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E-News from the EU Tax Centre
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KPMG's EU Tax Centre helps you understand the complexities of EU tax law and how this can impact your business, enabling you to better predict how rules will develop and how to leverage opportunities and minimize risks arising from EU tax law.

E-News provides you with EU tax news that is current and relevant to your business. KPMG's EU Tax Centre compiles a regular update of EU tax developments that can have both a domestic and a cross-border impact. CJEU cases can have implications for your country.

State Aid

Commission requires Belgium and France to abolish corporate tax exemptions for ports

Following the opening of a formal state aid investigation procedure in June 2016, the European Commission issued a decision on July 27, 2017, requiring France and Belgium to put an end to corporate tax exemptions granted to their ports. According to the Commission, this advantage is contrary to EU law as it does not pursue a clear public interest objective. Furthermore, the tax savings generated by these tax exemptions can be used by the ports to fund any type of activity. France and Belgium now have until the end of 2017 to remove corporate tax exemptions for their ports. As these measures existed before the France and Belgium joined the EU, they qualify as "existing aid'' and the Commission cannot demand that France and Belgium recover the aid already granted.

For more information, please refer to the European Commission's press release.

EU Institutions

EUROPEAN COMMISSION

Taxation paper on R&D published

On August 9, 2017, the European Commission issued Taxation Paper No. 69 on R&D provisions under the Common Corporate Tax Base (CCTB). This paper discusses issues surrounding the R&D provisions of the CCTB, provides insights from literature on R&D, assesses the impact of proposals on R&D, and comments on the relationship between European and national policies on R&D.

European Commission's statement on changes made by Cyprus to the tax treatment of financing companies

On July 21, 2017, Commissioner Margrethe Vestager welcomed amendments to Cypriot law regarding the tax treatment of financing companies. According to the Commissioner, ''*financing companies provide financial services intra-group and their profits is the remuneration for their financing activities. This remuneration has to be in line with the arm's length principle*.''

For more information, please refer to the Commission's press release and E-News 68.

EUROPEAN PARLIAMENT

Commission's answer on CSG tax

On July 24, 2017, the European Commission replied to a question about French *Contribution Sociale Généralisée* (CSG) tax on rental income for UK residents. Unlike residents, non-residents cannot claim a deduction for the CSG from their rental income. The Commission noted that, according to French public guidelines, the CSG on rental income is considered as non-deductible for non-residents and that the Convention between the United Kingdom and France excludes the possibility of crediting the CSG on the tax to be paid in the UK.

Link to the Commission's answer.

Council's answer on blacklist of non-cooperative tax jurisdictions

On July 17, 2017, the Council replied to a question about the European Union's blacklist of non-cooperative tax jurisdictions and the possibility of including Gibraltar after Brexit. According to the Council, it has not discussed any scenarios where Gibraltar would be on the list referred to by the member of the European parliament.

Link to the Council's answer.

PANA Committee – Study on capacity of Member States to fight tax crime

On August 25, 2017, the committee of inquiry to investigate alleged contraventions and maladministration in the application of Union law related to money laundering, tax avoidance and tax evasion (the PANA committee) published a study entitled ''*Member States' capacity to fight tax crimes*'' (the study also covers tax avoidance). National provisions against tax avoidance and tax evasion, as well as money laundering laws and their enforcement, differ widely from one Member State to the next. This study reviews the steps taken at the EU level to counter tax evasion, tax avoidance and money laundering and examines the administrative capacities of EU Member States to deal with these issues. It also reviews the specific measures taken by Member States in response to the publication of the Panama Papers. The survey aims to assess whether the legal and institutional framework in place is adequate, to identify weak points and to recommend ways in which these could be addressed.

PANA Committee – September 5 deadline for amendments to the draft report and recommendation

On June 20, 2017, the draft inquiry report and the draft recommendations of the PANA Committee were published and circulated to the Member States, after which they were examined at a meeting of the PANA on July 10, 2017.
The draft inquiry report presents the Committee's findings on discrepancies between the practices revealed in the Panama Papers and EU law. It includes a factual section setting out and analyzing the evidence taken into account by the Committee in reaching its findings, as well as identifying contraventions of EU law and instances of maladministration.
The draft motion for Parliament's recommendation to the Council and the Commission contain recommendations on how to improve the EU framework on anti-money laundering and administrative cooperation in the area of taxation. The draft motion stresses the urgent need for a common international definition of what constitutes an Offshore Financial Centre (OFC), a tax haven, a secrecy haven, a non-cooperative tax jurisdiction and a high-risk country in terms of money laundering. It welcomes the leading role played by the Commission in setting up a common EU list of non-cooperative tax jurisdictions and urges the Council to rapidly agree on the two steps of the Common Corporate Consolidated Tax Base to solve the issue of transfer pricing and to ensure a more fair competition in the single market by greater harmonization of the corporate tax bases in the EU. Both reports are open for amendment in Committee; with the deadline set at September 5, 2017. The draft recommendation will be open for amendment in the Plenary later in the year.

