



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre

Issue 109 – October 18, 2019

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**](#)

[**Opinion of AG Hogan in Banco de Santander Case**](#)

On October 1, 2019, Advocate General (AG) Hogan of the Court of Justice of the European Union (CJEU) issued an opinion in *Banco de Santander* (Case C-274/14). The AG considered whether the Spanish Tribunal Económico-Administrativo Central de Madrid (TEAC) could be considered to be a court or tribunal for the purposes of raising a preliminary question to the CJEU. Ultimately, the AG determined that the TEAC could not be considered to be a court or tribunal and that the Court lacked jurisdiction to answer the questions raised in the TEAC's preliminary ruling request.



Infringement Procedures & Referrals to CJEU

Infringement Procedures

France

On October 10, 2019, the European Commission announced the closure of infringement proceedings against France in relation to the payment of participation fees. A letter of formal notice was sent to France in 2017 regarding rules under which resident taxpayers could fully deduct costs and expenses related to a participation from the tax base, whereas these costs were only partially deductible for non-resident taxpayers. The Commission considered that this difference in treatment constituted an infringement to the freedom of establishment and the free movement of capital. France has now brought its legislation in line with EU law.

Belgium

The European Commission announced the closure of infringement proceedings against Belgium following the introduction of changes to Belgian law on the taxation of savings income. In 2018, the Commission had requested Belgium to bring its rules into line with EU law, as Belgium refused to grant tax credits to Belgian residents with accounts in Luxembourg and Austria for the withholding tax levied there on interest payments.



EU Institutions

COUNCIL OF THE EUROPEAN UNION

UAE and Marshall Islands removed from the EU list of non-cooperative jurisdictions

On October 10, 2019 the Council adopted a revised EU blacklist of non-cooperative jurisdictions for tax purposes. The EU Finance Ministers agreed to remove the United Arab Emirates (UAE) and the Marshall Islands from the list. Albania, Costa Rica, Mauritius, Serbia and Switzerland were also found to be compliant with all of their commitments on tax cooperation and were therefore removed from the EU grey list. Finally, the Council endorsed guidance notes published by the Code of Conduct Group on foreign source income exemption regimes.

For more information, please refer to our [Euro Tax Flash](#).

Opening of accession talks with North Macedonia and Albania

On October 3, 2019, a joint letter was published by Presidents Tusk, Sassoli and Juncker and President-elect Von der Leyen in relation to a decision to open EU accession talks with North Macedonia and Albania.

For more information, the letter is available [here](#).

EU Member States seek harmonization of withholding tax procedures

A report prepared by the Next Capital Markets Union High-Level Expert Group was presented at the EU Economic and Financial Council meeting on September 13, 2019. The report was prepared by experts from France, Germany, the Netherlands, Italy, Poland, Spain and Sweden and, amongst other proposals, called for greater harmonization of withholding tax reclaim procedures across the European Union. The report suggested that a single harmonized form could be used across all EU Member States and that time limits should be introduced for determining repayment claims.

For more information, please refer to the [report](#).

EUROPEAN COMMISSION

2018 report on fight against fraud

On October 11, 2019, the EU Commission published its 2018 annual report on the *Protection of the EU's financial interests and fight against fraud*. The report includes a summary of the actions taken by the European Commission to fight against VAT fraud.

For further information, the report is available [here](#).

International tax evasion paper published

On October 11, 2019, the European Commission published a paper entitled "*Estimating International Tax Evasion by Individuals*". The paper estimates that amount of wealth held offshore by individuals in the world's largest economies at EUR 7.5 trillion in 2016 or 10.4% of global GDP and provides estimates of the levels of tax evasion across EU Member States at EUR 46 billion (0.3% of GDP).

For more information, the paper is available [here](#).

Hearing of Commissioner-designate Vestager

On October 8, 2019, the hearing of Commissioner-designate Vestager took place before the European Industry, Internal Market and Economic Affairs committees. During the hearing, Commissioner-designate Vestager stated her desire for Member States to consider EU State aid decisions on tax rulings as guidance going-forward and indicated that the European Commission will launch a review into the manner in which tax rulings are used by Member States. She also commented on the common consolidated corporate tax base and echoed Commissioner-designate Gentiloni's preference to use qualified majority voting on tax matters through the use of Article 116 of the Treaty on the Functioning of the European Union (TFEU). Ms. Vestager is also the Danish candidate for the role of Executive Vice President of the Europe fit for the Digital Age portfolio and used the hearing to re-affirm commitments to ensure fair taxation is achieved across the EU through the introduction of a digital services tax.

