strict conditions laid down by the EU legislature.¹⁶
11. The Court first examined whether the transaction at issue fell within Article 3 or Article 4 of Directive 2008/7/EC. It was observed that, under Article 3(a), the formation of a capital company normally constitutes a contribution of capital. However, Article 4(1)(b) excludes from that concept certain share-for-share exchanges. Specifically, it excludes cases where a capital company, whether newly formed or already existing, acquires shares representing a majority of the voting rights in another capital company, and the consideration consists, at least in part, of securities representing the capital of the acquiring company.¹⁷
12. The Court held that the transaction at issue was such a restructuring operation. In fact, the capital of Nova Iberomoldes had been fully paid up through the contribution of shares held in other companies. Those shareholdings represented between 50% and 100% of the share capital of the companies concerned. In exchange, the contributing shareholder received all the shares representing the capital of Nova Iberomoldes. As the shares acquired by Nova Iberomoldes represented a majority of the voting rights of other capital companies, and the consideration consisted of securities representing the capital of Nova Iberomoldes, the transaction met the conditions of Article 4(1)(b), being a restructuring operation, falling within the Directive's scope. The Court further held that this classification was not affected by the fact that no other assets, resources or all of the equity interests in the target companies had been transferred.¹⁸
13. Consequently, under Article 5(1)(e) of Directive 2008/7/EC, Member States are prevented from subjecting capital companies to any form of indirect tax in respect of such a restructuring operation. According to the Court, such a provision must be interpreted broadly, having regard to the objective of the Directive, so as not to deprive the prohibition of taxation of its practical effect.

¹⁵ Ibid., para. 22-23.

¹⁶ Ibid., para. 24-26.

¹⁷ Ibid., para. 28.

¹⁸ Ibid., para. 29-30.

14. The Court then observed that Article 5 does not require Member States to exempt in-scope transactions from direct taxes which remain within Member State competence, subject to compliance with EU law.¹⁹ The Court then examined whether the levy resulting from Article 2(2)(d) of the IMT Code constituted an indirect tax within the meaning of the Directive. It recalled that the nature of a tax must be determined under EU law (autonomously, by reference to its objective characteristics, irrespective of its classification under national law). In that regard, it considered irrelevant that Portuguese law treated the acquisition of at least 75% of the shares in a company owning immovable property as equivalent to a transfer of immovable property.²⁰
15. According to the Court, the tax at issue should not be characterised as a direct tax (as it was not levied on income or on the possession of assets), but as an indirect tax, since it was levied on the transfer of shares in companies owning immovable property.²¹ The Court rejected the argument of both the Portuguese and German Governments that the operative event should be understood as the economic transfer of immovable property. It also rejected the argument that the tax base, which was determined by reference to the value of the immovable property, could alter that conclusion. For the Court, “the levying of IMT when there is a contribution of shares of a company owning immovable property to a capital company is equivalent, in terms of its effects, to charging a tax on that contribution”.²²
16. The Court then considered whether IMT could be justified under the exceptions listed in Article 6(1) of Directive 2008/7/EC. It recalled that this article contains an exhaustive list of duties and taxes which may be levied as a derogation from the prohibition enshrined in Article 5, and that such derogation must be interpreted strictly.²³ It considered both the derogations listed in a), c) and b) of Article 6(1) of the Directive, in that order.
17. As regards Article 6(1)(a), the Court accepted that Member States may, in principle, charge duties on transfers of securities. However, such derogation applies only to transfers of securities forming an independent transaction, which was not the case as the share transfer sub judice was incidental and integral to a restructuring operation covered by Article 5(1)(e).²⁴ On that basis, the Court distinguished the Order in *Inmogolf*, on which the Commission had relied. That order concerned an independent acquisition of shares and not a transfer of shares constituting a restructuring operation. The Advocate General had herself considered *Inmogolf* not relevant, since it concerned a duty on the transfer of securities rather than a tax on transfers of immovable property.²⁵
18. The Court also held that Article 6(1)(c) was not applicable, since that provision concerns only assets transferred to a capital company for consideration other than shares in that company. In the case at hand, the consideration received by the contributing company consisted of shares in Nova Iberomoldes.²⁶

¹⁹ Ibid., para. 33.

²⁰ Ibid., para. 34.

²¹ Ibid., para. 36-38.

²² Ibid., para. 39-42.

²³ Ibid., para. 43-44.

²⁴ Ibid., para. 46-50.

²⁵ Ibid., para. 49. See AG Opinion, *supra* n. 4, paras. 33-35. AG Kokott argued that IMT does not tax the raising of capital but rather the transfer of shareholdings in real estate-owning companies, since the same tax is chargeable outside the context of company formations or restructurings. Relying on *Inmogolf*, she therefore considered the tax compatible with Directive 2008/7.

²⁶ Ibid., para. 51-52.

