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

Decision in Brussels Securities case

On December 19, 2019, the Court of Justice of the European Union (CJEU) rendered its decision in the case of Brussels Securities SA v. Belgian State (Case C-389/18). The court ruled that Belgian provisions that limit the possibility for a parent company to deduct 95% of the qualifying dividends received before another domestic tax benefit, the transfer of which is limited in time, is contrary to the Parent-Subsidiary Directive.

Preliminary ruling request in Airbnb case

On September 30, 2019, a preliminary ruling request was made by the Consiglio di Stato in the case of AIRBNB Ireland UC, Airbnb Payments UK Ltd v Agenzia delle Entrate (Case C-723/19). The preliminary ruling request was made public on December 6, 2019. The CJEU is requested to rule whether the EU fundamental freedom to provide services precludes the Italian authorities from imposing technical regulations on an online booking platform without submitting a prior notification to the European Commission.

Preliminary ruling request in S.C. Valoris S.R.L case

On September 11, 2019, the CJEU was requested to provide a preliminary ruling by the Romanian Tribunalul Valcea in the case of S.C. Valoris S.R.L. v Direcția Generală Regională a Finanțelor Publice Craiova (C-677/19). The preliminary ruling request was made public on December 6, 2019. The question raised concerns whether the imposition of a one year time limit for claiming a reimbursement of taxes which were determined to represent a breach of EU law is permissible when no equivalent time limit is imposed for taxes which were levied in breach of domestic law.

State Aid

European Commission requests comments on the taxation of Italian ports

On January 10, 2020, the European Commission invited interested parties to submit comments on the corporate taxation regime applicable to Italian ports. The invitation follows a decision to open an in-depth State aid investigation to ascertain whether certain exemptions provided to Italian ports are in line with EU State aid rules.

For more information, please refer to the European Commission invitation.

Infringement Procedures & Referrals to CJEU

Action brought by European Commission against Spain on penalties for failure to report assets held abroad

On October 23, 2019, the European Commission brought an action against Spain to the CJEU. The action concerns a provision in Spanish legislation which imposes an obligation on Spanish tax residents to declare certain non-Spanish assets. Where the declaration is not completed correctly, the non-reported assets can be re-classified as capital gains for Spanish tax purposes and penalties can be imposed. The European Commission has determined that the penalties imposed are disproportionate and represent a breach of the fundamental freedoms under the Treaty on the Functioning of the European Union (TFEU).

EU Institutions

EUROPEAN COMMISSION

European Green Deal announced by European Commission

On December 11, 2019, the European Commission presented the European Green Deal, a roadmap containing actions to make Europe the first climate neutral continent by 2050. In particular, the roadmap of key actions provides an indicative timetable of June 2021 for a proposal to revise the Energy Taxation Directive.

For more information, please refer to the European Commission press release.

European Commission commences discussions with the United Kingdom on future relationship

On January 8, 2019, European Commission President, Ursula von der Leyen, held a meeting with UK Prime Minister Boris Johnson to discuss the future relationship between the EU and the United Kingdom, after the latter formally exits the EU on January 31, 2020. The EU and the UK will enter intensive discussions on a new partnership and free trade agreement during the transition period which is set to run until December 31, 2020.

For more information, please refer to the European Commission press release.

EUROPEAN PARLIAMENT

European Parliament adopts resolution on digital economy

On December 18, 2019, the European Parliament adopted a resolution expressing concern that there was no common approach at EU level on the ongoing international OECD-led discussions on the taxation of the digital economy. Members of the European Parliament (MEPs) called on the EU Commission and Member States to agree a joint and ambitious EU position and supported the Commission's commitment to propose an EU solution if agreement cannot be reached internationally by the end of 2020.

For more information, please refer to the resolution.

OECD

Multilateral Convention developments

On January 1, 2020, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (2016) (MLI) entered into force in respect of Denmark and Iceland.

The MLI was also ratified by Chile (January 10, 2020), Estonia (December 13, 2019) and Indonesia (November 12, 2019) and will enter into effect three months after each jurisdiction deposits its instrument of ratification with the OECD.

On December 19, 2019, Liechtenstein deposited its instrument of ratification with the OECD. The MLI will enter into force for Liechtenstein on April 1, 2020.

On December 19, 2019, Jordan also signed the MLI bringing the total number of signatories to 93 jurisdictions.

