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 Bevola case on Danish rules on cross-border loss relief

On June 12, 2018, the CJEU rendered its decision in the Bevola and Jens W. Trock case (C-650/16) concerning the compatibility with EU law of the Danish rules on the deductibility of losses from foreign permanent establishments, firstly in cases where the taxpayer did not elect to apply for the Danish international joint taxation scheme and secondly where the 'Marks & Spencer exception' applies, i.e. losses are considered final. The CJEU concluded that the

Danish legislation is contrary to the freedom of establishment and clarified the applicability of the 'Marks & Spencer exception', leaving it however to the referring court to assess whether this is the case in the circumstances at hand.

For more information, please refer to Euro Tax Flash 371.

AG Opinion in the X-GmbH case on German CFC rules in the light of the Standstill clause

On June 5, 2018, Advocate General (AG) Paolo Mengozzi of the Court of Justice of the European Union (CJEU) published his opinion in the X-GmbH case (C-135/17). The case concerns the derogation from the prohibition on restrictions to the free movement of capital with non-EU countries (also referred to as the 'Standstill Clause'), and its application to the German controlled foreign company (CFC) rules. The AG considered that the German rules are in line with EU law, as they fall within the scope of the Standstill Clause and that the restriction to the free movement of capital may in any case be justified by the need to guarantee the balanced allocation of powers to tax and the effectiveness of fiscal supervision.

For more information, please refer to Euro Tax Flash 370.

CJEU decision in the Hornbach Baumarkt case on German transfer pricing adjustment provisions

On May 31, 2018, the CJEU rendered its decision in the Hornbach Baumarkt case (C-382/16). The case deals with German legislation, according to which the income of a German taxpayer resulting from its business relationships with non-resident related companies is adjusted, as far as the relationships are not in line with the arm's length principle, whereas such adjustment is not made in the case of business relationships between German related companies. The Court ruled that the German rules in question are not, in principle, contrary to the freedom of establishment.

For more information, please refer to Euro Tax Flash 368.

Infringement procedures & referrals to CJEU

Infringement procedure

EU Commission calls on five Member States to transpose new transparency rules and closes case for Bulgaria

On June 7, 2018, the European Commission sent reasoned opinions to Cyprus, Greece, Ireland, Luxembourg and Romania, as they have failed to transpose new measures on the national tax authorities' access to anti-money-laundering information (Council Directive (EU) 2016/2258) into their national legislation. In the absence of a satisfactory reply within two months, the Commission may decide to refer the case to the CJEU. On the other hand, the infringement procedure against Bulgaria has been closed now that it has amended its legislation.

For more information, please refer to the Commission infringements package.

EU Commission calls on the Czech Republic to transpose accurately the new transparency rules

On June 7, 2018, the European Commission sent a letter of formal notice to the Czech Republic for failing to properly implement new measures on the automatic exchange of financial accounts' information (Council Directive 2014/107/EU). If the Czech Republic does not amend its legislation within the next two months, the Commission may send a reasoned opinion to the Czech authorities.

For more information, please refer to the Commission infringements package.

EU Commission closes infringement procedure against Portugal on exit tax rules

On June 7, 2018, the European Commission decided to close proceedings against Portugal for failure to amend its exit tax rules as required by the CJEU decision of December 21, 2016 in the Commission vs. Portugal case (C-503/14). The new rules introduce an option for the taxpayer to defer the taxation of capital gains upon emigration over a period of five years.

For more information, please refer to the Commission infringements package.

Referrals to CJEU

Portugal

On March 12, 2018, reference was made to the CJEU by the Tribunal Central Administrativo Sul for a preliminary ruling in the case Fazenda Pública v Carlos Manuel Patrício Teixeira, Maria Madalena da Silva Moreira Patrício Teixeira (C-184/18). The referring court asked whether the Portuguese legislation, which imposes a higher tax burden on capital gains resulting from the transfer of immovable property situated in Portugal, if the operation is realized by a Portuguese national residing in a third country, rather than if it is realized by a Portuguese national residing in Portugal, is contrary to the fundamental freedoms and to the non-discrimination clause on grounds of nationality enshrined in the Treaty on the Functioning of the European Union.

State Aid

Tax exemption granted for Dutch public seaports constitutes illegal State aid

On May 31, 2018, the CJEU rendered its decision in the Groningen Seaports and Others v. Commission case (T-160/16), concluding that an exemption from corporate income tax for the Dutch public seaports constitutes illegal State aid.