19. As regards Article 6(1)(b), the Court held that no transfer of ownership of immovable property had occurred. The immovable properties remained the property of the company, whose shares were contributed to Nova Iberomoldes. Even if an economic perspective were adopted, the Court considered that an intra-group business reorganisation of the kind at issue did not involve a transfer of actual ownership of those properties.²⁷
20. The Court further observed that this strict interpretation of the derogations was supported by the context and objectives of Directive 2008/7/EC, as Article 6 constitutes an exception from the main rule enshrined in Article 5. It also aligns with the Directive's rationale, which, among other objectives, is to reduce tax obstacles to the reorganisation of undertakings. That objective would be undermined if the transfer-duty exception were extended to the situation at issue.²⁸
21. Finally, the Court addressed the Portuguese Government's reliance on the prevention of tax evasion and avoidance. It is first noted that the absence of a specific anti-abuse provision in the Directive does not deprive Member States of the ability to prevent reliance on EU law in cases of fraudulent or abusive practices. However, Member States may not rely on general presumptions for such purposes. In that context, the Court considered that Article 2(2)(d) of the IMT Code was based on such a presumption, since it applied without exception to transfers of shares in companies whose assets included immovable property, irrespective of any concrete evidence of fraud or abuse. For the Court, the application of a rule such as Article 2(2)(d) of the IMT Code went beyond what was necessary to achieve the objective of combating tax evasion and avoidance and was therefore not consistent with the principle of proportionality. Furthermore, the Court added that the Portuguese Government had not alleged, and the documents before the Court did not indicate, that the transaction at issue was fraudulent or abusive.²⁹
22. The Court therefore concluded that Articles 3(a), 4(1)(b), 5(1)(a) and (e), and 6(1)(a) to (c) of Directive 2008/7/EC preclude national legislation which subjects such a formation of a capital company, paid up by shares held in companies owning immovable property, to a tax assessed by reference to the value of that immovable property.³⁰ In view of that answer, the Court held that there was no need to answer the sixth question submitted by the referring national court concerning Articles 8(3) and 11 of the Directive and the Portuguese rules on the applicable IMT rates and taxable amount.³¹

²⁷ Ibid., para. 53-58.

²⁸ Ibid., para. 59-62.

²⁹ Ibid., para. 63-68.

³⁰ Ibid., para. 69 and operative part of the judgement.

³¹ Ibid., para. 70.

III. Comments

III.1 Introduction

23. The following comments address the judgment from four perspectives. First, they consider the central issue of (autonomous) EU-law characterisation, namely the Court's refusal to allow the national law treatment of an indirect transfer of real estate under a share deal as a transaction in the real estate itself to determine the scope of Directive 2008/7/EC. Secondly, they examine the relationship between Article 5 and Article 6 of that Directive, focusing on the Court's confirmation that Article 5 operates as the protective core of the regime and that Article 6 must be read as a strict and exhaustive derogation. Thirdly, they analyse the Court's treatment of anti-abuse arguments, in particular the distinction between legitimate measures against fraud or abuse and general presumptions attached to real estate-rich share transactions. Finally, they identify the practical implications and limits of the judgment for Portuguese IMT and for comparable real estate transfer tax regimes in other Member States.

III.2 EU-Law characterisation prevails over domestic classifications

III.2.1 Reaffirmation of the transaction-based approach

24. One of the most important contributions of this judgment stems from its reaffirmation that transactions falling within Directive 2008/7/EC must be (autonomously) characterised under EU law rather than by reference to domestic legal classifications. Accordingly, the Court's starting point was not the Portuguese rule, treating certain acquisitions of shares in property-owning companies to constitute transfers of immovable property. Instead, it first assessed the relevant transaction under the Directive, being able to conclude that the formation of *Nova Iberomoldes*, whose capital was paid up through the contribution of shares in other companies, constituted a restructuring operation within the meaning of Article 4(1)(b).³²
25. In doing so, the Court followed a well-established line of decisions according to which the nature of a tax must be determined by its objective characteristics under EU law and not by national-law labels. This approach can be traced back to cases such as *Bautiaa*,³³ *Reiss*³⁴ and *Inmogolf*,³⁵ where the Court consistently focused on the actual transaction giving rise to the levy rather than on national legal characterisations or the transaction's economic effects. Once the operation was classified as a restructuring operation, the protection afforded by Article 5(1)(e) became applicable.
26. The judgment is therefore of particular relevance for corporate reorganisations involving real estate-rich companies. It does, however, not call into question the overall compatibility of share-deal real estate transfer taxes with EU law. But it limits the circumstances in which Member States may apply such taxes. Where a share transfer forms an integral part of a contribution of capital or a restructuring operation protected by Articles 3 and 4 of the Directive, Article 5 precludes Member States from subjecting it to real estate transfer tax by means of provisions that treat the transaction

³² Ibid., para. 28-31.

³³ Judgment of 13 February 1996, *Bautiaa and Société française maritime*, Joined Cases C-197/94 and C-252/94, ECLI:EU:C:1996:47, para. 39.

³⁴ Court of Justice of the European Union, Judgment of 28 June 2007, *Albert Reiss Beteiligungsgesellschaft mbH*, C-466/03, ECLI:EU:C:2007:385.

