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.

Latest CJEU, EFTA and ECHR

CJEU decision available in joined cases of AQ and DN

On September 18, 2019, the Court of Justice of the European Union (CJEU) announced its decision in the joined cases of AQ, DN v Ministre de l’Action et des Comptes publics (C-662/18, C-672/18). The cases concerned the compatibility with the Merger Directive 2009/133 of French rules on the taxation of capital gains. The CJEU held that, in the context of a fiscally neutral exchange of securities under the Merger Directive, the taxation of capital gains resulting from a subsequent transfer of the shares exchanged should follow the tax rules (including allowances) and the rate in force at the date on which the transfer occurs.

State aid

General Court examines the compatibility of rulings granted by Ireland, Luxembourg and the Netherlands with EU State aid rules

Following multiple State aid investigations launched by the European Commission, the General Court of the European Union was asked to examine whether the advanced pricing agreements granted by Ireland, Luxembourg and the Netherlands were compatible with EU law. In the case involving Netherlands, the Court ruled on September 24, 2019 that the Commission's decision should be annulled, but upheld the Commission's findings in the case involving Luxembourg. As regards the Irish case, during a hearing that took place on September 17 and 18, 2019 the Court requested the Commission, Ireland and the taxpayer concerned to clarify their arguments.

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

General Court's decision on the taxation of ports in Belgium

On September 20, 2019, the CJEU delivered its decision in the case *Port autonome du Centre et de l'Ouest and Others v Commission (T-673/17)*. The Court dismissed the action made to annul the European Commission's initial decision that the exclusion of the economic activities of the relevant ports from Belgian corporate tax constituted State aid incompatible with the functioning of the EU internal market.

Commission's decision on UK CFC financing exemption scheme appealed

On July 4 and 5, 2019, a number of applicants brought actions to the General Court of the EU to annul the European Commission's decision C(2019) 2526 of April 2, 2019 on the application of State aid rules in respect of the UK CFC financing exemption scheme.

For more information, please refer to the European Commission State Aid Register.

EU Institutions

EUROPEAN COMMISSION

Updates on status of EU Commissioners-designate

On September 27, 2019, Commissioner-designates Vestager and Gentolini provided written responses to questions posed in advance of their respective committee confirmation hearings. Commissioner-designate Vestager addressed the topics of digital taxation and EU State aid matters. Commissioner-designate Gentolini provided commentary on his view of the future EU tax agenda, including on taxation of the digital economy, environmental taxes and the move towards qualified majority voting on EU tax matters.

On September 30, 2019, the European Commission was informed that Commissioners-designate László Trócsányi (Hungary) and Rovana Plumb (Romania) were unable to be confirmed due to conflicts of interest uncovered during the confirmation process. The hearings for the Romanian and Hungarian Commissioners-designate will be suspended until further steps are announced by European Commission President-elect Ursula von der Leyen.

For more information, please refer to the responses of Commissioners-designate Vestager and Gentolini.

The European Economic and Social Committee (EESC) supports a move to qualified majority voting on energy tax matters

On September 27, 2019, the EESC announced that, in relation to energy tax matters, it supports the European Commission's position that a switch should be made from unanimity voting to qualified majority voting.

For more information, please refer to the EESC press release.

OECD

Multilateral Convention developments

On September 30, 2019 and September 26, 2019 respectively, Denmark and Iceland deposited their instrument of ratification for the Multilateral Convention (2016) (MLI) and on September 19, 2019 Uruguay ratified the MLI. The MLI will enter into force in respect of Denmark and Iceland on January 1, 2020. In addition, the MLI entered into force in respect of India, Belgium and Russia on October 1, 2019.

Consultation launched on transfer pricing draft toolkit on documentation requirements

On September 27, 2019, the Platform for Collaboration on Tax, a joint initiative of the OECD, International Monetary Fund, United Nations and the World Bank, launched a consultation aimed at assisting developing countries with the implementation of effective transfer pricing documentation measures. The consultation relates to a proposed draft toolkit which would provide assistance in relation to the documentation of transfer pricing analysis and includes guidance on current practice internationally.

