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E-News from the EU Tax Centre

Issue 115 – February 18, 2020

KPMG's EU Tax Centre compiles a regular update of EU and international tax developments that can have both a domestic and a cross-border impact, with the aim of helping you keep track of and understand these developments and how they can impact your business.

State Aid

Appeal in Fiat case (C-885/19)

On December 4, 2019, an appeal to the Court of Justice of the European Union (CJEU) was made in the joined cases (T-755/15 and T-759/15) *Luxembourg and Fiat Chrysler Finance Europe v Commission* (C-885/19). The CJEU has been requested to annul the decision of the General Court of the European Union that tax rulings in question – granted by Luxembourg, constituted illegal State aid.

For more information on the background of the case, please refer to [Euro Tax Flash Issue 412](#).



Infringement Procedures & Referral to CJEU

Infringement Procedures initiated by European Commission for failure to transpose the fifth Anti-Money Laundering Directive

On February 12, 2020, the European Commission sent [letters of formal notice](#) to eight EU Member States for their failure to transpose the fifth Anti-Money Laundering Directive (5AMLD). The Commission has not made public any further information at this stage but it is likely that the issue is a failure to meet the implementation deadline or to implement the Directive fully.

The Member States affected are: Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia, and Spain.



EU Institutions

EUROPEAN PARLIAMENT

European Parliament calls for level playing field in EU-UK future relationship negotiations

On February 13, 2020, the European Parliament adopted a resolution providing initial feedback on the new partnership being negotiated with the United Kingdom. Members of the European Parliament (MEPs) called for the integrity of the EU Single Market and Customs Union to be preserved, with a dynamic alignment of EU and UK rules. The resolution also calls on the Commission to “evaluate possible quotas and tariffs for the most sensitive sectors” if the UK does not comply with EU laws and standards.

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

EUROPEAN COMMISSION

European Commission adopts 2020 Work Programme

On January 29, 2020, the European Commission adopted its [2020 Work Programme](#), which sets out the actions the Commission will take in 2020. The Work Programme follows the publication of [Political Guidelines](#) by Commission President, Ursula von der Leyen, and presents an ambitious roadmap for the EU under six headlines: i) a European Green Deal; ii) a Europe fit for the digital age; iii) an economy that works for people; iv) a stronger Europe in the world; v) promoting our European way of life; and vi) a new push for European democracy.

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

Feedback and consultation on potential amendments to DAC for digital economy

On February 6, 2020, the European Commission launched a public consultation on data collection and exchange of tax information on the digital platform economy. The consultation is

examining whether recommendations from the consultation could be included as a possible amendment to the Directive on Administrative Cooperation (2011/16) (DAC) is needed to provide tax administrations with information to identify taxpayers that generate revenues through the digital platform economy. Interested parties are invited to provide feedback on an Inception Impact Assessment prepared by the Commission and to provide specific feedback on the challenges posed by the digital economy in a specific questionnaire.

For more information, please refer to the [initiative](#) on the EU Commission's website.

COUNCIL OF THE EUROPEAN UNION

Code of Conduct Group's work programme under Croatian Presidency published

On February 5, 2020, the Council of the European Union published the [work programme](#) agreed at the Code of Conduct Group (business taxation) meeting of February 4, 2020. The work programme will see the Code of Conduct Group review the tax measures under the last round of standstill and rollback notifications and take action on the list of third country non-cooperative jurisdictions. In addition, the Group will assess Member States' compliance with the guidelines on the conditions and rules for the issuance of tax rulings.



OECD

Multilateral Convention developments

On February 6, 2020, Uruguay deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). The MLI will enter into force on June 1, 2020 for Uruguay.

On February 13, 2020, the MLI was ratified by the Czech Republic. The MLI was also approved by the upper house of the Kazakhstan Parliament on February 6, 2020. The MLI will enter into force for the Czech Republic and Kazakhstan three months after the month in which each jurisdiction deposits its instrument of ratification with the OECD.