EU Institutions

COUNCIL OF THE EUROPEAN UNION

New Mandatory Disclosure Requirements for Intermediaries and Taxpayers to enter into force on June 25, 2018

The new mandatory disclosure requirements for intermediaries and relevant taxpayers will enter into force on June 25, 2018 i.e. twenty days after their publication in the Official Journal on June 5, 2018. These are the most recent amendments to the Directive on administrative cooperation in the field of taxation ("DAC 6"), which must be implemented by Member States before December 31, 2019 and which will apply from July 1, 2020. Intermediaries and relevant taxpayers will also be required to disclose information on reportable cross-border arrangements, the first step of which is to be implemented between June 25, 2018, and July 1, 2020. This information should be filed by August 31, 2020.

For more information, please refer to Euro Tax Flash 369.

Third revision of the EU list of non-cooperative jurisdictions for tax purposes and updated provision on good tax governance

On May 25, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) agreed to remove the Bahamas and Saint Kitts and Nevis from the EU blacklist of non-cooperative jurisdictions, first published on December 5, 2017, thus bringing to seven the number of remaining blacklisted jurisdictions. The EU Finance ministers have also approved an updated standard provision on good tax governance to be included in EU agreements with third countries.

For more information, please refer to Euro Tax Flash 367.

EUROPEAN COMMISSION

Publication of the a study on taxation trends in the European Union

On June 14, 2018, the European Commission published its annual study on taxation trends in the European Union with a detailed statistical and economic analysis of the tax systems of the 28 Member States of the European Union, Iceland and Norway. For each country, key taxation indicators are provided on tax revenues as a percentage of GDP for the years 2004 to 2016.

For more information, please refer to the report.

Publication of the European Semester Spring Package

On May 23, 2018, the European Semester Spring Package that contains the 2018 country-specific recommendations (CSRs) for the next 12 to 18 months was published by the European Commission and includes the following:

- Monitoring process for eleven Member States (Bulgaria, France, Germany, Ireland, Spain, Netherlands, Portugal, Sweden, Croatia, Italy and Cyprus);

- Deficit procedure for France will be closed;
- Reports for Belgium and Italy are adopted;
- Recommendations for Hungary and Romania should be adopted as they deviate from the medium-term budgetary objective in 2017; and
- Fiscal policy guidance should be provided to Member States by the CSRs in 2019.

EUROPEAN PARLIAMENT

TAXE3 Committee – Workshops on Taxation and fight against Money Laundering

On June 7, 2018, TAX 3 Committee Members participated in a workshop on "Taxation and fight against Money Laundering: Crypto Currencies, Digitalization and the European Semester". The workshop was organized by the Policy Department A., and consisted in three panels:

- Crypto-currencies and blockchain;
- Impact of digitalization on International Tax matters;
- Aggressive tax planning in the context of the European Semester.

Parliamentary questions submitted to the European Commission

In May 2018, members of the European Parliament referred numerous questions to the European Commission on tax issues, including:

- The rules on contacts with the media for whistleblowers and opinion on whistleblower protection (E-002563-18)
- EU list of non-cooperative jurisdictions (E-002925-18)

For more information, please refer to the parliamentary questions.

OECD

Agreement on accession to OECD is signed by Lithuania

On May 30, 2018, Lithuania became the 36th member of the OECD. Once the relevant process of accession is completed at national level and Lithuania deposits its instrument of accession with the French government, the OECD membership will be officially granted.

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

OECD: First peer reviews of country-by-country reports, in advance of June 2018 rollout

On May 24, 2018, the OECD released the first peer reviews of the country-by-country (CbC) reporting initiative, which focus on the domestic legal and administrative framework, and reflects implementation as of January 2018.

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

United Nations

UN Updates Model Double-Taxation Agreement

The UN has released the 2017 UN Model Double Taxation Convention between Developed and Developing Countries. This update incorporates some of the changes from the OECD's 2017 Model Tax Convention, which will curtail entities from attempting base erosion and profit shifting.

Some of the Convention's main updates from its earlier 2011 version include the following:

- A new preamble providing clear emphasis that treaties should not create opportunities for tax avoidance or evasion, including through treaty shopping
- A "fiscally transparent entity" clause under Article 1 "persons covered",
- A new "tie breaker" rule for determining the treaty residence
- Modifications to prevent the avoidance of permanent establishment status
- Amendments to the circumstances in which a lower rate applies for dividends on direct ownership of shares above a 25% threshold
- A new provision regarding source taxation of fees for technical services
- Modifications to expand the "land rich company rule",
- New provisions relating to entitlement to treaty benefits,

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

Local Law and Regulations

Austria

"Ultimate beneficial owner" registration, deadline June 1, 2018

Corporate and other legal entities incorporated or managed in Austria must register their "ultimate beneficial owners" with a newly established Austrian ultimate beneficial owner registry no later than June 1, 2018.

