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E-News from the EU Tax Centre

Issue 117 – April 1, 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.

[Latest CJEU, EFTA and ECHR](#)

[CJEU order on the State of Canada v. Autoridade Tributária e Aduaneira Case \(C-613/18\)](#)

On January 21, 2020, the Court of Justice of European Union (CJEU) issued an order in the case of State of Canada v. Autoridade Tributária e Aduaneira (C-613/18). The CJEU held that the preferential tax treatment afforded to dividends paid to companies resident in Portugal when compared against dividend payments made to companies resident outside Portugal, constituted a restriction on the free movement of capital between Member States and third countries. This assessment only changes if the applicable tax treaty completely neutralizes the difference in tax treatment.

CJEU judgement on the GVC Services (Bulgaria) v. Direktor na Direktsia “Obzalvane i danachno-osiguritelna praktika - Sofia Case (C-458/18)

On April 2, 2020, the Court of Justice of European Union (CJEU) issued a judgement in the case of GVC Services (Bulgaria) (C-458/18). The case concerned the application of the dividend withholding tax exemption under the EU Parent-Subsidiary Directive to dividends paid by a Bulgarian company to its Gibraltar-based parent. CJEU held that the parent established in Gibraltar does not meet the requirements set forth by the Parent-Subsidiary Directive as they do not qualify as “companies under UK law” subject to “corporation tax in the UK” as provided for under article 2, a) of the Parent-Subsidiary Directive and the annex to the Directive. It is not for the Bulgarian domestic court to assess the case under the EU freedom of establishment and free movement of capital.

State Aid

For details on the Temporary Framework for State aid measures adopted by the European Commission and related measures implemented by Member States, please refer to the European Commission section below.



EU Institutions

EUROPEAN COUNCIL

Accession talks with Albania and North Macedonia

On March 26, 2020, European Council members approved the opening of accession talks with Albania and Macedonia in a decision that was welcomed by the European Commission. The Commission will submit proposals for negotiating frameworks with the two countries. These frameworks establish the guidelines and principles governing the accession negotiations with each candidate country.

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

EUROPEAN COMMISSION

Brexit update: draft legal agreement for future EU-UK partnership published by EC and first meeting of the EU-UK Joint Committee

On March 18, 2020, the European Commission published [the draft text of the Agreement on the New Partnership with the United Kingdom](#). The draft text was developed under the negotiating directives approved by the Council of EU on February 25, 2020 and the Political Declaration agreed between the EU and UK in October 2019. The draft text covers all areas of the negotiations including trade and economic cooperation, law enforcement and judicial cooperation in criminal matters, participation in European Union programs and other thematic areas of cooperation. For more information, please refer to the European Commission's [press release](#).

Additionally, on March 30, 2020, the European Union and the United Kingdom held remotely the first Joint Committee meeting on the implementation and application of the Withdrawal Agreement. Both parties in the meeting confirmed their commitments to ensure that EU citizens and UK nationals can enjoy their rights granted under the Withdrawal Agreement.

They also agreed that it is important for the UK to delineate its plan in regards to the implementation of the Protocol on Ireland/Northern Ireland over the coming months. The next Joint Committee meeting is scheduled for June 2020.

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

European Commission activates general escape clause to respond to COVID-19 pandemic

On March 20, 2020, the European Commission announced a proposal to activate the general escape clause of the Stability and Growth Pact (SGP) as part of its strategy to respond quickly, forcefully and in a coordinated manner to the COVID-19 pandemic. The proposal was subsequently endorsed by European Finance Ministers on March 23, 2020 and allows Member States to undertake measures to deal adequately with the crisis, while departing from the budgetary requirements that would normally apply under the European fiscal framework.

For more information, please refer to the European Commission [press release](#) and questions and answers [document](#).

European Commission adopted Temporary Framework for State aid measures

On March 19, 2020, following consultation with EU Member States, the European Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. The Framework sets out temporary State aid measures that the European Commission considers compatible with the EU internal market and that can be approved rapidly upon notification by each Member State. The Framework provides for five types of aid, including direct grants, selective tax advantages and advance payments, up to EUR 800,000 to a company to address its urgent liquidity needs. For more information, please refer to [Euro Tax Flash issue 428](#)

On April 3, the European Commission announced that it had adopted an [amendment](#) extending the Temporary Framework with an additional five types of aid:

- Targeted support in the form of deferral of tax payments and/or suspensions of social security contributions;
- Targeted support in the form of wage subsidies for employees;
- Support for coronavirus related research and development (R&D);
- Support for the construction and upscaling of testing facilities;
- Support for the production of products relevant to tackle the coronavirus outbreak.

