E-News from KPMG's 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.

Latest CJEU, EFTA and ECHR

CJEU Decision in the A Oy Case (C-292/16)

On November 23, 2017, the Court of Justice of the European Union (CJEU) rendered its decision in the A Oy case (C-292/16). The case concerned the immediate taxation in Finland of the unrealized gains of a permanent establishment upon its transfer to a company, both being located in a Member State other than Finland by virtue of domestic legislation implementing the Merger Directive, whereas taxation would be deferred if a Finnish permanent establishment was transferred to a domestic company. The CJEU concluded that the Finnish legislation is contrary to the freedom of establishment, as it does not allow for the deferral of taxation of the unrealized capital gains upon the transfer of a permanent establishment to another Member State.

For more information, please refer to the Euro Tax Flash 344.

Advocate General's Opinion on French mechanism for deferred taxation of capital gains in *Jacob* and *Lassus* (Joined Cases C-327/16 and C-421/16).

On November 15, 2017, Advocate General (AG) Wathelet of the CJEU rendered his Opinion in the joined cases *Marc Jacob v. Ministre des finances et des comptes publics* and *Ministre des finances et des comptes publics v. Marc Lassus* (C-327/16, C-421/16). The AG concluded that a mechanism that allows for the taxation of capital gains on an exchange of shares to be deferred until the shares are disposed is not precluded by the Merger Directive, as it does not create a cash flow disadvantage. The AG also noted that the fact that the subsequent transfer of the securities falls within the fiscal competence of another Member State is irrelevant. With respect to the possibility of offsetting the capital loss resulting from the subsequent transfer against the deferred capital gain, the AG concluded that refusing to allow such an offset by a taxpayer who has exercised his freedom of establishment, while granting it in a comparable domestic situation, is precluded by EU legislation.

For more information, please refer to the Euro Tax Flash 343.

EFTA Court decision in *Yara International ASA and The Norwegian Government* (Case E-15/16)

On September 13, 2017, the Court of Justice of the European Free Trade Association States (EFTA Court) ruled in case E-15/16 that the prohibition to deduct a group contribution after liquidation of the receiving company located in another EU/EEA State is an infringement of the freedom of establishment. A difference in treatment between resident parent companies, according to the seat of their subsidiaries, constitutes an obstacle to the freedom of establishment because it makes it less attractive for resident companies to establish subsidiaries in other EEA States.

Infringement procedures & referrals to CJEU

UK – Prospector Offshore Drilling SA and Others case (C-72/16) removed

On November 30, 2016, the CJEU issued an order in the case Prospector Offshore Drilling SA and Others (Case C-72/16) removing the proceedings from the Court's register. The order follows the referring court's statement that it had withdrawn its request for a preliminary ruling.

State Aid

AG Opinion in the ZPT case (C-518/16)

On November 29, 2017, AG Wathelet of the CJEU published his Opinion in the ZPT case (C-518/16). The case deals with EU Regulation No. 1998/2006 of December 15, 2006 on the application to *de minimis* aid of Articles 87 and 88 on the Treaty establishing the European Community. The Court was asked whether or not State aid granted in the form of tax relief is compatible with competition in the internal market, where such aid is invested in assets used for the manufacture of products that are partly exported to third countries. The AG concluded with reference to settled case law that the provisions on the free movement of goods and those related to State aid have a common factor, which is to maintain the principle of the free movement of goods and the Regulation mentioned above cannot be used to override this principle. As a consequence, Article 1 (1) (d) of Commission Regulation (EC) No. 1998/2006 is invalid as it creates a difference within the *de minimis* rule in the treatment between purely national economic activities and activities relating to exports to Member States.

European Commission publishes non-confidential version of decision to investigate UK State Aid

On November 16, 2017, the European Commission published the non-confidential version of the decision to open an in-depth investigation into a UK scheme that exempts certain transactions by multinational groups from the application of UK Controlled Foreign Company rules targeting tax avoidance. Specifically, the Commission will investigate if the scheme allows multinationals to pay less UK tax, in breach of EU State aid rules. The decision is located under case SA.44896 and the press release can be found here.