OECD

Neutralising the tax effects of branch mismatch arrangements

On July 27, 2017, the OECD released a report on Neutralising the Effects of Branch Mismatch Arrangements (BEPS Action 2). This new report sets out recommendations for amending domestic laws. These recommendations would bring the treatment of these branch mismatch structures into line with the outcomes described in the 2015 Report.

For more information, please refer to the OECD's press release.

The Platform for Collaboration on Tax invites comments on a draft toolkit on the taxation of offshore indirect transfers of assets

On August 1, 2017, the OECD issued a press release inviting comments on a draft toolkit entitled ''Taxation of Offshore Indirect Transfers''. The toolkit was developed by the Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group. The document aims to tackle the tax treatment of offshore indirect transfers of assets by multinational companies (i.e. the sale of an entity located in one country, which owns an immovable asset located in another country, by a non-resident of the country where the asset is located) in order to minimize their tax liability. Interested parties have until September 25, 2017 to submit comments on the draft toolkit.

For more information, please refer to KPMG's TaxNewsFlash.

Global Forum releases second round of compliance ratings on tax transparency for 10 jurisdictions

On August 21, 2017, the Global Forum released the first ten results of a new and enhanced peer review process. The aim is to assess compliance with international standards for the exchange of information between tax authorities. Of the 10 assessed jurisdictions, three (Ireland, Mauritius and Norway) were rated "compliant'', six (Australia, Bermuda, Canada, Cayman Islands, Germany and Qatar) were "largely compliant'', and only one (Jamaica) was "partially compliant''.

For more information, please refer to the OECD's press release.

Public comments on the 2017 OECD Model Tax Convention released

On August 11, 2017, the OECD released the comments it received on the 2017 update to the OECD Model Tax Convention. The content of the 2017 update will be approved and published later this year.

For more information, please refer to the OECD's press release.

Local Law and Regulations

Belgium

Draft bill to implement European directives on automatic exchange of information in tax matters adopted by Parliament

On July 20, 2017, the Belgian parliament adopted a draft bill in order to implement: Directive 2014/107/EU (known as DAC 2), Directive 2015/2376/EU (known as DAC 3) and Directive 2016/881/EU (known as DAC 4) on the mandatory automatic exchange of information in the field of taxation.

Bulgaria

Legislation to implement BEPS and European directives on automatic exchange of information in tax matters gazetted

On August 4, 2017, amendments to the Tax and Social Security Procedure Code were gazetted. The aim is to implement procedural rules on the mandatory exchange of advance cross-border tax rulings provided for in Directive 2015/2376/EU (known as DAC 3), and the country-by-country reporting rules contained in Directive 2016/881/EU (known as DAC 4) on the mandatory automatic exchange of information in the field of taxation.

Under the proposed amendments, the ultimate parent entity, the surrogate entity or the EU designated entity of a multinational group, which is resident in Bulgaria for tax purposes, is required to file a country-by-country report within 12 months of the last day of a reporting fiscal year. The deadline for filing the first report is December 31, 2017. Non-compliance may incur a penalty of up to BGN 300,000.

The implementation follows the infringement procedure initiated by the EU Commission against Bulgaria in July 2017 for the late implementation of Directive 2015/2376 amending the Mutual Assistance Directive.

Denmark

Tax Board decision on CFC dispensation published

On August 17, 2017, the Danish tax authorities issued Tax Board Decision No. SKM2017.502.SR regarding dispensation from the application of the Controlled Foreign Company (CFC) legislation.

The tax authorities decided to grant an exemption from the application of the CFC legislation if the following cumulative conditions are met:

– the subsidiary must have a license to conduct insurance, mortgage, brokerage, investment management or banking activities and be subject to public supervision;
– the main part of the income must be derived from business activities with customers in the country in which the subsidiary is established and from business with unrelated customers;
– the subsidiary's capital is lower than or equal to the amount required for the operation of the business activities in question; and
– the subsidiary must be established in Denmark or the taxation of dividend payments from the subsidiary to the parent company may be exempted or reduced in accordance with the provisions of the Parent-Subsidiary Directive or a double taxation agreement with the country in which the subsidiary is established.

France

Statement on taxation of the digital economy published

On August 7, 2017, the French government issued a press release setting out its position on the taxation of the digital economy. At the domestic level, tax authorities are doing their best to tax profits generated in France and to reassess the taxable base of foreign companies where necessary. If a dispute arises, the government will submit the case to the courts and appeal any negative decision. At the level of the European Union, France will fight for tax harmonization to eliminate both competition between Member States and tax avoidance. France will also continue to support OECD initiatives on this issue, notably the notion of a “digital tax presence’’.

Greece

Bill on Country-by-Country Reporting published

On August 1, 2017, the bill implementing Directive 2016/881 on non-public country-by-country reporting (CbCR) was published in the Official Gazette (Law 4484/2017, section A). It applies with retroactive effect as of June 5, 2017. Failure to file the report will incur a penalty of EUR 20,000, with the penalty for late or incorrect filing set at EUR 10,000.

Ireland

Filing deadline regarding automatic exchange of financial account information extended

On August 2, 2017, Revenue announced that the filing deadline for DAC2 and Common Reporting Standards (CRS) returns will be extended to September 4, 2017. According to the press release, this is to take account of the delay in the provision of the required validation module by the EU Commission.