The Temporary Framework will be in place until the end of December 2020, but may be extended if the Commission, in consultation with the Member States, deems it necessary.

Since the beginning of the coronavirus outbreak, the Commission approved over fifty aid schemes notified by Member States under the Temporary Framework and article 107(2)b TFEU (as at April 7, 2020). A list of approved Member State Measures is available [here](#). For more information, please refer to [Euro Tax Flash issue 429](#).

On April 9, 2020, the European Commission sent to Member States for consultation a draft proposal to further extend the scope of the State aid Temporary Framework, to provide recapitalizations to companies in need.

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

EU Commissioner delivers speech on the Commission's priorities for EU taxation policy

On March 5, 2020, EU Commissioner Paolo Gentiloni delivered a speech on the elements of the European Commission's agenda for the next five years. In particular, the Commissioner's speech focused on key areas of European tax policy, including: i) the use of environmental taxes and a potential carbon border adjustment mechanism; ii) the creation of a fair and simple tax environment for the digitalized economy; iii) the EU emphasis on combating tax fraud, evasion and avoidance; iv) the need to re-define what is acceptable when it comes tax competition.

For more information, please refer to the [speech](#) published by the European Commission.



OECD

Update on taxation of the digital economy project timeline

The OECD announced that multilateral efforts to address the tax challenges arising from digitalization of the economy continue according to the announced timeline (for further details please refer to [Euro Tax Flash issue 423](#)). Working methods have been adapted following various Covid-19 measures and all participants continue working towards reaching a political decisions on the key components of a multilateral solutions at the G20/OECD Inclusive Framework on BEPS meeting scheduled for July 1-2, 2020 in Berlin, Germany.

Multilateral Convention developments

On April 1, 2020, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) became effective for Liechtenstein and Qatar.

On March 31, 2020, the MLI was ratified by Oman.

The total number of signatories to the MLI currently stands at 94 jurisdictions. In total, 44 jurisdictions have deposited their instruments of ratification with the MLI. The MLI has entered into force in 39 jurisdictions. The OECD provides a full list of the signatories and parties of the MLI as of March, 11, 2020 and the list is available [here](#).

OECD Secretary-General calls for joint action to fight against COVID-19 outbreak

The OECD has recently issued a range of policy responses to mitigate the impact of the COVID-19 outbreak. From a tax perspective, the OECD has recommended measures including the deferral of tax payments, acceleration of tax refunds, increasing the generosity of loss carry-forward provisions and simplifying procedures for claiming relief.

On April 7, 2020, the OECD Forum on Tax Administration (FTA), in collaboration with the Intra-European Organization of Tax Administrations (IOTA) and the Inter-American Center of Tax Administrations (CIAT) has published a [reference document](#) on critical business continuity considerations for tax administrations in the context of the COVID-19 pandemic. The document is based on input from members of the three organizations.

For more information, please refer to the OECD's [COVID-19 website](#).

OECD Forum on Tax Administration publishes actions that tax administrations are currently taking to support taxpayers

On March 31, 2020, the OECD Forum on Tax Administration (FTA) published a [global reference document](#) summarizing measures to support taxpayers taken by FTA tax administrations. The supporting measures help taxpayers to address cash-flow concerns, difficulties in meeting reporting and payment deadlines. The document will be updated on a regular basis in order to assist tax administrations to development appropriate supporting measures in their jurisdictions.

OECD recommendations on the cross-border tax implications of the COVID-19 crisis

On April 3, 2020 the OECD issued recommendations on the implications of the COVID-19 crisis on cross-border workers and other related cross-border matters, based on an analysis of the international tax treaty rules. The OECD observed that this unusual situation is raising many tax issues—especially when there are cross-border elements in the equation, for example, when there are cross-border workers or individuals who are stranded in a country that is not their country of residence. These issues have an impact on the right to tax between countries, which is currently governed by international tax treaty rules that delineate taxing rights.

The OECD found that certain exceptional circumstances of the COVID-19 crisis call for an exceptional level of coordination and co-operation between countries, notably on tax issues, to mitigate the potentially significant compliance and administrative costs for employees and employers. The OECD encourages countries to work together to alleviate the unplanned tax implications and potential new burdens arising due to effects of the COVID-19 crisis.