The total number of signatories of the MLI currently stands at 94 jurisdictions. In total, 42 jurisdictions have deposited their instruments of ratification with the OECD. The MLI has entered into force for 36 jurisdictions.

For more information, please refer to the OECD list of [signatories and parties to the MLI](#).

OECD economic analysis and impact assessment on Pillar 1 and Pillar 2 Proposals

On February 13, 2020, experts from the OECD's Centre for Tax Policy and Administration and Economics Department hosted a webcast to present the findings of the economic analysis and impact assessment performed in respect of the Pillar One and Pillar Two Proposals put forward by the OECD to tackle the challenges of taxing the digital economy. In particular, the OECD estimated that the combined effect of both proposals would result in a 4% increase in global corporate tax revenues (approximately USD 100 billion) and that the effects of the proposals

would be broadly similar across low, medium and high-income economies with the effects most felt by jurisdictions which are classified as investment hubs. According to materials presented during the session, estimates on the impact of the Pillar 1 proposal – which focused only on Amount A, were based on a scenario where residual profit is defined with a 10% threshold on profit-before-tax to turnover, assuming a 20% reallocation of residual profit market jurisdictions (commodities and financial sectors excluded from scope). Pillar 2 estimates were based on a jurisdiction blending scenario and a 12.5% minimum tax rate.

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

[OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors published](#)

On February 14, 2020, the OECD published [a Secretary-General Report](#) in advance of the G20 Finance Ministers and Central Bank Governors' meeting on February 22-23, 2020. The report covers two parts: Part I sets the OECD's international tax agenda – including addressing tax challenges from digitalization, tax transparency, implementation of BEPS measures, and capacity building in developing countries, while Part II focuses on the progress of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

[Mali joins Global Forum on Tax Transparency](#)

On February 13, 2020, Mali joined the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes, becoming the 161st member of the Forum.

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

[Transfer Pricing Guidance on Financial Transactions released](#)

On February 11, 2020, the OECD released [the Transfer Pricing Guidelines on Financial Transactions](#) as a follow-up work on the BEPS Action 4 and Actions 8 -10. The publication is the first time that the OECD Transfer Pricing Guidelines (TPG) have included a specific section on the transfer pricing aspects of financial transactions. Section A to E of the report are incorporated into the TPGs as Chapter X, and Section F is added to Section D.1.2.1 in Chapter I of the TPGs.

For more information, please refer to a report released by KPMG in the Netherlands, available [here](#).

[Consultation document on the review of Country-by-Country Reporting published](#)

On February 6, 2020, the OECD published [a public consultation document](#) inviting public comments on the 2020 review of the BEPS Action 13 Country-by-Country Reporting (CbCR) minimum standard. The OECD and its Inclusive Framework have invited comments by March 6, 2020 on issues regarding the scope, implementation, operation and the content of CbCR.

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

[Convention and protocol on Mutual Administrative Assistance in Tax Matters enter into force in respect of Armenia](#)

On February 6, 2020, Armenia deposited its instrument of ratification of the Convention on Mutual Administrative Assistance in Tax Matters with the OECD. The Convention will enter into force in respect of Armenia on June 1, 2020 and will be applicable from January 2021.

[Global Forum supports Madagascar in implementing international tax transparency standards](#)

On January 20-24, 2020, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and the World Bank provided technical assistance to Madagascar regarding the implementation of international tax transparency standards. Madagascar joined the Global Forum in 2017 and is currently participating in an induction programme, supported by France and the World Bank, with an initial peer review scheduled for 2022. Madagascar has also been invited to join the Convention on Mutual Administrative Assistance in Tax Matters.

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



Local Law and Regulations

Austria

[Austria disagreement with German Financial Transaction Tax proposal](#)

On February 3, 2020, it was reported by Reuters that the Austrian Chancellor, Sebastian Kurz, announced publicly that Austria was not prepared to move forward with the financial transaction tax recently proposed by Germany, citing concerns that the proposal would target small investors and contains exclusions for speculative activities.