For more information, please refer to the Euro Tax Flash 342.

EU Institutions

COUNCIL OF THE EUROPEAN UNION

Code of Conduct Group (Business Taxation) Blacklist- Report for Council Endorsement

In preparation of the ECOFIN Meeting on December 5, 2017, the Code of Conduct Group worked on the EU list of non-cooperative jurisdictions for tax purposes during a meeting on November 24, 2017. The Group noted that it had finalized the preparatory work and launched an assessment exercise on a number of jurisdictions to engage in the process of analyzing their tax systems against the criteria set out by the Council on November 8, 2016, concerning tax transparency, fair taxation and the implementation of anti-BEPS measures.

For more information, please refer to the report of the Code of Conduct Group.

ECOFIN Report to the European Council on Tax Issues Endorsement

On November 24, 2017, the High Level Working Party on Tax Issues prepared and agreed a report on tax issues for submission to the ECOFIN Council on December 5, 2017 for endorsement. The report provides an overview of the progress achieved at the Council during the term of the Estonian Presidency. The report mentions the adoption of the Council Directive on Double Taxation Dispute Resolution Mechanisms in the EU and the Council conclusions on responding to the challenges of taxation of the digital economy. It states that the Council has completed its examination of chapters 1 to 5 of the CCTB proposal and started the technical examination of the proposal amending the Directive on administrative cooperation for reportable cross-border arrangements (DAC6), and is continuing discussions on the Interest and Royalty Directive.

EUROPEAN COMMISSION

Taxation paper on entrepreneurship and collaborative economy

On November 28, 2017, the European Commission published Taxation Paper No. 70 entitled "Literature review on taxation, entrepreneurship and collaborative economy". One of the issues discussed in the Paper is the concept of entrepreneurship within the framework of the collaborative economy, as well as links between taxation and entrepreneurships and points out the types of taxes that may be relevant for each entrepreneurial decision. Income taxes, social security contributions, capital gains taxes, excise taxes and property/wealth taxes are considered.

For more information, please refer to the Taxation Paper.

New TaxEdu portal launched to educate young people about tax

The European Commission has launched a new interactive education tool (TaxEdu) to teach younger generations about tax issues, the purpose of taxes, and how they affect their daily life. There is also additional information on tax compliance and the negative effects of tax fraud. TaxEdu has multilingual e-learning tools for various age groups and educational material for teachers to use in schools, which can be found here.

European Commission presents European Semester Autumn Package

On November 22, 2017, the European Commission published the European Semester Autumn Package setting out general economic priorities for the European Union and providing EU countries with policy guidance for 2018. The Commission particularly asked Member States to step up their efforts to implement measures to fight aggressive tax planning.

For more information, please refer to the press release.

Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently.

On November 14, 2017, the European Commission established the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently. The Task Force will comprise nine members – three from national parliaments, three from the European Parliament, and three from the Committee of the Regions. The Group will start its work on January 1, 2018 and will report its findings by July 15, 2018, making recommendations on how to better apply the principles of subsidiarity and proportionality, ascertain policy areas where work could be re-delegated to Member States, and better involve regional/local authorities in EU policy making and delivery.

For more information, please refer to the press release.

EUROPEAN PARLIAMENT

PANA Committee hearing on Paradise Papers

On November 28, 2017, the Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (PANA) held its last hearing on the revelations in the Paradise Papers. Members of the International Consortium of Investigative Journalists shared the findings of their comparison of the Panama Papers with the Paradise Papers, which revealed: i) less cases of wealthy individuals but more on multinational companies, ii) less outright illegal structures, and iii) the utilization of other jurisdictions, such as Bermuda and the Isle of Man. On behalf of the European Commission, Pierre Moscovici identified three areas where progress needs to be made: i) transparency on intermediaries who sell tax planning services, ii) transparency on the beneficiaries concerned, and iii) a blacklist of tax havens.