For more information, a video of the hearing is available [here](#).

EU rules to protect whistle-blowers to apply from 2021

On October 7, 2019, the EU Council adopted a directive on the protection of whistle-blowers. The new rules will be formally signed and published in the Official Journal of the European Union, from which point Member States will have two years to transpose the provisions of the directive into national law. The new rules will widen the scope of whistle-blower protection and will see the creation of safe channels for reporting within companies and public authorities, the introduction of safeguards for whistle-blowers and will place requirements on organizations to respond to whistle-blower reports in a timely manner.

For more information, please refer to the [directive](#) and our previous [Euro Tax Flash](#).

Hearing of Commissioner-designate Gentiloni

On October 3, 2019, Commissioner-designate Gentiloni outlined the objectives for his future mandate with the European Commission. During the hearing process, Mr. Gentiloni emphasized his desire to continue and re-inforce momentum on EU-wide taxation agenda including in areas such as energy taxation, digital taxation and fraud. Where consensus cannot be reached at OECD level by next year, he noted that the European Commission will be ready to launch a new proposal on the digital economy in the third quarter of 2020. Commissioner-designate Gentiloni stated that the common consolidated corporation tax base remains a priority of the Commission and that he hopes to move forward with a carbon border tax. He also noted that the Commission favors the introduction of a minimum corporate tax rate in the EU and that this should be pursued using all means available, including the use of qualified majority voting under Article 116 of the Treaty on the Functioning of the European Union (TFEU).

For more information, a video recording of the hearing is available [here](#).

EUROPEAN COURT OF AUDITORS

Tax information exchange across Member States examined by EU auditors

On October 1, 2019, the European Court of Auditors announced that it is undertaking an audit to determine the level of effectiveness of the exchange of tax information in the EU. In particular, the audit will focus on the manner in which the European Commission supports and monitors the level of information exchange across the EU.

For more information, please refer to the [press release](#).



OECD

Multilateral Convention developments

On October 8, 2019, Liechtenstein ratified the OECD Multilateral Convention (2016) (MLI). Liechtenstein has not yet deposited its instrument of ratification with the OECD.

IMF Fiscal Monitor report publication

In its October 2019 *Fiscal Monitor* publication, the International Monetary Fund (IMF) focused on the environmental, economic and administrative cases for the introduction of carbon taxes. The IMF stressed the need for carbon taxes to rise to USD 75 per ton by 2030 for G20 members and explored how alternative measures such as the use of “feebates” to incentivize carbon reduction could be used where increases in carbon taxation are a sensitive political issue.

For more information, the report is available [here](#).

OECD consultation on a “unified approach” to taxing the digital economy

Following a meeting on October 1, 2019 of the OECD Task Force on the Digital Economy (TFDE), the OECD Secretariat published a public consultation document on October 9, 2019 that sets out a proposal for a unified approach to the nexus and profit allocation challenges arising from digitalization. The OECD invites comments from the public with a view to discussing the results during a public consultation on November 21 and 22, 2019. Interested parties are invited to send their comments by email to the OECD no later than 12pm (Paris time) on Tuesday, November 12, 2019, using the email address TFDE@oecd.org. A progress report on Pillar Two of the Programme of Work agreed by the OECD in May 2019 will be published shortly with a consultation process expected in November.

For more information, please refer to our [Euro Tax Flash](#).

Montenegro signs Convention on Mutual Assistance in Tax Matters

On October 3, 2019, Montenegro joined the multilateral Convention on Mutual Administrative Assistance in Tax Matters. Montenegro is the 130th jurisdiction to join the convention.



Local Law and Regulations

Bulgaria

Anti-hybrid and exit tax legislation presented to National Assembly

On October 9, 2019, proposed amendments to the Bulgarian Corporate Income Tax Act were submitted to the Bulgarian National Assembly. In particular, the proposals would see the implementation of exit tax and anti-hybrid measures into Bulgarian law consistent with Bulgaria's requirements under EU ATAD 1 and ATAD 2.

Consultation launched on DAC6 implementation

On October 7, 2019, the Bulgarian Ministry of Finance launched a public consultation in respect of the proposed implementation of EU Directive 2018/822 on mandatory disclosure rules (DAC 6) into Bulgarian national law with effect from July 1, 2020.