³⁵ *Inmogolf*, supra n. 5, para. 17

as a transfer of immovable property, unless such particular transaction is abusive.³⁶ This is particularly relevant not only for the various transactions that are “contributions to capital” under Article 3 of the Directive, but also for the so-called “restructuring operations” under Art 4, which include the transfer of assets/liabilities or branches of activities in exchange for shares (Art 4(1)(a)) (e.g., side stream mergers), the exchange of shares (Art 4(1)(b)) and upstream mergers (Art 4(2)).

III.2.2 Rejection of Advocate General’s economic-transfer approach

27. The Court’s reasoning contrasts with the approach proposed by Advocate General Kokott. According to her, the Portuguese IMT should be viewed as a tax on the transfer of economic control over immovable property. In reaching this conclusion, she attached particular relevance to the fact that the taxable amount was determined by reference to the value of the underlying property rather than by reference to the value of the shares contributed.³⁷
28. The Court rejected that analysis. It held that the tax was levied in connection with the transfer of shares and that neither the existence of immovable property among the company’s assets nor the method used to determine the tax base could alter the legal characterisation of the transaction under Directive 2008/7/EC. This does not mean that economic considerations are irrelevant under the Directive. The Court itself reasoned in terms of effects when it held that charging IMT on the contribution was “equivalent, in terms of its effects”, to taxing the contribution, and it examined, in the alternative, whether an economic transfer of ownership had taken place. The judgment reflects an asymmetry that follows from the structure of the Directive. Because Article 5 must not be deprived of its practical effect, the effects of a levy are relevant in determining whether it falls within the prohibition. Because Article 6 contains an exhaustive list of exceptions to be interpreted strictly, economic equivalence cannot extend those exceptions beyond their wording.³⁸

III.3 Reiteration of the “prohibition-exception structure”

III.3.1 The dialectic relationship between Articles 5 and 6 of the Directive

29. Once a transaction falls within the scope of the Directive,³⁹ the permissibility of any tax levied on such transaction must be assessed in light of the dialectic relationship between Articles 5 and 6. The Court reiterates that Article 5 establishes the general rule which must be interpreted broadly: Member States are prohibited from levying any form of indirect tax on capital companies in connection with contributions of capital or restructuring operations. Article 6, by contrast, sets out an exhaustive and narrowly circumscribed list of exceptions under which certain duties and taxes may nevertheless be imposed.
30. The Court approaches this dialectic through the lens of the Directive’s underlying telos, namely the removal of fiscal obstacles to capital formation and corporate restructuring within the internal market. From that perspective, the effectiveness of the Directive depends upon maximizing the

³⁶ *Nova Iberomoldes*, supra n. 2, paras. 39-42, 43 and 58.

³⁷ Advocate General Kokott, Opinion delivered on 12 February 2026, *NOVA IBEROMOLDES – SGPS, S.A. v Autoridade Tributária e Aduaneira*, C-837/24, ECLI:EU:C:2026:93, paras. 34–43.

³⁸ This is consistent with the approach followed in prior case law, namely *Inmogolf*, supra n. 5.

³⁹ In this case, the transaction was classified as a restructuring operation under Article 4(1)(b).

practical reach of the prohibition laid down in Article 5,⁴⁰ whilst confining the derogations recognized in Article 6 to their strictly necessary scope. The broad interpretation of the former and the restrictive interpretation of the latter are therefore not independent interpretative choices, but rather two sides of the same hermeneutic imperative: to secure the fullest possible effectiveness (*effet utile*) of the EU interest protected by the Directive. Articles 5 and 6 thus stand in the ordinary relationship between a rule and its exceptions. Article 5 expresses the Directive's choice in favour of tax neutrality in the raising and reorganization of capital, whereas Article 6 preserves only those residual national taxing powers that the EU legislature has expressly considered compatible with that objective. The same relationship governs the Treaty freedoms and their derogations. And it prevents the risk of converting the exception into a vehicle through which the rule itself could be progressively undermined. It can be debated whether the narrow interpretation of exceptions is a valid argument of legal interpretation, as both general rules and exceptions should be interpreted in light of their object and purpose.

III.3.2 Article 6 as a strict derogation, and not a general saving clause

- 31.** The Court's holding, according to which Article 6(1) contains an exhaustive list of duties and taxes that may be levied by way of derogation from Article 5 and therefore must be interpreted strictly, marks a clear departure from the approach advanced by Advocate General Kokott. In her Opinion, Article 6(1)(b) was understood as "merely declaratory in nature",⁴¹ which in her view confirmed that real estate transfer taxes, including those arising in the context of indirect share deals, fall outside the scope of the prohibition laid down in Article 5.⁴² Although the Court did not address that characterization in such terms, its reasoning necessarily rejects it. It treated Article 6 as a derogation from, rather than a clarification of, the general prohibition laid down in Article 5. That reading is supported by the wording of Article 6(1), which opens with the words "Notwithstanding Article 5": a provision permitting certain charges notwithstanding a prohibition has a function only if those charges would otherwise fall within it. This qualification is significant because it fundamentally alters the analytical framework (compared with the one proposed by the AG). Once a transaction falls within Article 5, the relevant question is no longer whether the national tax pursues a legitimate domestic objective or whether it can be characterized as a real estate transfer tax. Instead, the decisive issue is whether the tax falls, strictly, within one of the exceptions, which the Court describes as an "exhaustive"⁴³ set out in Article 6. Arguably, the Court was concerned that any broader interpretation would allow Member States to reintroduce, through the back door of real estate taxation, tax burdens that the Directive was designed to eliminate. By preserving the prohibition-exception architecture of the Directive, the Court ensured that Article 6 remains a narrowly construed exception, rather than a mechanism through which the protection afforded by Article 5 may be undermined.