Country-by-Country Reporting guidance published

On December 23, 2019, updated country-by-country reporting (CbCR) guidance was approved by the OECD Inclusive Framework on BEPS. The guidance addresses key questions for both taxpayers and tax administrations and is updated periodically. The OECD also published a summary of CbCR requirements for Inclusive Framework countries, including information on reporting periods, the availability of surrogate filing and local filings.

For more information, please refer to the guidance and summary.

Third batch of automatic exchange of information peer reviews published

On December 23, 2019, the OECD published the third annual batch of peer review reports on the exchange of tax rulings, in which it assesses the progress of 112 jurisdictions (including 20 jurisdictions for the first time) on the spontaneous exchange of information on tax rulings under BEPS Action 5. The report notes that by the end of 2018, 18,000 tax rulings were in scope and that 30,000 in-scope exchanges of tax rulings had taken place.

For more information, please refer to the report.

Mandatory Disclosure Requirements

State of play

EU Directive 2018/822 on mandatory disclosure requirements (MDR) for intermediaries and relevant taxpayers entered into force in the European Union on June 25, 2018, to be applied as of July 1, 2020. Most, but not all, Member States met the December 31, 2019 deadline to transpose the new rules into domestic law. As at January 14, 2020, 17 Member States had completed the implementation process, with the rest likely to follow in the coming weeks.

In this regard, the Government of the United Kingdom presented regulations to transpose MDR into UK law to the UK Parliament on January 13, 2020, along with the publication of a summary of responses to its public consultation process. It is expected that MDR guidance will also be published in the UK in the near future.

Please refer to the new MDR Updates section on the EU Tax Centre website where commentary on the latest MDR developments across EU Member States can be found.

For information on the impact of the mandatory disclosure rules and the approach developed by KPMG to assist clients with their processes and controls and also on the related technology solution, please refer to the EU MDR page.

Local Law and Regulations

Austria

Digital services tax guidance

On December 20, 2019, the Austrian Ministry of Finance published guidance on the Austrian digital services tax. In particular, the guidance clarifies that the tax will apply to income earned from advertisements on a digital interface including banner advertising, search engine advertising and comparable advertising services. The tax will apply at a rate of 5% of the fee earned by the service provider with deductions available for services obtained from other unrelated advertising service providers. The tax must be calculated on a monthly basis and paid by the 15th day of the second month following the month in which the tax arises.

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

Belgium

Earnings stripping rules decree published

On December 27, 2019, a Royal Decree was published in the Belgian Official Gazette which implements earnings stripping rules (interest limitation provisions) into Belgian domestic law.

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

Bulgaria

Non-reciprocal CbCR interim measures

In December 2019, the Bulgarian National Revenue Agency (NRA) issued a letter announcing interim measures with respect to the temporary status of Bulgaria as a "non-reciprocal jurisdiction" under the OECD Multilateral Competent Authority Agreement on the automatic exchange of country-by-country reports (CbCR MCAA). At present, Bulgaria has committed to send CbCR reports, but will not receive reports from its partner countries. The NRA announced that it will request CbC reports from partner jurisdictions by way of bilateral agreement until the automatic exchange of CbC reports is restored.

Amendments to CFC loss carry-forward rules

On December 31, 2019, amendments to the Bulgarian Corporate Income Tax Act were published in the Bulgarian Official Gazette. The amendments clarify that losses incurred by a controlled foreign corporation (CFC) in a foreign jurisdiction will be available to offset profits made by the CFC or another CFC in the same jurisdiction for a period of five years.

Croatia

Legislation implementing exit tax and anti-hybrid mismatch rules

On December 11, 2019, amendments to Croatian corporate income tax law were published in the Croatian Official Gazette. The amendments took effect on January 1, 2020 and include the introduction of an exit tax and the implementation of anti-hybrid mismatch rules. The amendments also increase the threshold for the application of a 12% rate of Croatian corporate income tax to companies with annual revenues of less than HRK 7.5 million (approximately EUR 1 million). The previous threshold was HRK 3 million (approximately EUR 400,000).

Denmark

Public hearing on CFC proposals announced

On December 17, 2019, the Danish parliamentary Fiscal Affairs Committee announced that it would hold a public hearing on January 15, 2020 to gather the views of businesses in respect of a bill to broaden Danish CFC rules to comply with the EU Anti-Tax Avoidance Directive 2016/1164 (ATAD). As a result, amendments to Danish CFC provisions have been delayed beyond January 1, 2020, the date on which the amendments were previously expected to enter into force.