Draft report on the proposal for a Council Directive amending Directive 2011/16/EU

On November 22, 2017, the Committee on Economic and Monetary Affairs (ECON) put forward amendments to the draft report on the proposal for a Council Directive amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The document can be found here.

Debate about Paradise Papers

On November 14, 2017, the European Parliament held a debate on the Paradise Papers revelations. In this context, it was stressed that the EU must make progress in tackling the "fundamental problems" in tax matters and finance ministers should not hide behind unanimity rules in the battle against tax avoidance.

For more information on the debate, please refer to the verbatim report and the press release.

Parliamentary questions submitted to the European Commission

In November 2017, members of the European Parliament referred numerous questions to the European Commission on tax issues, including:

- The Netherlands failure to exchange information on tax rulings (P-007129-17).
- The use of offshore tax havens by citizens of high taxation countries (E-007068-17).
- The existence of secret tax avoidance deals in light of the Paradise Papers revelations and the actions taken by the European Commission in this respect (E-006948-17).
- The legal framework for the protection of whistle blowers (E-006927-17).
- The publication by the European Commission of data on tax evasion and tax avoidance practices, and the actions taken in this respect (P-006804-17).
- The introduction of a fair and uniform fiscal policy in the EU (E-006372-17).

For more information, please refer to the parliamentary questions.

OECD

OECD releases further guidance on Country-by-Country reporting (BEPS Action 13)

The Inclusive Framework on BEPS has published additional guidance on BEPS Action 13 to give certainty to tax administrations and multinational groups on the implementation of Country-by-Country reporting. The guidance provides further information on a number of specific issues, such as mergers, de-mergers and acquisitions, short accounting periods, and reporting amounts from financial statements prepared using fair value accounting.

For further information, please refer to KPMG's Tax NewsFlash.

OECD invites taxpayer input on fourth batch of Dispute Resolution peer reviews

On November 27, 2017, the OECD began gathering feedback for the Stage 1 peer reviews of Australia, Ireland, Israel, Japan, Malta, Mexico, New Zealand and Portugal in the context of BEPS Action 14. Specifically, the OECD requests input on issues related to accessing Mutual Agreement Procedures (MAP), the clarity and availability of MAP guidance, and the timely implementation of MAP agreements for each of these jurisdictions.

In the same context, on November 27, 2017, the OECD released the MAP statistics for 2016. The MAP statistics help to monitor compliance with BEPS Action 14 to improve the effectiveness and timeliness of dispute resolution mechanisms.

For more information, please refer to KPMG Tax NewsFlash.

OECD Revenues Statistics 2017

On November 23, 2017, the OECD published the Revenue Statistics for 2017, which provides annual data on government tax revenues. According to the report, OECD countries are, on average, becoming more reliant on personal income tax revenues, while social security contributions and taxes on goods and services are declining as a share of total tax revenue. Corporate tax revenues fell during the crisis, from 11.2% in 2007 to a low of 8.8% in 2010, and remained relatively stable, at 8.9%, in 2015.

For more information, including an interactive graph for each country, please click here.

2017 Update to OECD Model Tax Convention

On November 21, 2017, the OECD Council approved an update to the OECD Model Tax Convention. The content of this update will be incorporated in a revised version of the OECD Model and is expected to be published soon. The update includes new provisions in the context of BEPS aimed at neutralizing the effects of hybrid mismatch arrangements, and improvements to dispute resolution mechanisms.

For more information, please refer to KPMG's Tax NewsFlash

10th Global Forum on Tax Transparency and Exchange of Information for Tax Purposes

On November 15–17, 2017, members from more than 90 delegations met in Yaoundé, Cameroon for the 10th meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The topics under discussion were based on the automatic exchange of information, the exchange of information on request, and technical assistance. On this occasion, peer reviews were published that focused on international standards of transparency and exchange of financial account information for Curacao, Denmark, India, Isle of Man, Italy and Turkey.