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

Tax Inspectors Without Borders annual report released

On September 24, 2019, Tax Inspectors Without Borders (TIWB) released its annual report for the period May 2018 to April 2019. TIWB, a joint initiative of the OECD and UN Development Programme, is intended to assist local authorities in developing countries improve the quality of auditing and tax compliance.

For more information, please refer to the report.

OECD publication of its 2019 Tax Administration Series

On September 23, 2019, the OECD released the 2019 edition of its Tax Administration Series publication. The publication provides an overview of the shift towards the use of e-administration and other technologies by tax authorities to increase compliance. Findings show that the adoption of digital tools results in the reduction of administrative costs and the better protection of national tax bases.

For more information, the publication is available here.

OECD report notes the importance of increasing taxes on fossil fuels

On September 20, 2019, the OECD announced the publication of a report entitled Taxing Energy Use 2019. The report compares the taxation of different fossil fuels across forty-four jurisdictions and concludes that taxes on polluting energy sources fall short of the levels required to address air pollution and to curb the risks associated with climate change.

For more information, a summary of the report is currently available, with the full report (available from October 15, 2019).

Local Law and Regulations

Austria

Draft bill on the Tax Reform approved by Austrian Parliament

On September 19, 2019, the lower house of the Austrian Parliament approved a Tax Reform bill. Key measures include the transposition of the hybrid mismatch provisions of ATAD and ATAD 2 into national law, the introduction from January 1, 2020 of a Digital Services Tax (applicable to certain companies) at a rate of 5% and the implementation of EU mandatory disclosure rules. The draft has been sent for approval to the upper house of the parliament.

Belgium

Updated UBO register FAQ manual published

On September 24, 2019, the Belgian Ministry of Finance updated its ultimate beneficial ownership (UBO) register FAQ manual. The updated manual includes guidance on how to interpret the definition of a beneficial owner in various cases and guidance on the types of documentation required, penalties for non-compliance, access to the register and filling procedures. The deadline for UBO information reporting in Belgium is September 30, 2019.

Cyprus

Legislation of implementation of DAC 6 announced

On September 16, 2019, the Cypriot Tax Department announced that legislation to implement EU Directive 2018/822 on mandatory disclosure rules, will be introduced before the end of 2019. The announcement confirmed that, for arrangements made between June 25, 2018 and June 30, 2020, the first reports should be submitted in Cyprus prior to August 1, 2020.

France

Finance Bill for 2020 submitted to French Parliament

On September 27, 2019, the French government submitted the Finance Bill for 2020 to the French Parliament. The bill proposes a reduction in the French standard corporate income tax (CIT) rate to 28% for companies with an annual turnover of less than EUR 250 million with effect from January 1, 2020. For companies with an annual turnover in excess of EUR 250 million, the CIT rate of 28% will apply to the first EUR 500,000 of profits of the company with the current rate of 31% applicable thereafter. The bill envisages further reductions to 27.5% from January 1, 2021 and 25% from January 1, 2022 that would apply to all profits. The bill also includes proposals to transpose EU anti-hybrid rules under ATAD and ATAD 2 into French national law along with a proposal to publish a list of non-cooperative digital platforms. Finally, non-resident companies in a loss-making position will be able to claim a temporary refund of the withholding taxes paid, following the CJEU decision in the Sofina case (C-575/17).

Germany

Germany publishes revised mandatory disclosure tax law

On September 26, 2019, the German authorities published an official draft law to transpose EU Directive 2018/822 on mandatory disclosure rules (DAC6) into German national law. The terms of the Directive are closely adhered to by the draft law although there are some notable exceptions.