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

Belgium

Draft bill on various (corporate) income tax measures submitted to parliament

On June 11, 2018, a draft bill on various income tax measures was presented to the parliament. The new bill introduces inter alia a new anti-abuse provision for notional interest deduction, the abolition of the fairness tax and an amendment as regards the proper implementation of the EU Anti-Tax Avoidance Directive.

Bill to terminate tax exemption for ports gazetted

On June 11, 2018, a bill terminating tax exemption for ports for accounting years closing on or after January 1, 2018 was published in the Official Gazette in order to comply with the EU Commission's decision that the exemption of ports constitutes incompatible State aid.

FAQs document on MAP and APA procedures published

On May 23, 2018, a document with frequent answers and questions on the Mutual Agreement Procedure (MAP) and the Advance Pricing Agreement (APA) procedure was released by the Belgian tax authorities.

Czech Republic

Proposal to require reporting of income transferred abroad

The 2019 tax package is reportedly about to be submitted by the government. The Ministry of Finance has added a new proposal to require taxpayers to report income transferred abroad and to clarify the "abuse of right concept."

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

Proposals to limit interest deductions, revised CFC rules

Proposed changes to the income tax law of the Czech Republic has completed the comment process. Among the proposed amendments are provisions that would implement the EU Anti-Tax Avoidance Directive (ATAD) into Czech tax law.

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

Law implementing EU Directive on access by tax authorities to anti-money laundering information approved by parliament

On May 23, 2018, the Czech parliament approved the law implementing Council Directive (EU) 2016/2258 as regards access to anti-money-laundering information by tax authorities ('DAC 5'). The new law also permits the use of such information in domestic tax proceedings. On the contrary, access to information held by lawyers will only be possible in cases of international cooperation with certain foreign tax administrations.

Denmark

Bill to prevent retroactive merger gazetted

On June 9, 2018, a Law regarding the prevention of retroactive cross-border mergers was published in the Official Gazette. The new Law, which provides that cross-border mergers cannot become effective for tax purposes before the date on which the merger decision is adopted, will enter into force as from July 2018, but will be applicable as from March 23, 2018.

Law amending PE rules for pass-through entities gazetted

On June 9, 2018, a Law amending the PE rules for pass-through entities was published in the Official Journal and will be applicable as from July 1, 2018. According to the new Law, the participation of the foreign participants in Danish transparent investment entities cannot by itself constitute a Danish PE and thus, the foreign investment income can become taxable in Denmark.

Bill amending Corporate Income Tax Act presented to parliament

On May 4, 2018, a bill amending the Corporate Income Tax Act was presented to the Parliament. The proposal among other things introduces changes to the taxation of investment income derived by non-residents, an amendment to the Danish thin capitalization rules implementing the CJEU decision in the Masco Denmark and Damixa case (C-593/14), as well as adjustments to the dividend special anti-avoidance rule.

Greece

Draft law amending various provisions of Income Tax Code

On June 13, 2018, a law amending the Income Tax Code and the Tax procedural code was adopted by the parliament, introducing several amendments as regards: (i) the interpretation of the phrase “center of vital interests” for tax residency purposes; (ii) the amendment of the definition of “non-cooperative states”; and (iii) the taxation of dividends distributed by EU subsidiaries, which do not benefit from the participation exemption regime.

Updated reporting deadline for information on financial accounts

On June 1, 2018, the Greek tax authorities issued an updated circular on the automatic exchange of financial information in the context of the Multilateral Competent Authority Agreement on Automatic Exchange of Information and the EU Mutual Assistance Directive (2011/16). According to the circular, the filing deadline for financial institutions to report 2017 information is extended to June 15, 2018.

Iceland

Bill amending Income Tax Act adopted by parliament

On June 11, 2018, a bill amending the Income Tax Act was adopted by the Parliament and will take effect as from January 1, 2019. According to the bill, a joint taxation for Icelandic companies with permanent establishments in another EEA Member State, an EFTA State or the Faroe Islands will be allowed.

Italy

Implementing rules for corresponding adjustments are issued

On May 30, 2018, the tax authorities issued implementing rules on the requirements and procedure for downward transfer pricing adjustments.

Administrative guidance, court cases clarifying definition of permanent establishment

Guidance by the tax authorities and recent decisions by Italian courts have examined and clarified the definition of permanent establishment following amendments made by the budget law of 2018.

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

Public consultation on taxation of the digital economy launched

The Italian Ministry of Finance recently launched a consultation on the European Commission's proposals to tax the digital economy, which were issued in March 2018. Comments should be submitted by 22 June 2018.

Netherlands

Standard securitization transactions, advance tax rulings no longer available

The Financial Institutions Department of the Amsterdam tax office decided that advance certainty will no longer be provided for the corporate income tax aspects of standard securitization transactions.

