KPMG

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 may develop and how to leverage opportunities and reduce 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.

2019 EU Country Profiles

KPMG's EU Tax Centre is pleased to announce the launch of the 2019 EU Country Profiles, a yearly profile on tax systems of most European countries, useful for understanding local direct tax rules. Please note that information for Bulgaria, Hungary, and Portugal have last been updated in 2018, Montenegro and Serbia in 2017.

Latest CJEU, EFTA and ECHR

AG Opinion in the College Pension Plan of British Columbia Case

On June 5, 2019, Advocate General (AG) Pikamäe of the Court of Justice of the European Union (CJEU) rendered his Opinion in the College Pension Plan of British Columbia case (C-

641/17) concerning the compatibility with EU law of the German withholding tax on dividends paid to a Canadian pension scheme. The AG concluded that the German legislation constitutes an unjustified restriction to the free movement of capital and noted that the derogation from the prohibition on restrictions to the free movement of capital with non-EU countries (also referred to as the 'Standstill Clause") is not applicable to the case at hand.

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

Infringement Procedures & Referrals to CJEU

Commission refers Spain to the CJEU for disproportionate penalties

On June 6, 2019, the European Commission decided to refer Spain to the CJEU in relation to the disproportionate penalties imposed on Spanish taxpayers who fail to report assets held in other EU and EEA States ("Modelo 720"). The Commission took the view that the penalties imposed for the failure to submit information on assets held abroad breach the EU fundamental freedoms because they are higher than penalties in a purely domestic scenario. Prior to the court referral, a letter of formal notice was sent in November 2015 and a reasoned opinion in February 2017.

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

Infringement procedure against France closed

On June 6, 2019, the European Commission closed the infringement procedure against France's withholding tax refunds to non-residents.

State aid

CJEU action brought on the Gibraltar's tax exemption scheme for interest and royalties

On April, 10, 2019, Spain filed an appeal before the General Court of the European Union (T-241/19) against the European Commission's decision that Gibraltar's tax exemption scheme for interest and royalties, and five tax rulings granted to local partners in foreign limited partnerships constitute illegal state aid.

For more information, please refer to KPMG's EuroTaxFlash on the Commission's decision.

EU Institutions

EUROPEAN COMMISSION

Member states' tax systems facilitating aggressive tax planning

On June 5, 2019, as part of the 2019 European Semester Spring Package, the Commission reiterated that several EU Member States' tax systems contain characteristics that facilitate aggressive tax planning. The Commission specially noted the tax systems in place in Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands.

For more information, please refer to the Commission's country specific recommendations.

OECD

OECD Reports

On June 8, 2019, the OECD published its Secretary-General Tax Report to the G20, which was presented at the G20 Finance Ministers and Central Bank Governors meeting in Fukuoka, Japan. The report summarizes the progress made in implementing the OECD standards to combat tax avoidance and includes in annexes the Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalization of the Economy, a 2019 Progress Report on Tax Certainty (IMF and OECD), and the Third Annual Progress Report of the OECD/G20 Inclusive Framework on BEPS.

For more information, please refer to the report.

Academy for Tax and Financial Crime Investigation established

On June 8, 2019, during the G20 Finance Ministers and Central Bank Governors meeting, OECD Secretary-General and Japan's Minister of Finance signed a memorandum to establish the OECD Asia-Pacific Academy for Tax and Financial Crime Investigation. The Academy will reside in Wako, Japan, and provide intensive courses on conducting and managing financial crime investigations and on combating specific types of tax and financial crimes.

New data on transparency and automatic exchange of information released

On June 7, 2019, the OECD released new data on transparency and the automatic exchange of information related to financial accounts. According to the data, the OECD's Common Reporting Standard (CRS) initiative has facilitated since 2018 the exchange of information on 47 million offshore accounts with a value of around EUR 4.9 trillion across more than 90 jurisdictions. In addition, a preliminary OECD analysis on the impact of the automatic exchange of information (AEOI) has shown a 20-25% decrease in the number of bank deposits in international financial centers. A complete report is expected to be published later this year.

