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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 NN case on Danish rules concerning loss relief

On July 4, 2018, the Court of Justice of the European Union (CJEU) published its decision in the NN A/S case (C-28/17) concerning the compatibility with EU law of the Danish rules on the deductibility of losses from a Danish permanent establishment (PE) whose head office is not tax resident in Denmark. The Court concluded that the Danish legislation constitutes a restriction to the freedom of establishment, but that such restriction may be justified by the prevention of double deduction of losses.

For more information, please refer to Euro Tax Flash 377.

CJEU decision on the compatibility with State aid rules of the German “Sanierungsklausel” on the carry-forward of tax losses by ailing companies

On June 28, 2018, the CJEU rendered its decision in the Heitkamp Bauholding case (C-203/16) regarding the compatibility with EU State aid rules of German legislation, which under certain conditions allows a company in financial difficulties to carry forward tax losses despite changes in its shareholder structure (so-called “reorganization clause” or “Sanierungsklausel”). In line with the Advocate General’s opinion, the CJEU decided to annul the European Commission’s decision that such legislation constitutes State aid, arguing that the reference system identified for the purpose of the selectivity analysis is incorrect.

For more information, please refer to Euro Tax Flash 376.

CJEU decision in the Fidelity Funds case regarding Denmark’s withholding tax on dividends paid to foreign investment funds

On June 21, 2018, the CJEU rendered its decision in the Fidelity Funds case (C-480/16), concerning the compatibility with EU law of the Danish withholding tax on dividends distributed to non-resident investment funds. The Court concluded that the Danish legislation is contrary to the free movement of capital.

For more information, please refer to Euro Tax Flash 373

CJEU decision in the GS case on German Anti-Treaty Shopping provisions

On June 14, 2018, the CJEU rendered its decision in the GS case (C-440/17) on German Anti-Treaty Shopping Provisions. The decision, which was published in the form of an order, confirms that the German provisions in question constitute an infringement to both the Parent-Subsidiary Directive and the EU freedom of establishment, in line with the earlier CJEU decision in the Deister-Holding case (C-504/16). Whereas the Deister-Holding case concerns German anti-treaty shopping provisions applicable between 2007 and 2011, the GS case deals with the new legislation applicable from 2012.

State Aid

European Commission opens in-depth State Aid investigations into Madeira Free Zone

On July 6, 2018, the European Commission announced that it has opened in-depth state aid investigations into tax exemptions for companies in the Madeira Free Zone. The Commission has concerns that tax exemptions granted by Portugal to companies established in the Madeira Free Zone are not in line with the Commission’s decision and EU State Aid rules.

For more information, please refer to the EU Commission’s press release.

European Commission State aid decision in the GDF Suez (Engie) case

On June 20, 2018, the European Commission announced its final decision on the state aid investigations into tax rulings granted by the Luxembourg tax authorities to GDF Suez (Engie). The decision confirms the Commission's preliminary view that the tax rulings in question constitute state aid, incompatible with the internal market. As a result, Luxembourg has to recover the aid from the GDF Suez (Engie) group. It is now open to both Luxembourg and the companies concerned to appeal the decisions before the General Court (and possibly later the CJEU).

For more information, please refer to Euro Tax Flash 372.

EU Institutions

COUNCIL OF THE EUROPEAN UNION

2018 country-specific recommendations approved

On July 13, 2018, the Council concluded the 2018 European Semester and issued recommendations to the EU member states on their economy, employment and fiscal policies.

For more information, please refer to the CSR Recommendations.

Code of Conduct conclusions on the Luxembourg new patent box regime

On July 6, 2018, the Code of Conduct Group published its decision regarding the compatibility of Luxembourg's new patent box regime with the modified nexus approach. The Group concluded that the proposed amendments are overall not harmful. The new regime was published on April, 17, 2018 and is applicable from January 1, 2018.

For more information, please refer to the report.

ECOFIN Report on tax issues published

On June 27, 2018, the ECOFIN issued a report on the progress achieved at the Council level during the term of the Bulgarian Presidency on tax issues, in particular on the proposal for a Common Consolidated Tax Base, the adoption of Mandatory Disclosure Rules, the Interest & Royalties Directive recast, the taxation of the Digital Economy, and the adoption of conclusions on the EU standard provision on good governance in tax matters for agreements with third countries.