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

Bill to amend fiscal unity regime

On June 4, 2018, a bill was presented to parliament in response to the CJEU decision in the X cases (C398/16 and C-399/16) on the "per element" approach in the context of the Dutch fiscal unity regime for corporate income tax purposes. The measures in the bill mean that certain corporate income tax law and dividend withholding tax law measures would have to be applied as if there were no fiscal unity, including provisions concerning anti-profit shifting, rules on investment participations, the anti-hybrid measure in the participation exemption regime, the interest deduction limitation for excessive participation interest, etc.

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

Ministry of Finance answers questions on tax aspects of cryptocurrencies

On May 28, 2018, the State Secretary for Finance gave further explanations as regards the following tax aspects of cryptocurrencies: (i) the mining of and trade in cryptocurrencies by a natural person; (ii) inclusion in Box 3 (income from savings and investments); (iii) the payment for goods or services in cryptocurrency; (iv) the wages paid in cryptocurrency; (v) the purchase of cryptocurrencies by an entrepreneur; and (vi) the mining of and trade in cryptocurrencies by a legal entity.

Ministry of Finance answers questions concerning 30% ruling for expatriates

On May 25, 2018, the State Secretary for Finance issued an answer to the question as to whether the planned reduction of the 30% tax ruling from 8 years to 5 years for existing cases is legally defensible. In particular, he acknowledged that decisions regarding the 30% tax ruling contain a reservation in the case of future changes to rules and regulations and the exclusion of the existing cases from the reduction to 5 years would constitute direct discrimination.

Romania

European Commission’s proposals on taxation of the digital economy in line with principles of subsidiarity and proportionality

On May 23, 2018, the decisions of the Romanian parliament confirming that the two EU Commission proposals on the taxation of digital economy are in line with the principles of subsidiarity and proportionality were published in the Official Gazette.

Slovenia

Tax authorities clarify tax treatment of tokens received in Initial Coin Offering

On May 25, 2018, the tax authorities clarified the tax treatment of the Initial Coin Offering (ICO) when virtual currency tokens are received free of charge by individuals. Accordingly, further clarification was given for the taxable income, the time when income is earned and the types of income earned.

Spain

New tax on digital sales under examination

On April 27, 2018, the Minister of Finance announced that the government is reviewing the possibility of introducing a new tax on digital sales in compliance with the recent European Commission proposal for an interim tax on digital services.

Sweden

New tax measures adopted by parliament

On June 14, 2018, the Swedish parliament adopted new tax measures, which will apply as of January 1, 2019. The measures include a reduction in the corporate income tax rate to 21.4% in 2019 and 20.6% in 2021, and changes to the interest limitation rules.

Proposal to transpose CFC rules on EU Anti-Tax Avoidance Directive to domestic legislation

On June 7, 2018, a proposal on the transposition of CFC rules included in the EU Anti-Tax Avoidance Directive (EU) 2016/1164 was submitted to the Legal Council for review. According to the proposal, the new rules will strengthen the existing CFC rules and would be applicable both to companies and individuals participating in CFCs, even though the Directive refers only to entities and PEs. The new rules are expected to be applicable as from January 1, 2019.

Guidance on taxation of Swedish partners in foreign partnerships updated

On May 29, 2018, an updated version of the guidance on taxation of Swedish partners in foreign partnerships was released by the Swedish tax authorities. The guidance provides clarifications on (1) the taxation of Swedish partners in foreign partnerships treated as transparent in their residence country, and (2) the taxation of foreign partnerships having a PE in Sweden.

Guidance on the permitted use of country-by-country reporting published

On May 18, 2018, the Swedish tax authorities published guidance clarifying that information contained in the country-by-country reports may only be used for analyzing overall risks and selecting companies for further audits.

Switzerland

Factsheet on mutual assistance procedure published

On June 7, 2018, the Swiss tax authorities issued a factsheet on the application of the mutual agreement procedure under tax treaties.

For more information, please refer to the website of the Swiss Federal Department of Finance

United Kingdom

Consultation on imposing a “robot tax”

On May 24, 2018, the British Parliament launched a consultation on automation, which included the question whether a “robot tax” should be imposed in order to provide help to those affected by automation. The deadline for receiving written submissions is July 13, 2018.

Multilateral Instrument (MLI) ratified

On May 23, 2018, the United Kingdom ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI).

Local Courts

Denmark

National Tax Board released a ruling on construction PE

On May 9, 2018, the National Tax Board released a ruling on a construction site PE in Denmark. The Tax Board concluded that the activities of the construction PE were related as they lasted more than 12 months. Similarly, the seasonal and temporary interruptions are included in the 12-month calculation and thus the multiple contracts are considered as a single, continuous business activity if they constitute a coherent whole.

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