Estonia

No plans to introduce digital services tax

In December 2019, the Estonian Finance Minister, Martin Helme, stated that Estonia does not plan to introduce a digital services tax in the future years citing a desire to not introduce a new form of tax and to avoid conflict with trade partners such as the United States.

For more information, please refer to the article.

Finland

Guidance on the treatment of investment funds published

On January 1, 2020, the Finnish tax authorities published guidance (Guidance No. VH/3930/00.01.00/2019) on amendments made to the tax treatment of investment funds. The guidance states that the taxpayer must provide evidence that it fulfils all of the requirements for the tax exemption to apply. For foreign funds, it is necessary to determine if, based on the characteristics of the fund, the foreign fund is equivalent to a Finnish fund, a company limited by shares or a transparent partnership.

Transposition of exit tax and anti-hybrid mismatch rules

On December 31, 2019, legislation to transpose the exit tax and anti-hybrid mismatch provisions of the EU Anti-Tax Avoidance Directive (ATAD and ATAD II) into Finnish domestic law were published in the Finnish Official Gazette.

France

Revised blacklist published

On January 7, 2020, an updated list of jurisdictions that France considers to be non-cooperative for tax purposes was published in the French Official Journal. Botswana, Brunei, Guatemala, the Marshall Islands, Nauru and Niue were removed from the previous version of the list (2016). In addition to Panama – which was the only jurisdiction retained – Anguilla, the Bahamas, Fiji, Guam, the British Virgin Islands, Oman, American Samoa, Samoa, the Seychelles, Trinidad and Tobago, the United States Virgin Islands and Vanuatu were added to the 2019 blacklist. Payments of dividends and interest to blacklisted jurisdictions from France can be subject to a 75% rate of withholding tax.

Updated list of companies published for French financial transaction tax

On December 18, 2019, an updated list of 134 companies which qualify for the French financial transaction tax in 2020 was published. The relevant companies had a market capitalization in excess of EUR 1 billion on December 1, 2019. The acquisition of shares in these companies will be subject to a financial transaction tax of 0.3% of the acquisition price.

For more information, please refer to the list.

Germany

Transposition of Fifth Anti-Money Laundering Directive

On December 19, 2019, legislation to transpose the EU Fifth Anti-Money Laundering Directive (2018/843) was published in the German Official Gazette.

New EU financial transaction tax proposal

On December 9, 2019, the German Finance Minister, Olaf Schulz, presented an amended proposal for an EU directive introducing a financial transaction tax, which would initially apply on share purchases in ten countries. The revised proposal includes an optional exemption for pension schemes and a new system for mutualization of the FTT revenues.

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

Greece

Guidance on foreign tax credit relief published

On December 24, 2019, the Greek Public Revenue Authority published a circular (E.2202) which clarifies the treatment of foreign tax credits and deductions for Greek corporate income tax purposes. The circular clarifies that foreign tax is deductible or creditable regardless of the time in which a tax return is filed and any excess foreign tax should be refundable to the taxpayer.

Guernsey and the Isle of Man

Guidance on tax residency published

On January 2, 2020, the Isle of Man's Treaty Income Tax Division published a practice note to clarify how it determines the tax residency of corporate taxpayers. Key topics addressed in the practice note cover how tax residency is established, the concept of dual residency and international reporting obligations.

For more information, please refer to the practice note.

Guidance on the automatic exchange of information published

On December 31, 2019, authorities in Guernsey and the Isle of Man published guidance on the automatic exchange of information under the OECD Common Reporting Standard (CRS) for 2019 and 2020 reporting purposes.

For more information, please refer to the notice (Isle of Man) and bulletin (Guernsey).

Guidance on 2019 corporate tax return and economic substance regulations published

The Guernsey Revenue Service recently issued draft guidance notes on the application of its economic substance regulations, alongside the other Crown Dependencies (the Isle of Man and Jersey). A facility to view a demo version of the Guernsey 2019 corporate income tax return has now also been made available and includes – among others – questions on the types of activities carried out, whether relevant decisions are made in Guernsey and on the adequacy of expenditure, number of employees and premises.

For more information, please refer to the Guernsey Revenue Service website.