For more information, please refer to the Statement of Outcomes.

Local Law and Regulations

Belgium

Third and fourth draft bills on various tax measures submitted to parliament

On November 24, 2017, a third and fourth draft bill on various tax measures were submitted to the parliament and include:

- a harmonization of the participation exemption regime for collective investment vehicles;
- amended rules on administrative penalties in transfer pricing matters;
- a corrective measure in respect of the exemption for dividends from liquidation reserves;
- amendments to eliminate discrimination in the tax rates on securities transactions as requested by the European Commission.

Second draft bill on various tax measures submitted to parliament

On November 9, 2017, a second draft bill on tax measures was submitted to the Belgian parliament. The bill includes measures to:

- abolish the excess profit tax scheme;
- amend the repayment system of illegal State aid;
- clarify the scope of the innovation income deduction, i.e. cumulative application of the patent deduction and the innovation deduction is not possible; and
- amended rules with respect to the national exchange of information compliance rules in tax matters.

Draft bill on program law submitted to parliament

On November 6, 2017, a draft bill was submitted to parliament, which includes measures against trusts and companies located in tax havens. In particular, distributions by trusts will be regarded as deemed dividend distributions subject to a 30% withholding tax. The draft bill also introduces defensive measures against layered and life insurance structures

Bulgaria

Multilateral Competent Authority Agreement - Automatic exchange of country-by-country reports

On November 15, 2017, the Minister of Finance received authorization to sign the Multilateral Competent Authority Agreement on the Automatic Exchange of Country-by-Country Reports and Bulgaria became a signatory on November 17, 2017.

For more information about the signatories, please click here.

Cyprus

Public consultation on the implementation of the Anti-Tax Avoidance Directive

On November 14, 2017, the Cyprus Tax Department launched a public consultation on the implementation of the Anti-Tax Avoidance Directive (ATAD). The consultation ended on December 8, 2017. The ATAD is expected to have substantial influence on the Cyprus tax system, which does not yet include provisions for exit taxation, interest limitation and CFC rules.

Denmark

Binding answer on foreign investment through parallel partnerships

On November 21, 2017, the Danish tax administration published a Tax Board binding answer on whether or not a permanent establishment (PE) existed in Denmark, resulting from a foreign investment in a Danish limited liability company, which included parallel and underlying limited partnerships. The Tax Board concluded that no PE existed in Denmark because the foreign investors were passive investors not actively involved in business activities in Denmark.

Measures to combat abuse of partnerships announced

On November 14, 2017, the Ministry of Taxation announced how anti-abuse legislation will be submitted to combat international tax avoidance by partnerships. In particular, the Ministry proposed adjusting the "security rule" under the Corporate Tax Law to prevent tax constructions where no tax arises in Denmark, while no or very little tax is paid abroad.

Tax incentives for Investments and R&D

On November 13, 2017, the Ministry of Taxation presented a business package for investment and various R&D measures, which should come into force on January 1, 2019. Measures include a gradual increase of the deductible amounts of R&D expenses from 100% to 110% by 2026, and the reduction to 15% of the withholding tax rate on dividends distributed by Danish UCITs to foreign investors.

Binding answer on taxation of liquidation proceeds from cross-border mergers

On November 10, 2017, the Danish tax administration published a Tax Board binding answer on the tax treatment of a cross-border merger. In the case at hand, the Tax Board concluded that the foreign absorbing company is not subject to tax on capital gains nor dividend withholding tax on the liquidation proceeds of the transferred Danish company. Furthermore, the owners of the absorbing company are not subject to Danish tax because the liquidation proceeds will not be distributed to them.