⁴⁰ This is consistent with earlier case law, including *Reiss* and *Air Berlin*, where the Court treated the Directive as protecting capital-raising and restructuring operations not only against taxes formally labelled as capital duty, but also against indirect taxes or charges which, in substance, burden those operations. See *Reiss*, supra n. 34, paras. 39, 51; and Judgment of 19 October 2017, *Air Berlin plc v Commissioners for Her Majesty's Revenue and Customs*, C-573/16, ECLI:EU:C:2017:772, paras. 31, 33.

⁴¹ AG Opinion, supra n. 4, para. 44 and 48.

⁴² AG Opinion, supra n. 4, paras 44–48.

⁴³ Para. 63.

III.3.3 The Court's strict reading of Article 6(1)(a), (b) and (c)

32. The first possible derogation was Article 6(1)(a), which permits duties on transfers of securities. The Court accepted that shares may fall within that category. However, it held that such derogation applies solely to transfers of securities that constitute independent transactions. It does not apply where the securities transfer is merely incidental and integral to a transaction protected by Article 5.⁴⁴ The Court relied here on the logic of cases such as *HSBC Holdings*⁴⁵ and *Air Berlin*,⁴⁶ and distinguished this case from *Inmogolf*.⁴⁷ In *Nova Iberomoldes*, the transfer of shares was not merely a step in the restructuring: it was the restructuring itself, since Article 4(1)(b) defines that operation as the acquisition of shares representing a majority of the voting rights of another capital company in exchange for securities. If Article 6(1)(a) could apply to such a transfer, every operation within Article 4(1)(b) could be taxed as a transfer of securities, and Article 5(1)(e) would be deprived of its content. *Inmogolf*, by contrast, concerned an independent acquisition of shares, which falls within the derogation for duties on the transfer of securities, whether or not there is any intention to avoid tax. The Court refers to that order with approval (para. 47) and distinguishes it on that ground alone (para. 49). *Nova Iberomoldes* therefore confirms *Inmogolf* rather than departing from it. The distinction relies on the "integral-transaction" reasoning developed in *HSBC Holdings* and *Air Berlin*. In those cases, the reasoning applied to the issue and clearance of securities; here, the Court extends it to a share-for-share restructuring. The extension is justified because Article 4(1)(b) itself defines the acquisition of the shares as the protected operation.⁴⁸
33. The second possible derogation was Article 6(1)(b), which permits transfer duties, including land registration taxes, on the transfer to a capital company of businesses or immovable property situated in the Member State. The Court held that this provision was not applicable because no transfer of ownership of immovable property had occurred. In this case, the immovable properties remained owned by the company, whose shares were contributed to *Nova Iberomoldes*. The Court has not explicitly dealt with the interpretation of the term "transfer" and whether it could cover not only direct transfers (of the immovable property itself) but also indirect forms of transferring immovable property (transfer of shares of an entity owning immovable property).
34. While a literal interpretation could cover both transfers, the Court implicitly rejected the indirect transfer route. This focus on the transfer of legal ownership allowed us to distinguish this case from *Immobiliare SIF*⁴⁹ and *Badischer Winzerkeller*,⁵⁰ where the relevant duties were triggered by transactions directly affecting rights in immovable property or by registration formalities linked to such rights. Even if an economic perspective were adopted, the Court considered that such an intra-

⁴⁴ *Nova Iberomoldes*, supra n. 2, paras. 46–50

⁴⁵ Court of Justice of the European Union, Judgment of 1 October 2009, *HSBC Holdings plc and Vidacos Nominees Ltd v Commissioners for Her Majesty's Revenue and Customs*, C-569/07, ECLI:EU:C:2009:594, para. 34.

⁴⁶ Court of Justice of the European Union, Judgment of 19 October 2017, *Air Berlin plc v Commissioners for Her Majesty's Revenue and Customs*, C-573/16, ECLI:EU:C:2017:772, para. 36

⁴⁷ *Inmogolf*, supra n. 5.

⁴⁸ *Inmogolf*, supra n. 5, para. 18.

⁴⁹ Judgment of 11 December 1997, *Immobiliare SIF SpA v Amministrazione delle Finanze dello Stato*, C-42/96, ECLI:EU:C:1997:602, paras. 30–35.

⁵⁰ Court of Justice of the European Union, Judgment of 15 June 2006, *Badischer Winzerkeller eG v Land Baden-Württemberg*, C-264/04, ECLI:EU:C:2006:402, paras. 32–34.

group reorganisation did not involve a transfer of “actual ownership” of the properties (because, notably, all involved entities belonged to the same holding company).⁵¹ Before and after the operation, the same person, Nova Iberomoldes’ sole shareholder, held, directly or indirectly, the shares in the company that owned the properties. An analysis that looks through the property-owning company to its land, but not through the newly formed holding company to its sole shareholder, cannot identify any change in the person entitled to dispose of the property.