Greece

List of non-cooperative jurisdictions published

On September 23, 2019, the Greek Public Revenue Authority announced its determination of non-cooperative jurisdictions for 2018 and 2019. In particular, the following jurisdictions were listed as being considered to be non-cooperative for 2019: Sint Maarten, Anguilla, Vanuatu, Kingdom of Lesotho, Gabon, Ghana, Guatemala, North Macedonia, Ecuador, Kenya, Curacao, Kazakhstan, Liberia, Mauritania, Botswana, Burkina Faso, Brunei, Marshall Islands, Paraguay, Trinidad and Tobago and the Philippines.

Jersey

Consultation on mandatory disclosure rules for CRS avoidance

On September 23, 2019, the government launched a public consultation on the introduction of mandatory disclosure rules for common reporting standard (CRS) avoidance arrangements and opaque offshore structures. The draft rules, which would require advisers to disclose arrangements or offshore structures, including the identity of the beneficial owner, aim at implementing Jersey's earlier commitment to the EU Code of Conduct Group.

For more information, please refer to the consultation.

Netherlands

EUR 1 billion claim for back taxes issued by Dutch tax authorities to tobacco manufacturer

Following a tax evasion investigation by the Dutch tax authorities, a tobacco manufacturer was ordered to pay EUR 1 billion in outstanding taxes. The Dutch tax authorities found that certain fees paid by Dutch subsidiaries of the tobacco group for loans granted via a UK holding company were inflated in order to shift profits out of the Dutch tax resident subsidiaries. The decision is being appealed by the taxpayer.

Portugal

Portugal transposes EU Council Directive on tax dispute resolution mechanisms

On September 19, 2019, Portugal transposed EU Directive 2017/1852 on tax dispute resolution mechanisms. The provisions adopted in Portuguese domestic law are largely consistent with the requirements laid out in the Directive with enhanced procedures introduced in relation to the settlement of tax treaty disputes between Portugal and EU Member States.

Direct taxation amendments introduced

On September 18, 2019, a new bill was introduced in Portugal. In particular, amendments to Portuguese transfer pricing legislation will align the existing legislation with 2017 OECD Transfer Pricing Guidelines. Amendments are also being introduced to simplify the procedures associated with operating withholding tax on payments made to non-Portuguese tax resident parties including the introduction of new standardized withholding tax documentation. The amendments are effective from October 1, 2019.

Slovakia

Slovakian Parliament approve EU Directive on mandatory disclosure rules

On September 11, 2019, the Slovakian Parliament approved a bill transposing EU Directive 2018/822 on mandatory disclosure rules into Slovakian national law.

Slovenia

Tax law reform proposals announced

On September 20, 2019, the Slovenian Ministry of Finance announced proposed amendments to Slovenian Corporate Income Tax (CIT) Law. The measures announced include the introduction of an exit tax and hybrid mismatch rules consistent with Slovenia's requirements under ATAD and ATAD 2. Other changes include an increase of the CIT rate from 19% to 20%. The proposals are expected to come into force on January 1, 2020.

Switzerland

Implementation of Recommendations of Global Forum

On September 27, 2019, the Swiss Federal Council adopted, with effect from November 1, 2019, a Federal Act on the Implementation of Recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The law will impose certain conditions under which bearer shares are permitted and provides for penalties for shareholders or companies that fail to maintain a proper beneficial owner register.

Local Courts

Norway

US pension fund denied the reduction of withholding tax

On September 17, 2019, the Norwegian national tax assessment board (the Board) rendered its verdict in a case regarding the denial of a reduced rate of withholding tax under the Norway-United States Double Tax Treaty for a US pension trust by the Norwegian tax authorities. The Board agreed with the assessment of the Norwegian tax authorities and denied treaty benefits on the basis that the dividends received by the pension trust were not taxed in the US and the pension trust should therefore not be considered resident in US under the terms of the treaty.

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Key links

- Visit our website for earlier editions

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