Binding answer on interruption of 12-month work period for construction PE

On November 9, 2017, the Danish tax administration published a Tax Board binding answer on the effects of work interruptions for the application of the 12-month period test for construction PEs. In the case at hand, the Tax Board regarded the supply of a newly installed plant and the subsequent shutdown to connect it with an existing plant as two separate construction works. As a result, no PE was recognized, since each construction work lasted for less than 12 months, and the temporary interruption rule did not apply.

Binding answer on tax liability after cross-border relocation

On November 10, 2017, the Danish tax administration published a Tax Board binding answer on the tax liability of a company in Denmark after a cross-border relocation. The Tax Board concluded that the company's tax liability in Denmark will be limited to Danish source income, since the day-to-day management will be conducted in another country.

France

Conclusion of the first round of discussions for Finance Bill 2018

On November 21, 2017, the French parliament concluded the first round of discussions on the Finance Bill for 2018, which will now be discussed in the Senate. The measures proposed by the government were largely adopted, with the exception of the proposed interest deduction limitation rules for low-substance holding companies. Instead of being repealed, existing rules will be amended to be brought in line with EU law.

Transfer pricing documentation update to OECD standards

The domestic requirements for transfer pricing documentation (Article L 13 AA of the Book of Fiscal Procedures) will be brought into line with OECD standards. The measure will apply to fiscal years commencing on or after January 1, 2018.

Draft "corrective" finance bill for 2017

On November 15, 2017, the French government released a draft "corrective" finance bill for 2017 which includes a number of tax technical measures. The corrective finance bill contains amended provisions on the application of the French deferral mechanism for capital gains on a cross-border merger (resulting from the CJEU decision in the *Euro Park Service* case, see Euro Tax Flash 320) and amended provisions regarding the deductibility of foreign tax credits. These measures will apply to fiscal years ending on or after December 31, 2017.

For more information, please refer to KPMG's Tax NewsFlash.

Exceptional corporate income tax surcharges adopted by parliament

On November 14, 2017, the French parliament adopted the final version of the bill introducing two exceptional surtaxes on corporate income tax for large companies. During the parliamentary debate, several amendments were introduced, including a smoothing mechanism for companies with total turnover only slightly exceeding the surtax thresholds. The constitutionality of the bill was further confirmed on November 29, 2017 by the French Constitutional Court.

Guernsey

Statement of practice on anti-avoidance provisions updated

On November 22, 2017, the Statement of Practice M45 was updated, to clarify that the relevant anti-abuse provisions will be applicable to circular schemes, schemes with no real commercial purpose and schemes to convert income to capital. In this respect, the document gives several examples of qualifying transactions and refers to the principle of substance-over-form.

Statement of practice on exchange of information on tax rulings

On November 14, 2017, the government published a Statement of Practice C56, clarifying the automatic exchange of tax rulings under OECD BEPS Action 5. The document includes information provided by the tax authorities in the Circular of June 8, 2017 together with further details on the rulings' validity and how to submit requests.

Greece

2016 and 2017 list of preferential tax regimes published

On November 10, 2017, the Public Revenue Authority published Circular POL 1173 identifying countries and territories that have preferential tax regimes, (i.e. regimes providing for taxation 50% lower than that provided for by Greek income tax legislation) for fiscal years 2016 and 2017.

Hungary

Tax legislative measures approved by parliament

On November 14, 2017, the Parliament approved tax legislation (the "Autumn tax package") that includes measures concerning tax procedural rules as well as certain provisions that will affect corporate and individual taxpayers. In particular, the new legislation will revise the rules on tax audits, including the types of tax audits available, time limits for conducting tax audits, and the rules for appeals, among other items.

For more information, please refer to KPMG's Tax NewsFlash.

Italy

Changes proposed to tax capital gains on "qualifying shares,"

The draft budget law 2018 proposes an increase in taxes applicable to gains realized on the disposal of "qualifying shares" of Italian companies. If approved, the provision would be effective as of January 1, 2019 and would specifically affect non-resident entities, by replacing the current tax treatment with a "flat" 26% substitute tax, which would be aligned with the capital gains tax of "non-qualified shares" and gains realized by "physical persons".