35. The third possible derogation, Article 6(1)(c), was also discarded. The exception applies to transfer duties on assets transferred to a capital company when the consideration is something other than shares in that company. In *Nova Iberomoldes*, the consideration received by the contributing company consisted of shares in *Nova Iberomoldes* itself. Thus, the exception listed in Article 6(1)(c) was therefore unavailable.⁵²
36. A careful reading of the Court’s reasoning allows the identification of a clear operational test for restructuring transactions involving companies owning real estate: Member States cannot escape the prohibition laid down in Article 5 merely by labelling a charge as a real estate transfer tax or by linking its tax base to the value of immovable property. What matters, for the Court, is not how a tax is characterized under domestic law, but whether the transaction satisfies the strict exceptions exhaustively listed in Article 6. Article 6(1)(a) presupposes an independent transfer of securities; Article 6(1)(b) a transfer of immovable property or of a business to a capital company; and Article 6(1)(c) transactions involving consideration other than shares. According to the Court, none of those conditions was satisfied in *Nova Iberomoldes*.⁵³

III.4 Anti-abuse considerations

III.4.1 Admissibility in the framework of a strict proportionality analysis

37. The anti-abuse part of the judgment is addressed only briefly. However, its significance should not be underestimated. The Court accepted that Member States may deny the benefits from EU Law in cases involving fraud or abuse. At the same time, it reiterated that such a finding cannot be based on general presumptions. In the context of Directive 2008/7/EC, this means that the objective of protecting real estate transfer tax systems cannot justify the automatic taxation of transactions that would otherwise fall within the protection of Article 5.⁵⁴
38. The Court considered Article 2(2)(d) of the IMT Code to be based on such a general presumption. The provision applied, without exception, to transfers of shares in companies whose assets included immovable property, irrespective of whether there was concrete evidence of a fraudulent or abusive practice. For transactions protected by Article 5, the Court held that such an automatic rule went beyond what was necessary to combat tax evasion and avoidance and was therefore inconsistent with proportionality.⁵⁵

⁵¹ *Nova Iberomoldes*, supra n. 2, paras. 53–58.

⁵² *Nova Iberomoldes*, supra n. 2, paras. 51–52.

⁵³ *Ibid.*, paras. 49–50, 52, 58–62.

⁵⁴ *Nova Iberomoldes*, supra n. 2, paras. 63–65.

⁵⁵ *Ibid.*, paras. 66–67.

39. This reasoning follows the logic of *Commission v Spain*,⁵⁶ where the Court held, under the predecessor Directive, that Member States could not introduce general anti-avoidance measures outside the harmonised framework of the Capital Duties Directive, while preserving the possibility of case-by-case action against wholly artificial arrangements.⁵⁷ It is also consistent with settled case law in direct taxation, where the Court rejected national rules based on (general) presumptions of abuse that do not allow an assessment of the taxpayer's actual circumstances.⁵⁸ In short, the fact that a restructuring involves a company owning real estate does not, by itself, justify the loss of Directive protection. Tax authorities must identify concrete abusive features, while taxpayers should be able to document the commercial and corporate rationale of the restructuring.⁵⁹ The same standard governs the anti-abuse clause of the Merger Directive, which covers the identical operation of an exchange of shares (*Leur-Bloem*⁶⁰, *Foggia*,⁶¹ *Euro Park Service*⁶²). *Nova Iberomoldes* thus aligns the treatment of share exchanges under the Directive on indirect taxes on the raising of capital with their treatment under direct taxation: tax neutrality as the rule, and abuse addressed on a case-by-case basis. One should note, however, that abuse of domestic law is not automatically abuse of the Directive, and this distinction was arguably not made explicit in the Court's reasoning.

III.4.2 Contrast with the Advocate General's reliance on avoidance and ability to pay

40. Advocate General Kokott placed greater weight on avoidance prevention. In her view, taxing indirect transfers of immovable property through share deals was a necessary complement to real estate transfer taxation. She also relied on equality in taxation and ability-to-pay considerations to conclude that the Portuguese IMT should either fall outside Directive 2008/7/EC or be permitted under Article 6(1)(b).⁶³
41. The Court, however, refused to elevate those concerns into criteria to be extracted from the Directive. Anti-abuse considerations cannot convert a restructuring operation protected by Directive 2008/7/EC into a taxable transfer of immovable property merely because the company whose shares are contributed owns real estate. However, the decision to assimilate share deals and asset deals for transfer tax purposes is a domestic policy choice.
42. Whether AG Kokott's assertion that "liability for tax on transfers of immovable property in connection with a share deal is mandatory having regard to equality in the taxation of taxable persons and taxation according to ability to pay"⁶⁴ Whether it can be sustained is open to debate. While both are generally recognised as guiding principles of taxation, they leave the legislature a wide margin of appreciation in defining taxable events and drawing distinctions between different

⁵⁶ Court of Justice of the European Union, Judgment of 9 July 2009, *Commission of the European Communities v Kingdom of Spain*, C-397/07, ECLI:EU:C:2009:436.