For more information on German FTT proposal, please refer to [Euro Tax Flash 420](#).

France

[Guidelines published on the new provisions on abuse of law](#)

On January 31, 2020, the French tax authorities published guidelines on the application of the new general anti-abuse rules (GAAR), which represent an extension of Article 6 (GAAR) of the EU Anti-Tax Avoidance Directive 2016/1164 (ATAD). The aim of the new rules is to target arrangements that are principally tax-driven and exploit domestic provisions, but may also apply to abuse of tax treaty provisions.

Gibraltar

[Exit taxation introduced into domestic law](#)

On January 30, 2020, the Income Tax (Amendment No. 3) Regulations 2020 were published in Gibraltar, which introduce exit tax provisions as required under ATAD. The exit tax provisions apply to transfers of assets in several cases with an effective date from January 1, 2020.

[Extended application of hybrid mismatch provisions](#)

On January 30, 2020, the Income Tax (Amendment No. 2) Regulations 2020 were published in Gibraltar, which extended the scope of the hybrid mismatch provisions in order to comply with the requirements of EU Anti-Tax Avoidance Directive 2017/952 (ATAD II). The extended provisions cover hybrid mismatches involving third countries, hybrid transfers, hybrid mismatches involving permanent establishments, imported mismatches, and tax residency mismatches. The provisions came into force on January 1, 2020.

[DAC6 transposed into domestic law](#)

On January 30, 2020, the Income Tax (Amendment) Regulations 2020 were published in Gibraltar to transpose Directive 2018/822 on mandatory disclosure rules (DAC6) into domestic law in Gibraltar. The provisions have not yet entered into force but would become fully effective from July 1, 2020.

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

Greece

[Circular published for clarifying the reduction of dividend withholding tax rate](#)

On January 30, 2020, the Greek Public Revenue Authority published circular E.2012 that provides clarifications on the reduction of the Greek dividend withholding tax rate from 10% to 5%. The reduced rate applies to income received from January 1, 2020 onwards.

Hungary

[Guidance on anti-money laundering rules published](#)

On January 30, 2020, the Hungarian tax authorities issued guidance on amendments to Hungarian anti-money laundering legislation. The amendments to Hungarian law had previously been introduced on January 10, 2020 to transpose the requirements of EU Directive 2018/843 into Hungarian domestic law.

India

[Union Budget 2020 presented to the Indian Parliament](#)

On February 1, 2020, the Indian Finance Minister presented the Union Budget 2020 before the Indian Parliament. The Finance Bill 2020 proposes amendments to corporate tax, including the removal of dividend distribution tax, an interest withholding tax concession for certain foreign investments and a preferential tax rate for co-operative societies.

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

Ireland

[Updated tax and duties manuals](#)

On February 4, 2020, the Irish Revenue Commissioners announced that the exit taxation manual has been updated. In addition, updates have been made to the main purpose test tax and duty manual, particularly in relation to the application of the main purpose test in the context of newly enacted legislation to transpose DAC6 into Irish domestic law. Updates were also made to the dividend withholding tax manual to reflect the increase in the Irish rate of dividend withholding tax from 20% to 25% and the introduction of certain requirements to retain information on the beneficial owner of dividend payments.

For more information, please refer to the [exit tax manual](#), the [main purpose test manual](#) and the [dividend withholding tax manual](#).

Isle of Man

[Mandatory disclosure rules introduced](#)

On December 10, 2019, the Income Tax (Mandatory Disclosure Rules) Regulations 2019 were approved in the Isle of Man, under which taxpayers and intermediaries are obliged to report certain information regarding CRS avoidance arrangements and opaque offshore structures. A failure to comply with the regulations can lead to daily penalties of up to GBP 600 (approx. EUR 700).