Cayman Islands

Introduction of public company ownership register

On October 9, 2019, the government of the Cayman Islands signified its intention to introduce a public register of company ownership with the current expectation that the register will be launched in 2023.

For more information, please refer to the [press release](#).

Curaçao

Decree issued on substance requirements

On September 10, 2019, the Curaçao Minister of Finance issued a Ministerial Decree in relation to the substance requirement provisions contained in the Curaçao Corporate Income Tax Code. The decree provides guidance on when the relevant substance requirements will be deemed to have been satisfied.

Denmark

Updated guidance on reporting obligations for shares, dividends and bonds

On October 2, 2019, the Danish tax authorities published guidance on the reporting obligations of taxpayers in respect of the purchase, holding and sale of shares, the acquisition, disposal and redemption of bonds and the reporting of dividends. The updated guidance applies for the 2019 tax year.

Legislative amendments presented to Parliament

On October 1, 2019, the Danish Government proposed legislative changes to the Danish Parliament, the majority of which, if approved, would enter into effect on January 1, 2020. Key measures include amendments to Danish controlled foreign corporation (CFC) rules and the definition of a permanent establishment to align with the EU ATAD and the 2017 OECD Model Tax Convention. Legislative proposals to implement Council Directive EU 2018/822 of May 25, 2018 on mandatory disclosure rules and amendments to Danish transfer pricing, interest deductibility and dividend withholding tax rules were also presented. Draft legislation for the measures outlined above is expected to be published on a piecemeal basis between now and February, 2020.

Consultation launched on amendments to investment income and capital gains tax

On October 1, 2019, the Danish Government launched a consultation on draft measures to amend as of January 1, 2020 the tax treatment of tax-exempt business transformations, certain acquisition costs (valuation), certain debt reduction transactions between related companies, and introduce the taxation of stock dividends as personal income for mutual funds partners.

Guernsey

Guidance issued economic substance questions to be included in corporate tax return

On October 1, 2019, the Guernsey Revenue Service published guidance on the level of economic substance information that is required to be included as part of the Guernsey corporate tax return. The questions included in the guidance will need to be answered in corporate tax returns for accounting periods commencing on or after January 1, 2019.

For more information, please refer to the [guidance](#).

Introduction of MDR for CRS Avoidance Arrangements and Opaque Offshore Structures

On October 1, 2019, the Guernsey Revenue Service issued a Briefing Note in respect of the introduction of mandatory disclosure rules (MDR) on the Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures. The Briefing Note outlines the features of the MDR that Guernsey intends to introduce by December 31, 2019 and is largely consistent with the requirements of Action of the OECD BEPS project.

For more information, please refer to the [Briefing Note](#).

Greece

2020 Budget submitted to Parliament

On October 7, 2019, a budget for 2020 was submitted to the Greek Parliament. Key measures include the proposed reduction of the Greek corporate income tax rate from 28% to 24% and the reduction of the Greek rate of dividend withholding tax from 10% to 5% for distributions made in 2020.

Ireland

Guidance on MLI Tie-Breaker Rule for dual resident companies

On October 9, 2019, the Irish tax authorities published a manual explaining how the new rule under the MLI regarding the determination of treaty residence of dual-resident companies applies. The MLI came into force for Ireland on 1 May 2019.

For more information, please refer to the [manual](#).

Budget 2020 presented to Parliament

On October 8, 2019, the Irish Minister for Finance presented the budget for 2020 to Dáil Éireann (lower house of the Irish Parliament). Key measures include the introduction of anti-hybrid rules in line with Ireland's requirements under EU ATAD 1 and ATAD 2 and updates to Irish transfer pricing legislation to cover material capital transactions and non-trading non-domestic transactions. An increase to the Irish carbon tax rate of €6 per ton (to a cumulative amount of €26 per ton) and an increase in the rate of dividend withholding tax from 20% to 25% were also proposed.

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

Italy

Introduction of digital services tax

On October 15, 2019, the Italian Government issued a decree which will result in the introduction of a Digital Services Tax (DST) at a rate of 3% with effect from January 1, 2020. Companies with an annual turnover of EUR 750 million and digital services supplied in Italy in excess of EUR 5.5 million will be in scope of the DST with the 3% tax applying to gross revenue derived from (i) advertising on a digital interface, (ii) a multilateral digital interface that allows users to buy or sell goods and services and (iii) the transmission of user data generated from using a digital interface.