⁵⁷ Ibid. paras. 29–30.

⁵⁸ See, for instance, Judgment of 17 July 1997, *Leur-Bloem / Inspecteur der Belastingdienst/Ondernemingen Amsterdam 2* (C-28/95, ECR 1997 p. I-4161) ECLI:EU:C:1997:369, paras. 44–45; or Judgment of 20 December 2017, *Deister Holding AG and Juhler Holding A/S*, Joined Cases C-504/16 and C-613/16, ECLI:EU:C:2017:1009, para. 56.

⁵⁹ *Nova Iberomoldes*, supra n. 2, para. 68.

⁶⁰ See *Leur-Bloem*, supra n. 58.

⁶¹ Judgment of 10 November 2011, *Foggia – Sociedade Gestora de Participações Sociais SA v Secretário de Estado dos Assuntos Fiscais*, C-126/10, ECLI:EU:C:2011:718.

⁶² Judgment of 8 March 2017, *Euro Park Service v Ministre des finances et des comptes publics*, C-14/16, ECLI:EU:C:2017:177.

⁶³ A.G. Kokott Opinion in *Nova Iberomoldes*, supra n. 4, paras. 41–47.

⁶⁴ Ibid., para. 41.

legal forms of economic activity. The constitutional question is therefore not whether share deals and direct transfers of immovable property must be necessarily treated alike, but whether their differences are sufficient to justify a different tax treatment by the legislature. Given the legal, economic and transactional differences between the acquisition of shares and the acquisition of immovable property,⁶⁵ it is far from obvious that domestic constitutional equality requires identical tax treatment. Indeed, the considerable diversity of approaches adopted across the EU, with some Member States applying share-deal deeming rules and others not, suggests that the matter falls within the realm of legislative policy rather than constitutional necessity. If constitutional principles genuinely required the assimilation of share deals and asset deals, a much greater degree of convergence in national constitutional case law would be expected. The more plausible conclusion is therefore that such assimilation reflects a policy choice available to the legislature, not a constitutional obligation imposed upon it. Of course, it must be analysed from each national constitution, and, in any event, EU Law (namely the directive) would prevail. The Court did not address either equality or ability to pay.

III.5 Open questions after *Nova Iberomoldes*

III.5.1 Introduction

43. The relevance of *Nova Iberomoldes* extends well beyond the resolution of the Portuguese IMT dispute. Although the judgment arose in the context of a restructuring operation falling within Article 4(1)(b) of Directive 2008/7/EC, its implications reach far deeper. By excluding the application of share deal requalifications to transactions protected by the Directive, the Court has cast doubt on the compatibility of a legislative technique that has become an increasingly important feature of real estate transfer tax systems across the European Union.
44. A careful reading of the Court's decision reveals several important unresolved questions. The judgment opens a new chapter in the debate on the permissible boundaries of real estate transfer taxation under EU law, and precipitates fundamental questions concerning the territorial reach of the Directive, the interaction between tax harmonization and domestic anti-avoidance policies, and the extent to which Member States may continue to safeguard their real estate transfer tax base without undermining the effectiveness of Article 5.

III.5.2 Scope beyond restructuring operations

45. Taxpayers may seek to extend the Court's reasoning beyond the specific restructuring operation addressed in *Nova Iberomoldes*, particularly to other transactions protected by Directive 2008/7/EC, namely mergers, divisions, capital increases, share-for-share exchanges and other reorganisations involving capital companies that own real estate. Tax administrations, by contrast, are likely to argue that the judgment is confined to the specific restructuring operation described in Article 4(1)(b). The extent to which the Court's reasoning can be transposed to other protected transactions remains an open question and will likely determine the practical reach of the judgment. The Court's reasoning in paragraphs 36 to 38 is not, on its terms, confined to Article

⁶⁵ Namely differences relating to the legal object acquired, the rights obtained by the purchaser, the allocation of liabilities and risks, corporate governance rights, and the ability to use, enjoy or dispose of the underlying immovable property.

4(1)(b): it characterises the levy as an indirect tax on the movement of shares and applies it to contributions of capital generally. The same analysis would therefore appear to apply where, for instance, a new investor acquires at least 75% of a real-estate-owning company by subscribing to newly issued shares. Where such a subscription forms part of a wholly artificial arrangement, for instance, one under which the contributed funds are artificially returned to the previous owner or the company's equity is not in substance increased, the prohibition of abusive practices provides the appropriate response. A capital contribution with genuine economic substance is not abusive merely because of the subsequent use of the funds.