For more information, read the [related KPMG tax alert](#).

Platform for Collaboration on Tax and other international organizations move to help developing countries to improve tax system

On March 31, 2020, the Platform of Collaboration on Tax, together with the International Monetary Fund (IMF), the OECD, the United Nations (UN), and the World Bank Group (WBG), established [their first integrated website](#) providing information to low- and middle-income countries on how to strengthen their tax systems and mobilize domestic revenue to address their urgent development challenges including in relation to the recent COVID-19 outbreak.

The website includes an extensive database that give access to all of the latest information on tax-related activities of the international organizations, on a country-by-country basis.

[OECD releases second peer review report on preventing treaty shopping \(BEPS Action 6\)](#)

On March 24, 2020, the OECD released its [second peer review report on preventing treaty shopping](#), which outlines the most recent progress on the implementation of the BEPS package. The report indicates that a large majority of the countries that joined the OECD/G20 Inclusive Framework on BEPS are transposing the BEPS Action 6 minimum standard and modifying their treaty network, with the Multilateral Instrument proving to be the most commonly used tool for doing so.

[First meeting of Global Forum's peer review group on the effective implementation of automatic exchange of tax information](#)

On March 16-18, 2020, the Global Forum's Automatic Exchange of Information Peer Review Group (APRG) held its first meeting remotely, during which key issues were discussed to ensure jurisdictions adopt necessary instruments to facilitate the effective implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the AEOI Standard). Widespread exchanges under the AEOI Standard in 2017 and 2018 indicate a step change towards improved tax compliance and tackling tax evasion via offshore financial accounts. The potential impact of the recent COVID-19 outbreak was also discussed.

[OECD Tax Policy Review on Seychelles calls for a fairer and more sustainable tax system](#)

On March 12, 2020, the OECD released its report [OECD Tax Policy Reviews: Seychelles 2020](#), which assessed the Seychelles' tax system and primarily focuses on business tax. Despite recent reforms, the report identified the remaining imbalance of the business tax burden and made recommendations for further reform, including a re-alignment of business tax rates across sectors and a broadening of the tax base by tackling aggressive tax avoidance using measures developed in the BEPS project.

[Public comments received on the 2020 Review of CbCR](#)

On March 3, 2020, the OECD released the public comments received on the 2020 Review of Country-by-Country Reporting (CbCR) - BEPS Action 13.) Minimum Standard. The public consultation meeting on the 2020 Review of CbCR was initially scheduled on March 17, 2020, but was subsequently cancelled due to the rapidly evolving situation with Covid-19.

[The Global Forum and the African Development Bank strengthen their collaboration](#)

On February 3-4, 2020, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) discussed the tax transparency agenda with the African Development Bank (AfDB). The AfDB currently is an observer to the Global Forum and has committed to collaborate with the Global Forum and other international partners to increase the capacity of its regional members to ensure greater tax transparency.

[Multilateral Competent Authority Agreement on automatic exchange of CRS information approved in Morocco](#)

On January 30, 2020, the OECD Automatic Exchange of Financial Account Information Agreement (CRS MACC) was approved by the Moroccan Council of Ministers to introduce the automatic exchange of CRS information on a reciprocal basis.

Convention and protocol on Mutual Administrative Assistance in Tax Matters updates

On March 25, 2020, Oman ratified the Convention and protocol on Mutual Administrative in Tax Matter.

On January 28, 2020, Montenegro 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 Montenegro on May 1, 2020 and will be applicable from January 1, 2021.



Local Law and Regulations

Belgium

Circular letter published on minimum taxable income and penalties in case of non or late filing

On March 27, 2020, the Belgian Tax Administration published a circular letter on the minimum taxable income and applicable penalty for resident and non-resident companies that do not file a tax return or file the return too late for the tax year of 2020.

France

Additional guidelines published on digital services tax

On March 23, 2020, the French tax authorities issued additional guidelines on the French digital service tax that took effect from January 1, 2019. The additional guidance provides clarification on the scope and calculation of the digital service tax. Interested parties are invited to submit comments by May 23, 2020.