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

Italy

[New rules for foreign trusts, non-commercial partnerships, non-commercial entities](#)

At the end of 2019, new Italian income tax rules were introduced for foreign trusts, non-commercial partnerships and non-commercial entities. The rules concern the treatment of distributions made by foreign trusts and distributions received by resident non-commercial partnerships. The new rules also extend two forms of Italian wealth taxes to Italian non-commercial partnerships and entities.

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

Latvia

[Exit tax and hybrid mismatch provisions adopted](#)

On January 30, 2020, the Latvian Parliament approved proposed amendments to the Latvian Corporate Income Tax Code to transpose the hybrid mismatch provisions of ATAD II into Latvian domestic law. The amendments also transpose the exit tax requirements of ATAD as well as interest deductibility requirements for public long-term infrastructure projects.

Lithuania

[Amendments to Corporate Income Tax Law proposed](#)

On January 7, 2020, a proposal was issued by the Lithuanian Ministry of Finance to amend the law on corporate income tax, which will enter into force on January 1, 2021. The amendments include measures to limit the deductibility and ability to carry-forward losses from the transfer of shares by both resident and non-resident taxable entities. The amendments also include measures that affect the eligibility of related small and medium-sized companies to qualify for a reduced corporate income tax rate of 5%.

Luxembourg

[List of jurisdictions for CbCR exchange updated](#)

On January 24, 2020, the Luxembourg Ministry of Finance published a new Grand-Ducal Regulation, which updated the list of jurisdictions with which Luxembourg Tax Authorities will exchange country-by-country (CbC) reports.

For more information, please refer to the most recent [list](#).

[List of jurisdictions for CRS updated](#)

On January 24, 2020, the Luxembourg Ministry of Finance published a new Grand-Ducal Regulation which updated the list of participating and reportable jurisdictions for the Common Reporting Standard (CRS).

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

Poland

[Bill to transpose ATAD II and amend mandatory disclosure rules submitted to parliament](#)

On February 5, 2020, the Polish Council of Ministers submitted a bill to the parliament, which amends the Polish Corporate Income Tax Law in order to implement ATAD II and amend the existing mandatory disclosure rules. The amendments will enter into force on April 1, 2020 once adopted.

For more information, please refer to KPMG's [TaxNewsFlash](#) (DAC6).

Portugal

[Draft bill implementing ATAD II submitted to the Portuguese Parliament](#)

On January 30, 2020, a draft bill was submitted to the Portuguese Parliament to transpose the requirements of ATAD II into Portuguese domestic law. The new provisions on hybrid mismatches apply from January 1, 2020 with the exception of provisions targeting reverse hybrid mismatches which are applicable from 2022.

[Proposed legislation to transpose DAC6 approved by the Portuguese Council of Ministers](#)

On February 12, 2020, a draft law for the transposition of DAC6 into Portuguese domestic law was approved by the Portuguese Council of Ministers. The next step is for the bill to be passed by Parliament. According to the proposal, certain intermediaries may rely on legal and contractual professional privilege which in turn passes the reporting obligation to other intermediaries or

the relevant taxpayer involved in the arrangement. It is expected that the legislation will become fully operational on July 1, 2020.

Romania

[ATAD II transposed into domestic law](#)

On January 31, 2020, an Ordinance to transpose the requirements of ATAD II into Romanian domestic law was published in the Romanian Official Gazette.

Spain

[Decree to implement EU Tax Dispute Resolution Mechanism Directive gazetted](#)

On February 5, 2020, a Royal Decree was published in the Spanish Official Gazette amending a previous decree which transposed Directive 2017/1852 on tax dispute resolution mechanisms into Spanish domestic law. In particular, the decree extends the scope of mutual agreement procedures (MAP) to tax dispute resolution mechanisms with other EU Member States. The decree also removes the non-accrual of interest during MAP procedures.

[Resolution on Annual Plan for Tax and Customs Control 2020 gazetted](#)

On January 28, 2020, an Annual Plan for Tax and Customs Control 2020 was announced in Spain. The guidelines approved by the resolution demonstrate several areas that draw special attention from the tax authorities including the use of new technologies under a new taxpayer assistance model, measures to prevent tax fraud, the promotion of bilateral or multilateral advanced pricing agreements (APAs) and enhanced coordination between tax authorities and taxpayers in relation to tax dispute resolution.