III.5.3 Domestic tax systems requiring further scrutiny

46. The impact of this case on Member States' tax systems is narrower than a superficial reading may lead one to conclude. Its relevance is confined to situations in which domestic law treats a transaction involving shares in a real estate-owning company as a taxable transfer of immovable property, and where that share transaction forms part of a contribution of capital or other restructuring operation protected by Directive 2008/7/EC. The central question is therefore not whether Member States may tax share deals, but whether they may apply such taxation to share transactions that are themselves contributions of capital or restructuring operations protected by Articles 3 to 5 of the Directive.
47. Germany is the most obvious example. The German Real Estate Transfer Tax Act (*Grunderwerbsteuergesetz*, *GrEStG*) contains several supplementary taxable events for share deals involving real estate-owning entities. Section 1(2a) GrEStG concerns changes in the partner structure of real estate-owning partnerships; Section 1(2b) GrEStG extends a comparable rule to corporations; Section 1(3) GrEStG covers share acquisitions or share consolidations exceeding the statutory threshold; and Section 1(3a) GrEStG captures certain economic participations. These provisions operate at the shareholder level through legal fictions, producing real estate transfer tax consequences even though ownership of the underlying immovable property remains unchanged, for civil-law purposes. This is precisely where *Nova Iberomoldes* creates pressure, and Sections 1(3) and 1(3a) may be the provisions most directly exposed, with possible implications also for Section 1(2a) and Section 1(2b), particularly where the taxable event is linked to a contribution, merger, demerger or other capital measure. While the intra-group exemption in § 6a GrEStG may continue to provide relief in some cases, the judgment raises the broader question of whether transactions falling within Article 5 of Directive 2008/7/EC should require reliance on a domestic exemption at all.
48. The Dutch approach is different. Article 4(1)(a) of the Wet op belastingen van rechtsverkeer (WBR) treats shares in certain real estate entities as "fictitious immovable property" (*fictieve onroerende zaken*). The provision applies where the entity's assets consist predominantly of real estate, at least 30% of which is located in the Netherlands, provided that the real estate is principally held for acquisition, disposal, or exploitation purposes. Article 4(3) limits taxation to acquisitions resulting in a substantial interest in the entity, while Article 10 determines the taxable base by reference to the value of the underlying real estate represented by the shares. Although the Dutch mechanism differs from the Portuguese deeming rule examined in *Nova Iberomoldes*, both regimes subject

certain share acquisitions to real estate transfer tax by treating the shares as representing the underlying property. *Nova Iberomoldes* raises questions as to the compatibility of the Dutch regime with Directive 2008/7/EC where the taxable share acquisition forms part of a share-for-share exchange or another restructuring operation protected by the Directive. In Dutch practice, the judgment is already being invoked to argue that real estate transfer tax should not be levied on acquisitions of shares in real estate entities where the acquisition is covered by Directive 2008/7/EC. The contrary view relies, among other things, on the existence of specific exemptions for restructurings. These exemptions are subject to conditions, typically a three-year period during which certain events retroactively forfeit the exemption, and they are said to operate in effect as anti-abuse measures. After *Nova Iberomoldes*, however, it is questionable whether the protection afforded by the Directive can be made to depend on satisfying such conditions. That is particularly so where the forfeiture is triggered automatically, irrespective of whether the transaction is abusive. It is also questionable whether no exemption applies, even though the transaction is a restructuring within the meaning of Article 4 of the Directive. Similar questions arise regarding cash contributions to real estate entities in exchange for newly issued shares, which constitute capital contributions under Article 3.

49. Austria provides a particularly illustrative example because its real estate transfer tax regime has recently moved in the direction of a broader and more comprehensive taxation of share deals. Under the reform introduced by the Budget Accompanying Act 2025, the legislature significantly expanded the circumstances in which changes in the ownership structure of a real estate-owning entity may trigger real estate transfer tax. The relevant participation threshold was reduced from 95% to 75%, the observation period was extended to seven years, and the regime was broadened to cover corporations, indirect acquisitions and acquisitions by an acquirer group (Erwerbergruppe). Against that background, *Nova Iberomoldes* becomes even more relevant. Austrian law contains relief provisions for certain reorganisations under the Reorganisation Tax Act (Umgründungssteuergesetz, UmgrStG). The question after *Nova Iberomoldes*, however, is not merely whether those exemptions are sufficiently broad. If a transaction falls within the scope of Directive 2008/7/EC, the more fundamental issue is whether the application of the share-deal fiction is admissible. Otherwise, the protection afforded by Article 5 would depend on the scope of domestic relief provisions rather than on the requirements of EU law.
50. In conclusion, *Nova Iberomoldes* only impacts Member States with automatic or quasi-automatic share-deal requalifications as asset-deal transactions if those rules also apply to transactions protected by Articles 3 and 4 of Directive 2008/7/EC. The highest-risk situations are share-for-share contributions, incorporations paid up by shares in capital companies that own real estate, intra-group mergers or demergers affecting such shares, and capital measures that trigger domestic RETT without any transfer of civil-law ownership of the underlying immovable property. In those situations, the legislative question is whether the domestic rule contains a sufficiently clear carve-out or proportionate anti-abuse mechanism. If it does not, *Nova Iberomoldes* is likely to generate litigation.
51. A Member State that wishes to maintain a share-deal real estate transfer tax regime must therefore consider a two-track design: ordinary share acquisitions may remain within the charge, while

Directive-protected contributions and restructurings should either be carved out or subject only to a targeted anti-abuse override.