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

Guidelines published on reportable cross-border arrangements under DAC6

On March 9, 2020, the French tax authorities published guidelines on new rules adopted to implement the EU Council Directive 2018/822 on Mandatory Disclosure Rules (DAC6) into French domestic law. Interested parties are invited to submit comments on the guidelines until April 30, 2020. The guidelines generally clarify the meaning of a cross-border arrangement, the parties which may have a reporting obligation, as well as providing further information on the reporting process. In addition, a new decree addressing the content of the DAC6 return was published in the French Official Journal on March 19, 2020.

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

Germany

Draft guidance issued on implementation of DAC6

On March 9, 2020, the German Ministry of Finance issued draft guidance on the German legislation adopted to transpose DAC6 into German law. The draft guidance is subject to public comments and will be finalized by early June 2020. The draft guidance provides clarification of the scope and interpretation of the hallmarks and includes certain hypothetical examples.

Gibraltar

Guidance issued on Mutual Agreement Procedure under DTAs

The Income Tax Office in Gibraltar recently released guidance on the Mutual Agreement Procedure (MAP) under Double Tax Agreements (DTAs). The guidance explains the functions of DTAs and provides detailed information on the MAP procedure. The full text of the guidance is available [here](#).

Guernsey

Mandatory disclosure rules introduced for CRS avoidance arrangements and opaque offshore structures

On March 11, 2020, authorities in Guernsey published the Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules) Regulations, 2020. The Regulations introduce mandatory disclosure rules for CRS avoidance arrangements and opaque offshore structures. The full text of the Regulations is available [here](#).

Iceland

Amendments to taxation of capital gains

On March 12, 2020, the Icelandic Parliament discussed amendments proposed by the Icelandic Economic Affairs and Trade Committee in relation to the taxation of capital gains in Iceland. The Committee proposal would add a new chapter to the law on capital gains tax, which would shift the obligation to withhold tax on dividends paid by companies with electronic share registers from the entity making the dividend payment to the Icelandic domestic financial institution that administers the shares.

Israel

List of participating and reportable jurisdictions for the AEOI under CRS updated

In March 2020, the Israeli tax authorities updated the Israeli list of participating and reportable jurisdictions for the purpose of automatic exchange of information on financial accounts under the common reporting standard for 2019.

Latvia

Amendments adopted to implement DAC6

On February 20, 2020, the Latvian Parliament adopted its amendments to the Law on Taxes and Fees in order to implement the mandatory disclosure requirements under DAC6 into Latvian domestic law. The DAC6 amendments have entered into force on March 19, 2020.

Liechtenstein

Guidance issued for FATCA and AEOI audits

On February 12, 2020, the Liechtenstein tax authorities published guidance for 2020 tax audits of FATCA and AEOI exchanges made (i) during the reporting period of 2015-2019 for trust companies, professional trustees and persons and (ii) the reporting period of 2018-2019 for banks and insurers. The full text of the guidance is available [here](#).

Luxembourg

Proposed limitations on deduction of payments made to “blacklisted” countries

On March 30, 2020, the Luxembourg Government Council published a draft Bill of law that would disallow the deductibility of interest and royalties paid or due to related entities located in a country listed on the EU “blacklist.” The proposed date to enforce this measure is currently not known.

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

Bill to transpose DAC6 adopted

On March 21, 2020, a bill to transpose the provisions of DAC6 into Luxembourg domestic tax law was passed by the Luxembourg Parliament.

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

Implementation of Fifth Anti-Money Laundering Directive

On March 21, 2020, the Luxembourg Parliament adopted the bill to implement the EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing 2018/843 (the Fifth Anti-Money Laundering Directive). The bill takes effect as from March 30, 2020. In addition, the Luxembourg Parliament also adopted on the same date the bill on a central economic data retrieval system that intends to facilitate the implementation of the Fifth Anti-Money Laundering Directive.

Circular issued on CFC rules

On March 4, 2020, the Luxembourg tax authorities issued a circular on Controlled Foreign Company (CFC) rules that were incorporated into Luxembourg tax law during the transposition of the EU Anti-Avoidance Directive 2016/1164 (ATAD). The CFC rules are applicable for financial years starting on or after January 1, 2019.

Malta

Enactment of the Budget Implementation Act

On March 20, 2020, the Maltese Budget Implementation Act 2020 (and related secondary legislation) enacted most of the measures announced in Malta Budget 2020. Amendments were made on the income tax, duty on documents and transfers, and value added tax. In respect of corporate income tax, major revisions include the extension on the definition of company, the change on deductibility of interest to align with the EU Anti-Tax Avoidance Implementation Regulations, and the repeal of the option to deduct 150% of qualifying expenditure on scientific research.