For more information, please refer to ECOFIN report.

ECOFIN adopts conclusions on the Code of Conduct Group's activities during the Bulgarian EU Presidency

On June 22, 2018, the ECOFIN Council adopted conclusions on the work of the Code of Conduct Group during the first half of 2018. The Member States particularly welcomed the progress made by the Group with regard to the EU blacklisting process and endorsed a new multiannual work program.

For more information, please refer to Euro Tax Flash 375.

Brexit: joint statement issued on the progress of negotiations

On June 19, 2018, the European Union and the UK issued a joint statement on the progress of Brexit negotiations. According to the document, the parties reached an agreement on a number of topics, including value added tax and excise duty matters, as well as recognition and enforcement of judicial decisions, and related cooperation between authorities.

For more information, please refer to the Joint Statement.

France and Germany agree on a common position paper on EU CCCTB

On June 19, 2018, German Finance Minister Olaf Scholz and his French counterpart Bruno Le Maire issued a common position paper on the European Commission's proposal for a Common Corporate Tax Base (CCTB). The position paper, which suggests a number of modifications to the proposed measures, aims at fostering the current discussions on the CCTB Directive at EU level and encouraging a timely adoption of the initiative by all Member States.

For more information, please refer to Euro Tax Flash 374.

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

Digital Economy – EESC opinion on the EU Commission's proposals

On July 12, 2018, The European Economic and Social Committee (EESC) published its opinion on the EU Commission's proposals to tax the digital economy. The EESC advocates in particular in favor of a global solution, in dialogue with the EU's trading partners and stresses that the European Commission's impact assessment should be complemented

For more information, please refer to the EESC website.

EUROPEAN PARLIAMENT

Study on Cryptocurrencies and blockchain

On July 5, 2018, the Policy Department for Economic, Scientific and Quality of Life Policies of the European Parliament issued a study on Cryptocurrencies and blockchain - Legal context and implications for financial crime, money laundering and tax evasion. The study has been commissioned by the TAX3 Committee and follows up on a workshop organized in June 2018 on the same topic.

For more information, please refer to the European Parliament Report.

Resolution on adverse effects of FATCA on EU citizens endorsed by the European Parliament

On July 5, 2018, the European Parliament issued a resolution on the adverse effects of the US Foreign Tax Compliance Act (FATCA) on EU citizens and "accidental Americans" The documents pointed out that FATCA may lead to the exposure and punishment of dual (US-EU) citizens and “accidental Americans” who are individuals born in the US but who do not have any ties with the US.

For more information, please refer to the press release.

EU Parliament’s Greens-EFA group publishes report on Austria’s tax practices

On July 2, 2018, the European Parliament Greens-EFA Group published a new report looking into Austria’s alleged facilitation of aggressive tax planning. The report argues that while Austria has made progress on issues of financial secrecy in recent years, the country remains an attractive destination for dirty money. Its publication coincided with the start of the Austrian Presidency of the Council, which has made the fight against tax avoidance one of its priorities.

For more information, please refer to the report

OECD

Enlargement of CRS global network published

On July 5, 2018, the OECD published a new set of bilateral exchange relationships established under the common reporting standard (CRS) Multilateral Competent Authority Agreement - the CRS MCAA.

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

Discussion draft on transfer pricing aspects of financial transactions released

On July 3, 2018, the OECD released a discussion draft on the transfer pricing aspects of financial transactions. Public comments are invited on the discussion draft, which deals with follow-up work in relation to Actions 8-10 of the BEPS Action Plan.

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

Multilateral Convention (MLI) entered into force

On July 1, 2018, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) entered into force following the deposition of the fifth ratification document by Slovenia, on March 22, 2018. Austria, the Isle of Man, Jersey and Poland had already deposited their ratification documents with the OECD. The MLI will take effect in those jurisdictions in respect of withholding taxes as of January 1, 2019.

Guidance published on hard-to-value intangibles and the transactional profit split method

On June 21, 2018, the OECD released new guidance on the application of the approach to hard-to-value intangibles and the transactional profit split method under Action 8 and Action 10, respectively, of the base erosion and profit shifting (BEPS) project.

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

Developing countries, mining investors and tax incentives

On June 18, 2018, the OECD issued a report intended for resource-rich developing countries and the attempts by multinational mining enterprises to avoid taxes through the use of tax incentives.