III.5.4 Designing a compliant anti-abuse rule

52. Under the afore-mentioned two-track system, it would be important to distinguish between the charging rule and the application of the EU law prohibition of abusive practices. The charging rule may continue to tax ordinary share deals in companies that own real estate. However, transactions under the Directive (contributions of capital and restructuring operations covered by Articles 3 and 4) should be excluded from the charge unless the tax authority can establish that the transaction forms part of an abusive arrangement. Such an approach avoids treating domestic share-deal requalification as an immovable property transaction as the starting point in situations where EU Law has already classified the transactions as protected.
53. The abuse to be targeted should therefore be defined more clearly. The relevant concern is not the mere reduction of real estate transfer tax, which is the ordinary consequence of the protection conferred by the Directive. It is the use of that protection in circumstances which, despite formal compliance with its conditions, do not achieve its purpose, where the essential aim of the arrangement is to obtain that tax advantage (the objective and subjective elements of the general EU prohibition of abuse). A compliant regime should therefore not presume abuse merely because a contribution of capital or restructuring operation involves a company that owns real estate.
54. Relevant indicators of such abuse could include, for example, a pre-arranged sale of the shares or the underlying real estate shortly after the contribution; circular or self-cancelling steps that leave the parties in substantially the same position apart from the tax advantage obtained; the interposition of entities lacking genuine holding or organisational or economic function; or the fragmentation of shareholdings solely to remain below a domestic real estate transfer tax threshold. The common feature of such situations is not merely the absence of tax, but the absence of a genuine commercial or organizational rationale for the capital contribution or restructuring. These factors should operate only as indicia of abuse requiring an assessment of all the circumstances of the case, and should not give rise to irrebuttable presumptions. It should further be recalled that, according to the Court's case law, taxpayers may choose to structure their business so as to limit their tax liability, and the mere choice of the least-taxed route does not, in itself, constitute an abusive practice.⁶⁶

⁶⁶ Judgment of 21 February 2006, Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise, C-255/02, ECLI:EU:C:2006:121, para. 73; Judgment of 22 December 2010, The Commissioners for Her Majesty's Revenue and Customs v Weald Leasing Ltd, C-103/09, ECLI:EU:C:2010:804, para. 27; Judgment of 12 September 2006, Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue, C-196/04, ECLI:EU:C:2006:544, para. 37; Judgment of 9 July 2009, Commission of the European Communities v Kingdom of Spain, C-397/07, ECLI:EU:C:2009:436, para. 39.

IV. The Statement

55. CFE Tax Advisers Europe considers that the judgment of the Court of Justice in *Nova Iberomoldes* correctly interprets Directive 2008/7/EC. The judgment confirms that the concepts of contribution of capital and restructuring operation must be interpreted autonomously under EU law and cannot be redefined through domestic legal classifications. Accordingly, Member States may not subject to real estate transfer tax by means of provisions that treat share transactions in companies that own real estate as transfers of immovable property where those transactions form part of a contribution of capital or a restructuring operation falling within Articles 3 and 4 of the Directive.
56. The judgment also reaffirms the fundamental structure of Directive 2008/7/EC. Article 5 establishes a broad prohibition on indirect taxes affecting capital contributions and restructuring operations, while Article 6 contains an exhaustive list of exceptions that must be interpreted strictly. Arguably, this means the Court only applies Art. 6(1)(b) to direct transfers of real estate.
57. CFE Tax Advisers Europe considers that the judgment provides an important opportunity to enhance legal certainty across the European Union. While Member States have a legitimate interest in protecting their real estate transfer tax base and combating abusive arrangements, such objectives must be pursued in a manner that respects EU law. They should not operate through automatic presumptions that deprive genuine contributions of capital and restructuring operations of the protection guaranteed by Directive 2008/7/EC. Moreover, measures should therefore be targeted and proportionate. They should require the tax authority to establish, on the facts of the individual case, that the arrangement is abusive, and they should give the taxpayer the opportunity to demonstrate its commercial rationale. The implementation of the judgment should seek to preserve both the effectiveness of the Directive and the ability of tax authorities to address genuinely abusive practices on a case-by-case basis.
58. Some Member States have expressed concerns, namely neutrality between direct and indirect transfers of immovable property. It should first be noted that the Directive does not prohibit all real estate transfer taxation of share deals. For example, the indirect transfer of real estate is not even covered by Articles 3 or 4 of the Directive if it is not a contribution of capital or a restructuring operation, but rather, e.g., a sale of the shares. And even within the scope of the Directive, *Nova Iberomoldes* does not restrict Member States' ability to tax contributions of immovable property to companies (Article 6(1)(b)) or independent transfers of shares (Article 6(1)(a)). It, moreover, leaves open the door to case-by-case anti-avoidance challenges. *Nova Iberomoldes*, however, excludes the real-estate transfer taxation on a broad range of share deals, e.g., upstream- and side-stream mergers, capital contributions that only indirectly involve real estate, etc., especially in group situations. One could argue, from a policy perspective, that this could erode the scope of domestic real-estate transfer taxation systems and potentially raise fairness issues. The way forward would be for the Union legislature to address those Member States' concerns in an amendment of the Directive, for instance, an option inspired by Article 15(2)(c) of the VAT Directive⁶⁷.

⁶⁷ See Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, pp. 1–118.