Consultation on energy taxation rules

On October 14, 2019, the Italian Economy and Finance Ministry announced a public consultation on the European Commission's report on energy taxation rules. The publication process will run until October 23, 2019.

Investigation into possible tax avoidance by US streaming service

In October 2019, the Milan Public Prosecutor commenced an investigation into a major US content streaming platform. According to the prosecutor the use of servers and computers to deliver content to users in Italy may equate to the streaming servicing having a physical presence in Italy and the prosecutor is investigating potential tax avoidance on this basis.

Luxembourg

2020 Budget presented to Parliament

On October 14, 2019, the Luxembourg Government presented the budget for 2020 to the Luxembourg Parliament. The measures presented include an increase in the maximum excise duty applicable to different petroleum products and clarification that capital gains from the disposal of business assets should be included in the calculation of business profits of companies. In addition, the budgetary proposals will result in all advance tax rulings (ATR) issued by the Luxembourg tax authorities before 2015 ceasing to be applicable from December 31, 2019 and new ruling requests needing to be submitted under Luxembourg's ATR codified regime which has applied from 2015 onwards.

Netherlands

Consultation launched on Dutch list of low-tax jurisdictions

On October 7, 2019, the Dutch Ministry of Finance launched a consultation on its list of low-tax jurisdictions for the year 2020. At present, the list contains the members of the EU blacklist of non-cooperative jurisdictions and a number of countries with a statutory corporate tax rate of less than 9%. The Dutch Ministry of Finance proposes to add Barbados and Turkmenistan to the list and to remove Belize and Saudi Arabia from the 2020 list. The consultation runs from October 7 to November 8, 2019.

Norway

2020 Budget presented to Parliament

On October 7, 2019, the Norwegian Government presented 2020 budgetary proposals to the Norwegian Parliament. In particular, the measures include an increase of 5% to Norway's CO2 tax and changes to Norwegian interest limitation rules.

CFC white and black lists published

On September 26, 2019, the Norwegian tax authorities published updated lists of white and black-listed jurisdictions which apply in the context of Norwegian controlled foreign corporation (CFC) legislation. Hong Kong, Oman and Serbia were removed from the blacklist while the white list remains unchanged.

Slovakia

Legislative amendments signed into law by Slovakian President

On October 14, 2019, the Slovakian President signed into law a bill to reduce the Slovakian rate of corporate income tax for entities with an annual turnover of less than EUR 100,000 to 15% (from 21%) for taxable periods beginning on or after January 1, 2020.

On October 1, 2019, the Slovakian President signed into law the introduction of anti-hybrid legislation to comply with Slovakia's requirements under EU ATAD 2. The law will become effective on January 1, 2020. The Slovakian President also signed into law a bill implementing EU Directive 2018/822 on mandatory disclosure rules which will be applicable as of July 1, 2020 with retrospective reporting requirements for arrangements entered into since June 25, 2018.

Slovenia

Introduction of a minimum corporate income tax rate approved

On October 3, 2019, the Slovenian Government approved the introduction of a minimum corporate income tax rate of 7%, as well as an increase in the tax on income from capital, derivatives, and rents from 25% to 27.5%.

Sweden

Legislative amendments submitted to Swedish Parliament

On October 1, 2019, legislation to implement hybrid mismatch rules and amendments to the definition of permanent establishment required under EU ATAD 1 and 2 was presented to the Swedish Parliament for approval. In addition, amendments to exit tax rules were proposed to align Swedish national law with its requirements under EU ATAD 1, as well as changes to the identification of reportable accounts under the EU Directive 2014/107 on automatic exchange of financial account information. The legislation is expected to enter into effect from January 1, 2020.

United Kingdom

GAAR Advisory Panel opinion

On October 8, 2019, the UK tax authorities published an opinion of its GAAR advisory panel which stated that the use of employee shareholder share arrangements as a method to extract value from a company was not an acceptable use of the relevant legislative provisions.

For more information, please refer to the [opinion](#).



Local Courts

Denmark

Danish National Tax Board ruling on units held in German UCITS

On October 7, 2019, the decision of the Danish National Tax Board (the Board) in the case of *SKM2019.492.SR* was published. The Board noted that capital gains and losses on units held in a German UCITS investment vehicle should be determined at the end of each year on a mark-to-market basis as opposed to when the capital gain or loss is realized on disposal.



Robert van der Jagt

Chairman, KPMG's EU Tax Centre and
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