Iceland

Amendments to the special taxation on financial institution submitted to parliament

On December 20, 2019, legislation to reduce the tax rate applicable to the existing regime for taxing financial institutions in Iceland was published in the Icelandic Official Gazette. The legislation results in a phased reduction to the rate of Icelandic tax imposed on the liabilities of a financial institution in excess of ISK 50 billion (approximately EUR 365 million) from the current rate of 0.376% to 0.145% by 2023.

Ireland

Mutual agreement procedure guidelines published

On December 23, 2019, the Irish Revenue Commissioners published updated guidance in respect of mutual agreement procedures (MAP). Key topics addressed in the guidance include the legal basis for making a MAP request, the process for making a request, the resolution of MAP requests and correlative adjustments. The main update in the guidance concerns the ability for a MAP request to be filed in a treaty partner jurisdiction if that jurisdiction has ratified the MLI and adopted the relevant MAP provision.

For more information, please refer to the guidance.

Finance Bill 2019 enacted into law

On December 22, 2019, the Irish President signed Finance Bill 2019 into law. Key measures include the transposition of anti-hybrid mismatch provisions under the EU Anti-Tax Avoidance Directive into Irish domestic law and amendments to the Irish tax treatment of securitization vehicles. In addition, the Irish Revenue Commissioners have also published updated notes for guidance in respect of the Taxes Consolidation Act 1997. The updated guidance reflects changes introduced as a result of Finance Act 2019.

For more information, please refer to KPMG in Ireland's dedicated website and the guidance notes.

Italy

Budget 2020 legislation enacted into law

On December 24, 2019, legislation to give effect to the Italian 2020 budget was published in the Italian Official Gazette. Key measures introduced in the legislation include a digital services tax which entered into force from January 1, 2020.

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

Decree on urgent tax measures

On December 24, 2019, legislation on urgent tax measures was published in the Italian Official Gazette. The decree includes amendments to administrative and criminal penalties for tax violations and provisions regulating the taxation of qualifying income earned by trusts established in jurisdictions which have a privileged tax regime.

Clarification issued on patent box regime

On December 18, 2019, the Italian tax authorities published a law clarifying the application of its patent box regime. The amendments clarify that trademarks will no longer be treated as qualifying intellectual property for the purposes of the regime, in line with recommendations under OECD BEPS Action 5. Where a taxpayer has already made an election (valid for five years), the patent box regime will continue to apply for trademarks until June 30, 2021. Elections that expire before June 30, 2021 cannot be renewed.

Latvia

Communication with tax authorities in electronic format

On January 9, 2020, the Latvian Parliament adopted amendments to the Law on Taxes and Duties which will require communication between taxpayers and the Latvian tax authorities to generally occur in electronic format. The amendments will take effect from January 1, 2021 onwards.

Lithuania

Transposition of exit tax and anti-hybrid mismatch rules

On December 17, 2019 amendments to the Lithuanian Law on Corporate Income Tax were adopted. The amendments took effect on January 1, 2020 and include the introduction of an exit tax and the implementation of anti-hybrid mismatch rules as required by the EU Anti-Tax Avoidance Directive (ATAD and ATAD II).

Luxembourg

Transposition of Tax Dispute Resolution Directive

On December 23, 2019, legislation to transpose the EU Tax Dispute Resolution Directive (2017/1852) into domestic law in Luxembourg was published in the Official Gazette.

Transposition of ATAD II

On December 24, 2019, legislation to transpose EU Directive 2017/952 (ATAD II) into domestic law in Luxembourg was published in the Luxembourg Official Gazette. The legislation was approved by the Luxembourg Parliament on December 19, 2019.

Malta

Guidelines on automatic exchange of information published

On January 2, 2020, the Maltese tax authorities published guidance on the automatic exchange of financial account information.

For more information, please refer to the guidelines.

Transposition of anti-hybrid mismatch rules

On December 24, 2019, legislation to transpose the anti-hybrid mismatch provisions of the EU Anti-Tax Avoidance Directive (ATAD II) into Maltese domestic law was published in the Maltese Official Gazette.