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

Programme of work on the tax challenges of the digitalization of the economy issued

On May 31, 2019, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) issued a programme of work outlining a process for reaching a global consensus on the taxation of the digitalized economy. The programme, adopted during the Inclusive Framework plenary meeting on May 28-29, and further endorsed by the G20 Finance Ministers on June 8, 2019, explores potential solutions for a two pillar proposal combining nexus and profit allocation rules and a global anti-base erosion rule ensuring a minimum level of tax.

For more information, please refer to [KPMG's TaxNewsFlash](#).

Multilateral Convention developments

On May 29, 2019, the United Arab Emirates deposited its instrument of ratification for the Multilateral Convention (2016) (MLI). The MLI will enter into force in relation to the United Arab Emirates on September 1, 2019, and the MLI coverage of its bilateral treaties will depend on the final adoption positions taken by other countries. In addition, the MLI was approved by the parliament of Belgian region of Walloon on April 4, 2019. The Belgium ratification of the MLI is subject to the approval of the parliaments of the other regions (the Brussels and Flemish) and communities and to the King's final approval. Moreover, on June 1, 2019, the MLI entered into force in respect of Guernsey and Finland.

Local Law and Regulations

Bulgaria

Parliament's first reading vote on transfer pricing documentation and EU Tax Dispute Directive

On June 5, 2019, amendments to the Tax and Social Security Procedure Code were voted at first reading by the parliament. The amendments implement mandatory transfer pricing documentation rules as well as the EU Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. The amendments need to be further voted on by the parliament at second reading.

Greece

Circular on reduced dividend withholding tax and refund of unduly payments

On June 3, 2019, Circular E.2092 clarifying the reduced withholding tax rate for dividends and the refund of unduly payment was issued by the Greek tax authorities. The circular clarifies that the reduced withholding tax rate for dividends from 15% to 10% applies from January 1, 2019, the type of dividends covered by the reduction and the refund of unduly paid withholding tax (5%) resulting from the rate reduction.

Handbook on intra-group dividends issued

On May 24, 2019, the publication of a handbook on the tax treatment of intra-group dividends by the Greek tax authorities was announced. The handbook provides guidance on several topics including the treatment of dividends received and distributed by Greek companies from and to EU or third country companies, the recording of dividends of Greek companies, and the applicable anti-abuse rules.

Finland

New government’s tax plans published

On June 3, 2019, the new Finnish government published its tax plans which includes measures to combat tax avoidance, widen tax residency rules, allow the deduction of foreign final losses, tax hidden profit distributions, and to align the transfer pricing adjustments rules with the OECD Guidelines. In addition, the government will consider whether to introduce a 5% withholding tax on outbound dividends, amendments to the Controlled Foreign Company rules, an ultimate beneficial owner concept, and rules excluding state-owned infrastructure companies from the interest deductibility rules.

France

Clarifications on the special tax regime on reorganizations issued

On May 29, 2019, the tax authorities published ruling No. BOI-RES-000040-20190529 on the special tax regime applicable to reorganizations. The ruling clarifies that the rules applicable from January 1, 2018 under which transfers of shares classified as a “full branch of activity” do not have to be retained for a 3-year period following the transfer to the special tax regime, also apply to the transfer of shares realized before 2018 provided the transferred shares qualify as a “full branch of activity”.

Italy

Law clarifying the application of foreign tax credit to the patent box regime

On May 31, 2019, it was reported that the Italian Tax Authorities published Law Principle No. 5. The law clarifies that the limitation of the foreign tax credit is reduced in accordance with the percentage of the foreign income included in the taxpayer’s worldwide income. The limitation is also applicable to patent box regimes, including cases where tax treaty provisions reproducing Article 23 B of the OECD Model Tax Convention apply.

Malta

Fiscal unity rules adopted

On May 31, 2019, Legal Notice 110 of 2019 introduced fiscal unity rules in Malta. Under the new rules, a parent company may elect to form a fiscal unity with its 95% owned subsidiaries and sub-subsidiaries (local and foreign) if the subsidiaries have the same accounting period as the ultimate parent company. Income earned and expenses incurred by members of the unit are allocated to the parent company who is responsible for preparing a consolidated balance sheet, profit and loss account, and a single tax return covering all companies in the fiscal unit. The rules enter into force with effect from 2020.

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