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

Local Law and Regulations

Austria

Draft bill, transposing Anti-Tax Avoidance Directive (ATAD) into law

A draft of an annual tax amendment law for 2018 (Jahressteuergesetz 2018) includes measures that would transpose the EU Anti-Tax Avoidance Directive (ATAD) into Austrian domestic tax law. The draft bill also includes measures concerning the introduction of controlled foreign company (CFC) rules.

For more information please refer to KPMG's TaxNewsFlash.

Cyprus

Tax Appeals' Publication

On June 2, 2018, the Income Tax Act was amended allowing the Tax Tribunal for the publication of the appeals rulings. The law applies retroactively as of January 2, 2000.

Estonia

MLI signed by Estonia

On June 29, 2018, Estonia signed the MLI.

France

MLI ratified by France

On July 12, 2018, France ratified the MLI.

Transfer pricing documentation requirements clarified and detailed

On June 30, 2018, a decree clarifying the requirements for the content of and the format for presenting transfer pricing documentation under French tax law was published in the Official

Journal.

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

Administrative guidance published on the tax rulings procedure on merger, split or partial transfer of assets

On June 25, 2018, a Ministerial Order was published which provides details with regard to the tax rulings procedure on merger, split or partial transfer of assets. The Ministerial Order stipulates a list of information which must be provided by the taxpayer in order to obtain the tax rulings.

Germany

Guidance on cost contributions agreements published

The Ministry of Finance issued new administrative guidelines on cost allocation between internationally related enterprises. The document stipulates the general rule that cost contribution agreements must comply with the arm's length principle. The new guidance is applicable to cost contribution agreements between related enterprises signed after 31 December 31, 2018. For existing agreements, the new guidance will be applicable with effect from December 31, 2019.

Ireland

Manual on mandatory disclosure rules published

On June 14, 2018, the Irish tax authorities issued a manual concerning EU Directive 2018/822 on the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The document provides information about the content and scope of the Directive, and enters into force on June 25, 2018.

For more information, please refer to the manual.

Italy

Decree implementing DAC5 entered into force

On June 6, 2018, the Decree which implements EU Council Directive 2016/2258 on access to anti-money laundering information by tax authorities (DAC5) into domestic law entered into force.

Guidance clarifying the application of R&D tax credit published

A tax credit is available for eligible Italian companies and Italian permanent establishments of foreign companies investing in research and development (R&D). The credit is available from the fiscal year in progress on December 31, 2014 and up to the fiscal year in progress on December 31, 2020.

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

Liechtenstein

Bill amending Tax Act approved by Parliament

On June 7, 2018, the Liechtenstein Parliament approved a bill whose objective is to bring Liechtenstein tax legislation in line with the EU good tax governance criteria, as requested by the EU Code of Conduct Group.

Lithuania

Multilateral Convention (MLI) was ratified

On June 14, 2018, Lithuania ratified the MLI.

Proposal to implement DAC5 published

On June 13, 2018, the Lithuanian parliament published a proposal to implement EU Council Directive 2016/2258 on access to anti-money laundering information by tax authorities (DAC5). Under the new rules, which will enter into force as of the date of their adoption, the tax authorities will be able to access beneficial ownership information held by financial institutions.

Luxemburg

Government releases two bills on ATAD 1 transposition and MLI ratification

On June 15, 2018, the Luxembourg government's council approved a bill for the transposition of the EU Anti-Tax Avoidance Directive (issued in July 2016, ATAD 1) into domestic tax law. This bill contains two additional tax measures. The Luxembourg government's council also approved a bill for the ratification of the Multilateral Instrument (MLI).

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

Government's response to the EU Commission's State aid decision in the GDF Suez case

On June 20, 2018, the Luxembourg government issued a press release in response to the European Commission's decision in the GDF Suez (Engie) case. The government takes the view that the group was taxed in accordance with the rules in force at the time and that it did not benefit from a beneficial tax treatment.

Netherlands

Ministry of Finance announces changes to the tax treatment of "CoCos"

On June 29, 2018, the Dutch government announced its intention to abolish the tax deductibility for banks and insurance companies of the interest payment on certain contingent convertible debt ("CoCos"). The amendment, which would take effect as of January 1, 2019 follows a letter from the European Commission, indicating that the current regime may constitute illegal State aid.