Sweden

[Proposal to implement DAC6 submitted to parliament](#)

On February 4, 2020, the Swedish Government submitted a proposal to transpose DAC6 into domestic law to the Swedish Parliament. The proposals, if approved, will become fully effective on July 1, 2020.

Switzerland

[Safe haven interest rates announced for 2020](#)

On February 3, 2020, the Swiss Federal Tax Administration issued circulars to update the safe haven interest rates for intercompany loans. The applicable interest rates vary depending on whether the Swiss company acts as a lender (minimum rate established) or borrower (maximum rate established), the currency of the loans (CHF or foreign currency) and the type (equity- or debt-financed, real estate or operational) of the loan concerned. The circular clarifies that a higher interest rate can be applied if it is supported as being an arm's length rate.

Turkey

[Draft communiqué on implementation of Digital Service Tax issued](#)

On February 5, 2020, the Turkish Revenue Administration issued a draft communiqué to clarify the manner in which the Turkish Digital Service Tax (DST) that was adopted by the Turkish Parliament on November 21, 2019 will be implemented.

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

United Arab Emirates

[Flowchart on scope of economic substance regulation published](#)

On February 4, 2020, the United Arab Emirates Ministry of Finance published a flowchart to provide an overview on the scope of the UAE economic substance regulations.

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



Local Courts

France

[Foreign states exemption on capital gains from immovable property annulled in case of indirect ownership](#)

On January 22, 2020, the French Supreme Administrative Court (*Conseil d'Etat*) ruled that a capital gains tax exemption for foreign states on the sale of immovable property is not applicable in cases of indirect ownership. As a consequence, it was determined that the state of Kuwait was required to pay French tax on a capital gain realized from the sale of French immovable property through its fully owned French partnership.

[Foreign states taxable on French profit-making activities](#)

On January 22, 2020, the French Supreme Administrative Court (Conseil d'Etat) ruled that foreign states are subject to French corporate income tax if the foreign state carries on activities of a lucrative nature in France. The Conseil d'Etat found that the scope of French corporate income tax extended to also any legal persons carrying on an activity that has a lucrative character (*exploitation à caractère lucratif*).

The United Kingdom

[First-tier Tribunal finding on the availability of group relief](#)

On January 31, 2020, the UK First-tier Tribunal (Tax) (FTT) delivered its decision in *LINPAC v. the Commissioners for Her Majesty's Revenue & Customs* [2020] UKFTT 60 (TC). The Tribunal ruled that the taxpayer's claim for cross-border group relief did not invalidate claims for domestic relief that had been submitted separately by the taxpayer. The taxpayer's claims for cross-border relief (submitted after domestic claims had been made) had been found to be invalid and the taxpayer had therefore sought to rely on the original claims for group relief between UK companies which had been submitted previously.



KPMG Insights

Italy

Overview of digital services tax

KPMG in Italy has prepared a brochure that describes the main features of the Italian digital services tax and discusses the immediate actions that affected entities should consider. The Italian digital services tax is effective since January 1, 2020.

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

Digital Economy

KPMG Digital Economy Tax Tracker Mobile App

KPMG have developed a Digital Economy Tax Tracker mobile App to help businesses navigate the rapidly evolving digital taxation landscape. News updates are regularly provided and the jurisdiction specific tax information is structured in a consistent format addressing the key information companies need to know to assess the impact of local tax requirements on their business.

The mobile App – available for free download on the [App Store](#) and [Google Play](#) (or search for: ‘Digital Economy Tax Tracker’) – features news updates, jurisdiction specific information and publications on tax issues in the digitalized economy and the digitalization of tax.

For more information, please refer to KPMG’s [TaxNewsFlash](#) announcing the App’s launch.



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