For more information, please refer to KPMG's Tax NewsFlash.

Implementing guidelines for Country-by-Country reports

On November 28, 2017, the Italian tax authorities issued guidance for implementing Country-by-Country reporting in Italy.

For more information, please refer to KPMG's Tax NewsFlash.

Latvia

New regulations on tax havens

On November 7, 2017, the Cabinet of Ministers approved new regulations on the blacklist of tax havens, which will take effect on January 1, 2018. New regulations shorten the list of countries and territories recognized as tax havens due to Latvia's membership in the OECD and participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Accordingly, Latvia does not include on the blacklist countries and territories where the exchange of information is ensured.

Norway

Clarification on required documentation for application of reduced withholding tax rate on dividends for non-deposited securities

On November 9, 2017, the Norwegian tax authorities issued a clarification letter on the required documentation for the application of the reduced withholding tax rate on dividends paid by companies on securities that are not deposited with the Norwegian Central Securities Depository. The requirements will apply as of January 1, 2018.

Poland

Implementation of retail sales tax postponed following state aid investigation

On November 15, 2017, a draft regulation postponing the implementation of the Polish tax on retail sales until January 1, 2019 was adopted, following the European Commission's decision, issued in June 2017, that the tax is in breach of EU State aid rules.

Romania

Corporate tax changes effective as of 2018

On November 10, 2017, Government Emergency Ordinance 79/2017 was published, which introduces amendments to Romanian tax law. The provisions generally follow earlier proposed measures and will be effective as of January 1, 2018. They transpose the Anti-Tax Avoidance Directive (EU) 2016/1164 into national law, and introduce changes to the interest limitation rules, exit tax rules, general anti-avoidance rules and controlled foreign company rules.

For more information, please refer to KPMG's Tax NewsFlash

Slovenia

Rules establishing a beneficial ownership register

On November 20, 2017, the government published the Ordinance for Establishment of a Beneficial Ownership Register, under which companies and individuals will be required to report beneficial ownership. The register will be publicly available and will be integrated into the existing business and court register.

Sweden

Clarification on Country-by-Country reporting for certain types of income

On November 7, 2017, the Swedish tax authorities published a clarification letter stating that group contributions do not have to be included in the revenue for Country-by-Country reporting. On November 8, 2017, they further clarified that pension fund income derived by life insurance companies, foreign occupational retirement institutions and pension funds must be included.

United Kingdom

Finance Bill 2018 published

Following the Autumn Budget on November 22, Finance (No.2) Bill 2017-19 was published on December 1, 2017. Some of the measures in the Bill include:

- Increasing the rate of the Research and Development expenditure credit to 12%
- Certain technical amendments to the corporate interest restriction and hybrid mismatch rules which are generally intended to ensure the rules work as intended
- Withholding tax exemption for a debt traded on a multilateral trading facility
- Tackling disguised remuneration
- Offshore trusts anti-avoidance changes
- Extension of VAT joint and several liability to online marketplaces

For more information, please refer to KPMG's Tax NewsFlash.

Autumn Budget 2017 – business taxation

On November 22, 2017, the Autumn Budget for 2017 was presented to Parliament by the Chancellor of the Exchequer. In this context, the UK Treasury published a raft of policy papers and launched public consultations, including:

- Consultation on corporate tax and the digital economy, as well as a position paper
- Policy paper on the government actions to tackle tax avoidance, evasion, non-compliance and aggressive tax planning
- Policy paper on UK's statutory powers to implement the Multilateral instrument.
- Policy paper on Double taxation relief: changes to targeted anti-avoidance rule
- Policy paper on Double taxation relief and permanent establishment losses
- Policy paper on Corporate interest restriction rules

For more information, please refer to KPMG's Tax NewsFlash.

Brexit referendum for the Taxation (Cross-border Trade) Bill

On November 20, 2017, the Taxation (Cross-Border Trade) Bill, previously known as the Customs Bill was introduced in Parliament, and published on November 21, 2017.