Poland

Proposal to introduce exit taxation rules

Regulations for implementing an “exit tax” intend that unrealized, potential gains resulting from the transfer of business from Poland to another country are subject to tax in Poland. The new regulations are intended to allow the authorities to tax the economic value of any potential capital gains that would have been realized if the transfer had not taken place.

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

Proposal for the simplified and transparent tax system announced

On June 16, 2018, the Ministry of Finance released a new tax package which proposes inter alia the introduction of a patent box regime, as well as a notional interest deduction regime, subject to certain limitations.

Serbia

“Ultimate beneficial owners” measures enacted

On June 8, 2018, a law establishing a central register of “ultimate beneficial owners” was enacted.

For more information please refer to KPMG’s TaxNewsFlash.

Slovakia

New rules on valuation of cryptocurrencies

On June 20, 2018, the Parliament of Slovakia approved new rules on the accounting valuation of cryptocurrencies, as well as on the taxation of income derived therefrom. The new rules will be effective as of October 1, 2018.

Sweden

Foreseeable relevance requirement in the context of information exchange

On July 9, 2018, the Swedish tax authorities published details regarding the interpretation of the concept of “foreseeable relevance” in the context of information exchange. According to the opinion, foreseeable relevance should be understood to mean that information can only be requested from another country if it is assumed that such information is relevant for taxation in Sweden of one or more individuals or corporate entities that are subject to tax liability in Sweden.

Sweden deposits instrument of ratification for the MLI

On June 22, 2018, Sweden deposited its instrument of ratification for MLI.

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

United Kingdom

Amendments to UK rules on loss relief, interest limitation, exit tax, and dispute resolution

On July 6, 2018, the UK tax authorities published a series of policy papers, including:

- Policy Paper "Changes to the Corporation Tax reform of loss relief rules"
- Policy Paper "Corporation Tax changes to the corporate interest restriction rules"
- Policy Paper, "Changes to the Corporation Tax exit charges"
- Policy Paper "Implementing a directive on tax dispute resolution mechanisms in the EU"

New profit fragmentation rules impact UK individuals and partnerships

Draft Finance Bill 2018/19 introduces new anti-avoidance legislation targeting businesses diverting profits to overseas territories.

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

UK deposits instrument of ratification for the MLI

On June 29, 2018, the UK deposited its instrument of ratification for the MLI.

Changes to HMRC guidance on CFCs

HMRC are updating the Controlled Foreign Companies (CFCs) section of their International Manual. The changes relate to the finance company exemptions, which exclude from the CFC regime certain profits of a CFC from its 'qualifying loan relationships'. The changes update the examples and guidance relating to a number of different areas of this guidance.

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

Local Courts

France

Supreme Administrative Court ruling on active holding companies

On June 13, 2018, the French Supreme Administrative Court ruled on the definition of an active holding company. The Court considered that a holding company can be considered as carrying on an active business if it is actively engaged in the strategic management of its subsidiaries and provides the latter with administrative services.

Netherlands

Opinion of the Advocate General of the Supreme Court

On June 29, 2018, the Opinion rendered by the Advocate-General (AG) to the Dutch Supreme Court, Mr. P.J. Wattel, in case No. 15/00878 was published. The AG confirmed the CJEU decision in case X NV v. Staatssecretaris van Financiën (C-399/16). In that case, the CJEU decided that certain elements of the Dutch fiscal unity regime are – and certain are not – contrary to the freedom of establishment. The dispute related to the interest deduction limitation and rules on the deduction of foreign exchange losses on EU participations. In essence, the CJEU concluded that taxpayers should be eligible for benefits from separate elements of the fiscal unity regime (also referred to as the 'per element' approach).

United Kingdom

Court of Appeal decision in the Ardmore case

On June 21, 2018, the UK Court of Appeal rendered a decision in a case regarding whether a source of interest arose within the UK and a company was obliged to withhold income tax on payments of interest. The interest was paid by Ardmore, a company resident in the UK, on unsecured loans from a non-UK resident lender that were governed by non-UK law. The Court of Appeal confirmed that the test of the source of an interest payment is not merely multifactorial but also practical and acutely fact-sensitive; the court or tribunal must examine all the available facts both singly and cumulatively.

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

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