The Netherlands

Dutch list of low-tax jurisdictions for 2020 published

On December 30, 2019, the Dutch Ministry of Finance published the Dutch list of low-tax jurisdictions for 2020. The list captures jurisdictions that are on the European Union's list of non-cooperative jurisdictions and jurisdictions which have a corporate tax rate of less than 9%. In addition to the jurisdictions on the EU blacklist, the following jurisdictions are also added to the Dutch list for 2020:

Anguilla, the Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, Turkmenistan, Vanuatu and the United Arab Emirates.

Dutch Tax Plan 2020 enters into force

On December 27, 2019, the Dutch Tax Plan 2020 was published in the Dutch Official Gazette and entered into force. Key measures in the tax plan include the implementation of the EU Anti-Tax Avoidance Directive (ATAD II), amendments to Dutch anti-abuse and dividend withholding tax rules, the introduction of a definition of permanent establishment in line with the OECD Model Convention 2017 and a reduction in the Dutch corporate income tax rate from 19% to 16.5% for taxable profits up to EUR 200,000.

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

Decree on mutual agreement procedure published

On December 20, 2019, a decree covering the mutual agreement procedure (MAP) tax residency tie-breaker rule was published in the Dutch Official Gazette. The decree introduces MAP regulations as set out under the OECD Multilateral Convention (MLI) 2017 from January 1, 2020 for each relevant tax treaty.

Substance requirements for group service companies

On December 6, 2019, the Deputy Finance Minister presented amendments to the Implementing Decree to the Law on International Assistance in the Collection of Taxes to the upper house of the Dutch Parliament. The amendments propose two additional substance requirements that must be satisfied by a Dutch group servicing company, namely (i) the company must pay a salary of EUR 100,000 annually and (ii) the company must have an office building available for use for a period of at least 24 months.

Poland

Deferral of key amendment to Polish withholding tax regime

On December 30, 2019, a decree was published in Poland which defers a key change to the Polish withholding tax regime until the end of June 2020. The measure deferred relates to an obligation to collect withholding tax regardless of relief at source being available under a double tax treaty or a domestic exemption in Polish law based on an EU directive.

Romania

Elimination of financial assets tax

On January 9, 2020, an Ordinance was published in the Romanian Official Journal which introduced significant changes from a fiscal perspective and in other areas. In particular, an amendment was introduced which eliminates the Romanian tax on financial assets with effect from January 1, 2020.

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

Bill to transpose hybrid mismatch rules published

On December 23, 2019, draft legislation to transpose the anti-hybrid mismatch provisions of the EU Anti-Tax Avoidance Directive (ATAD II) into Romanian domestic law was published. If approved, the legislation would be effective from January 1, 2020.

No-deal Brexit measures published

On November 20, 2019, an Ordinance was published in the Official Journal of Romania which enacted a number of measures that will apply in the case of a no-deal Brexit. The legislation would enter into force from the first day following the date of withdrawal (i.e. February 1, 2020) unless amended by a withdrawal agreement, and subject to the condition of reciprocity being met by that time, according to which the United Kingdom will grant at least the same legal rights to Romanian citizens as Romania grants to British citizens through this Ordinance.

For more information regarding the measures taken, please refer to KPMG's TaxNewsFlash.

The Kingdom of Saudi Arabia

Tax Dispute Resolution Committee rules published

On January 3, 2020, a Royal Decree (No. 26040) was published which outlines the rules governing the operation of Tax Dispute Resolution Committees in Saudi Arabia. In particular, the Royal Decree sets out the timelines which should be followed when appealing an assessment to the Tax Violations and Disputes Resolution Committee (TVDRC). The Royal Decree also addresses the process for appealing a decision of the TVDRC to the Tax Violations and Disputes Appellate Committee.

The United Arab Emirates

FAQs on economic substance regulations published

On January 9, 2020, the United Arab Emirates Ministry of Finance published frequently asked questions (FAQs) on the economic substance regulations which had been introduced on April 30, 2019. The FAQs address the scope of the regulations, how economic substance can be demonstrated by specific businesses and administrative requirements.

Local Courts

Switzerland

In December 2019, the Swiss Federal Supreme Court issued a decision in a case concerning what is referred to as a "perceived dividend stripping transaction." The Supreme Court in its decision – following prior judgments – rejected a claim for a refund of Swiss withholding tax by a Luxembourg resident financial institution that had borrowed Swiss shares before the dividend declaration date under a standard stock-lending agreement. The claim was rejected on the basis that the Luxembourg entity was not the beneficial owner of the dividends generated by the Swiss shares.

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

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