Amendments to anti-money laundering and beneficial-ownership regulations

On February 20, 2020, several amendments were made to the Maltese regulation on anti-money laundering. The amendments result in an extension of certain beneficial ownership registration obligations to trusts and trustees, as well as certain associations and foundations.

Netherlands

Decree on application of participation exemption updated

On March 18, 2020, an updated decree on the application of the Dutch participation exemption was published in the Dutch Official Gazette. The updated decree made several amendments to clarify the application of participation exemption in cases where dividends are paid on shares with call or put options attached, and, the conditions under which Dutch loss liquidation rules could apply.

United Kingdom

Finance Bill 2020 published

On March 19, 2020, the UK Finance Bill 2020, which will become Finance Act 2020 after Royal Assent, was published. The Finance Bill is largely aligned with the UK Budget delivered on March 11, 2020, but there are areas where the legislation has provided significant further detail. Alongside the bill, consultations were launched to review the UK's overseas funds regime and, more specifically, the tax treatment of asset holding companies in alternative fund structures. Consultations run until May 11 and May 19 respectively.

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

Digital Service Tax

On March 19, 2020, the final provisions for the UK's digital services tax were also published as part of the UK Finance Bill 2020. The digital services tax has entered into effect on April 1, 2020.

The digital services tax will see a 2 percent tax be levied on UK digital services revenue that are attributable to UK users.

The in-scope digital services activities are:

- Social media services;
- Internet search engines; and
- Online marketplaces.

Revenue arising from activities which are ancillary or incidental to an in-scope digital services activities may also be subject to the digital service tax.

A group will be liable to the DST when:

- Its annual worldwide revenues arising from relevant digital services activity exceed £500 million; and
- More than £25 million of these annual digital services revenues are attributable to UK users.

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

Turkey

Digital Service Tax provision published

On March 20, 2020, the final version of the communique for a digital services tax was published in Turkey's official gazette. The digital services tax will be imposed at a rate of 7.5% on the Turkish revenues of certain entities.

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

United Arab Emirates

Economic Substance Regulation communication released by DIFC

On March 17, 2020, the Dubai International Finance Center (DIFC) released a communication on the Economic Substance Regulation. The communication clarified the scope, application and deadline on Economic Substance notification. Furthermore, a Relevant Activities Guide will be issued by the UAE Ministry of Finance to assist firms regarding the practical application of the Economic Substance Regulation.



Local Courts

France

Supreme Administrative Court rules rate of tax penalty violates right to property

On March 10, 2020, the French Supreme Administrative Court delivered a decision concerning the imposition of penalties under Article 1764 of the French General Tax Code.

The court ruled that the penalty, which is imposed where a property is disposed of within a five year period and amounts to 25% of the value of the property acquired, was disproportionate and constituted a breach of the right to property under Article 1 of the First Protocol to the European Convention on Human Rights.

Germany

Criminal court rules on cum/ex trades

On March 18, 2020, a German regional criminal court delivered an initial decision on the subject of "cum/ex trades". The case concerns trade structures formerly used to obtain double or multiple refunds of German dividend withholding tax, which were argued to be abusive by knowingly exploiting a legal loophole in the German withholding tax system. The court ruled that the two defendants that participated in cum/ex trades were guilty of tax evasion.

Financial Court rules on deductibility of foreign permanent establishment losses

On November 28, 2019, a German regional financial court delivered a decision on the deductibility of foreign losses by a permanent establishment (PE) situation in Poland. The court ruled that the taxpayer has successfully demonstrated that the Polish PE has ceased its activity thus its losses are final and should be taken into account as requested by the taxpayer.

Netherlands

Digital litigation introduced in tax cases before Supreme Court

On March 6, 2020, a Dutch decree announced that, from April 15, 2020 onwards, tax advisors and lawyers, companies and administrative bodies will be required to litigate cases digitally in tax cases before the Dutch Supreme Court.



KPMG Insights

COVID-19 Resources

An overview of tax developments being reported globally by KPMG member firms in response to the Novel Coronavirus (COVID-19) is available [here](#).

For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated [KPMG page](#).

In addition, KPMG Global is hosting a regular webcast series – Keeping Connected Globally Series– Global perspectives on the Future of Tax, Legal and Mobility. Registration for the webcast sessions is available [here](#).





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