For more information, please refer to the Bill.

General Anti-Abuse Procedure (Amendment) Regulations 2017 laid before Parliament

On November 14, 2017, The General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 were laid before Parliament and will come into force on December 5, 2017. The Regulations make minor amendments to the procedural rules under which when one set of arrangements thought to be abusive is referred to the GAAR Advisory Panel, equivalent arrangements can also be counteracted.

For more information, please refer to the Regulations.

Gibraltar enacts amendments on automatic exchange of financial information

On November 9, 2017, the International Co-operation (Improvement of International Tax Compliance) (Amendment No. 2) Regulations 2017 came into force, implementing Council Directive 2014/107/EU of December 9, 2014 and the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information.

Local Courts

Austria

Austrian Administrative Supreme Court upholds rules for indefinite use of loss carry-forward

The Austrian Administrative Supreme Court recently issued a decision on taxpayers' ability to use loss carry-forward when there is a change of indirect shareholder(s). As a general rule, a company's tax loss carry-forward can be utilized indefinitely, unless the identity of the taxpayer changes following a significant change of the organizational, economic and shareholder structure. In the case at hand, the court found that there was a significant change of the shareholder structure and disallowed the loss carry-forward. According to the court, there was no "look-through" approach for purposes of the Austrian loss trafficking rules. Accordingly, transactions within a group of companies, if the direct shareholding changes significantly, can cause the tax loss carryforward to no longer be available for use. However, if an entire group is acquired by a new shareholder, there would appear to be no adverse consequences to the ability to use the loss carryforward of any indirect Austrian subsidiaries

For more information, please refer to KPMG's Tax NewsFlash.

France

French Administrative Supreme Court rules on abuse of tax treaties

On October 25, 2017, the French Administrative Supreme Court ruled that the domestic abuse of law theory may be invoked by the tax authorities if taxpayers make an abusive use of tax treaty provisions, where such treaty does not explicitly provide for a general anti-abuse rule. In the case at hand, the French tax authorities considered the interposition of a Luxembourg holding company abusive and taxed the French individual as if he had acquired and sold the underlying immovable property himself.

Greece

Consequences to income tax paid on gains derived from transfer of shares after a reversal

On November 16, 2017, the Supreme Administrative Court published judgment No. 2080/2017 on the tax consequences of the reversal of a transaction concerning a transfer of shares. The Court concluded that in the case of a reversal of the sale of the shares which results by law in the reimbursement of the consideration paid, the income tax already paid on the gains derived from the transfer is considered unduly paid. It must consequently be refunded to the seller or offset against the income tax that he may have to pay for the same year.

The Netherlands

Treaty between the Netherlands and Italy: EasyJet pilot stationed in Italy entitled to double tax relief

On November 23, 2017, Decision No. 17/3681 of the Zeeland West-Brabant District Court (*rechtbank Zeeland-West Brabant*) on the entitlement to double tax relief for an EasyJet pilot stationed in Italy was published. The Court concluded that based on the double tax treaty between Italy and the Netherlands, the Italian branch of the UK-based company employing the pilot constituted a PE in Italy and found that the pilot's remuneration should be attributable to this PE. The Court concluded that the taxing rights on the pilot's remuneration should therefore be allocated to Italy and that the Netherlands must grant relief from double taxation for the income taxed in Italy.

UK

First-tier Tribunal decision in the Marathon Oil UK LLC v HMRC

On November 13, 2017, the UK first-tier tribunal issued its decision in the Marathon Oil UK LLC v HMRC case, in which it rejected the taxpayer's claim for capital allowances on a fee paid for decommissioning. This case may be seen as an example of the UK courts seeking to defeat what they perceive as tax avoidance arrangements, and appears to extend the boundary of what can be achieved under the banner of 'purposive construction'.

For more information, please refer to KPMG's Tax NewsFlash.

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