Italy

Resolution issued on credit for foreign taxes paid by a CFC

On August 11, 2017, the Italian Tax Authorities (ITA) issued a resolution clarifying the right of the parent company to obtain a credit for the taxes paid by its CFC in a foreign country other than its country of residence.
In the case discussed, an Italian company owned 100% of a company resident in Hong Kong. The income derived by the subsidiary located in Hong Kong was subject to Italian CFC rules. The Hong Kong company was subject to withholding tax on payments received for consulting services rendered to group entities and to a third party (located outside Italy). The associated withholding tax could not be credited against the taxable income of the Hong Kong company.
At issue was whether the Italian company could claim a credit for the withholding tax paid on the payments received by its subsidiary located in Hong Kong.
The ITA concluded that both the tax paid by the CFC in its country of residence, as well as the tax the CFC paid in other countries, to the extent that such tax was actually borne by the CFC, could be claimed as a credit by the parent company in Italy. The Resolution is in line with Action 3 of the OECD's Action Plan on BEPS on developing recommendations for the design of CFC rules.

Luxembourg

New intellectual property tax regime proposed for 2018

On August 4, 2017, a bill proposing a new intellectual property (IP) tax regime was submitted to parliament. The new bill provides for a 80% tax exemption for income arising from patents and copyright software as well as a full net wealth tax exemption for these assets. The proposal also addresses new measures, such as: what are eligible IP assets; how to compute the IP income that would benefit from the exemption; what is qualifying research and development (R&D) expenditure; what would be overall R&D expenditure; what would be qualifying net IP income; how would the new measures interact with the prior IP tax regime. Once enacted, the bill would apply as of January 1, 2018.

For more information, please refer to KPMG’s TaxNewsFlash.

Poland

Public consultation on draft bill implementing the Anti-Tax Avoidance Directive

On July 12, 2017, a public consultation on the draft bill that partially implements the Anti-Tax Avoidance Directive (ATAD) and amends the corporate income tax law was launched. The draft bill includes provisions on controlled foreign companies (CFC), thin capitalization, limits on deductible expenses, capital gains, and minimum income tax and tax groups.

Switzerland

Amending protocol to Income and Capital Tax Treaty with Belgium takes effect

On July 19, 2017, the amending protocol to the Belgium and Switzerland Income and Capital Tax Treaty took effect. It generally applies as from January 2018. The protocol modifies the wording of the provision on business profit in line with the new Article 7 of the OECD model, inserts the OECD provision regarding an appropriate transfer pricing adjustment including primary and corresponding adjustments (Article 9), brings the non-discrimination provision (new Article 24), the mutual agreement including mandatory binding arbitration provision (new Article 25) and the exchange of information provision (new Article 26) into line with OECD and Belgian tax practice.

Local Court decisions

France

French Administrative Supreme Court ruling on domestic thin capitalization rule and its compliance with the arm's length principle

On July 21, 2017, the French Administrative Supreme Court (Conseil d'Etat) rendered decision No. 392908. In this case, a French company borrowed money from a Dutch company to finance an acquisition in France, the latter having itself taken out a loan for the same amount from its US parent company, the sole shareholder of the French company. The French tax authorities considered the interposition of the Dutch company abusive, since the French company could borrow that money directly from the US firm and thus applied the domestic thin capitalization rule which limits the deductibility of the interest paid. The French tax authorities reassessed the French company for CIT purposes by recapturing the excessive interest in its taxable result and considered that a withholding tax was due on the excessive interest deemed distributed to the US company.

The French Administrative Supreme Court ruled that the provisions of Article 25(3)(b) of the Franco-American Convention, interpreted in the light of the OECD Commentary published before its conclusion date and in which neither France nor the United States has expressed any contrary observations, prevent the application of thin capitalization rules where the amount of profits attributed to the borrower under these rules exceeds the profits that the borrower would have realized in an arm's length situation regarding the features of the loan (especially its amount and interest rate). The French Administrative Supreme Court therefore annulled the decision of the Administrative Court of Appeal insofar as it did not investigate whether the arm's length principle was respected in the case at hand, and sent the case back to this court.

United Kingdom

First-tier tribunal decision on companies incorporated in Jersey

On July 14, 2017, the First-Tier Tribunal (FTT) rendered its decision (No. TC 06007) in the *Development Securities (NO 9) Ltd & Others against The Commissioners for Her Majesty's Revenue & Customs* case. It considered whether companies incorporated on Jersey were residents in the United Kingdom (UK). The Jersey-incorporated companies had entered into call option arrangements with UK group companies to crystallize latent capital losses without losing the benefit of indexation allowance. To be successful, the arrangement required the Jersey-incorporated companies to be tax resident in Jersey for a specific period. HMRC contended that the companies were resident in the UK during this period and denied the claims for an indexation allowance. The First-tier Tribunal (FTT) rejected the taxpayer's appeal, concluding that while the Jersey directors regarded the proposals in detail, they were acting on the instructions of the UK parent company.

For more information, please refer to KPMG's TaxNewsFlash.

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