



# E-News from KPMG's EU Tax Centre



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**E-News from the EU Tax Centre**

**Issue 119 – June 9, 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 decision on Luxembourg tax consolidation regime](#)

On May 14, 2020 the CJEU has issued its [judgement](#) in case C-749/18, *B and Others*, concerning the Luxembourg tax consolidation regime. The Court ruled that a non-resident company with a permanent establishment in a Member State and a non-resident company without a permanent establishment therein are in comparable situations. Thus, a tax regime allowing tax consolidation between "sister" companies only insofar as the non-resident controlling entity maintains a permanent establishment in Luxembourg, leads to a restriction of the freedom of establishment, which cannot be justified.

## CJEU decision on suspension injunctions for alleged State aid measures

On June 4, 2020 the CJEU issued its judgement in case C-456/18 P, *Hungary v Commission* concerning a suspension injunction in respect of alleged State aid measures. Based EU law, where the Commission initiates a formal State aid investigation procedure, the Member State concerned is required to suspend implementation of the measure under investigation. Under Article 11 of Regulation No 659/199, where the European Commission is investigating whether a measure implemented by a Member State is compatible with EU State aid rules, it may adopt a decision requiring that Member State to suspend any unlawful aid until the Commission has taken a decision on the compatibility of the aid with the internal market. A suspension injunction may be adopted after the initiation of the formal investigation procedure where the Member State concerned did not, when that procedure was initiated, suspend implementation of the measure under investigation. A suspension injunction may also be adopted at the same time as the decision to initiate the formal investigation procedure, where there is sufficient evidence for the Commission to presume that the Member State concerned does not have the intention of suspending implementation of the measure under investigation. Non-compliance with a suspension injunction enables the Commission to bring an action for a declaration of failure to fulfil obligations directly before the Court. In *Hungary v Commission*, the Court ruled that suspension injunctions can only be imposed by the European Commission in case the Commission provides sufficient statement of reasons why it is taking the view that the Member State concerned was not planning to suspend the aid at issue.

The text of the decision is available [here](#).

## CJEU decision on the rights of the defense in tax litigations

On June 4, 2020 the CJEU issued its [judgement](#) in case C-430/19 concerning the rights of the defense in tax litigations. The Court ruled that the general EU Law principle of respecting the rule to defense must be interpreted as meaning that, if during a tax audit, a taxpayer did not have the possibility to access information included in their administrative file, and this information was taken into account for making an administrative decision imposing additional tax liabilities, the decision has to be cancelled, if the national court concludes that, absent this breach, the audit would have had a different outcome . In addition, the Court ruled that the principles governing the application of the common VAT system by Member States, in particular the principles of tax neutrality and legal certainty, must be interpreted as opposing that national tax authorities refuse the right to deduct VAT based on unsubstantiated presumptions with regard to the economic operations that gave rise to the issuance of the tax invoice, where the taxpayer is unable to provide any other evidence of the reality of the economic operations carried out, besides the invoice.

## State Aid

### Temporary Framework for State Aid

As at June 7, 2020, the European Commission had approved more than 150 State aid measures under Article 107(2)b, Article 107(3)b and under the Temporary Framework. An overview of all cases approved by the Commission is available [here](#). The non-confidential versions of individual decision are made available in the [State aid register](#). For more information on State aid measures in the context of the coronavirus, please refer to the [“State aid rules and coronavirus” section](#) of the Commission’s Competition website.

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 [E-News Issue 117](#).

[Commission invites comments on updated proposal on simplified rules for State aid combined with EU support](#)

The European Commission is inviting Member States and other stakeholders to comment on its updated proposal to exempt from prior Commission scrutiny under EU State aid rules, aid granted through national funds for projects supported under certain EU centrally managed programmes. More information is provided in the [press release](#).



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## EU Institutions

### EUROPEAN COMMISSION

#### [European Commission Recovery Plan for Europe](#)

On May 27, 2020 the European Commission unveiled its proposal for a recovery strategy. The proposal is based on an emergency European Recovery Instrument (“Next Generation EU”) amounting to EUR 750 billion and covering the period 2021-2024. It is envisaged that the money raised will be invested across three pillars: (i) support to Member States with investment and reforms, (ii) kick-starting the EU economy by incentivizing private investments and (iii) addressing the lessons of the crisis, for example through a new health programme. It is proposed that Next generation EU will raise money by temporarily lifting the EU’s own resources ceiling to 2,00% of EU Gross National Income, which will allow the Commission to use its credit rating to borrow the funds on the financial markets.

It is noted that the funds raised will need to be repaid through future EU budgets - not before 2028 and not after 2058. The Commission will therefore propose a number of new own resources, which could include:

- a new own resource based on the Emissions Trading Scheme,
- a Carbon Border Adjustment Mechanism, and
- an own resource based on the operation of large companies,

A new digital tax could also be considered, building on the work done by the Organisation for Economic Co-operation and Development (OECD). The Commission notes that it stands ready to act if no global agreement is reached at OECD level. These initiatives will be in addition to the Commission’s proposals for own resources based on a simplified Value Added Tax and non-recycled plastics. The Commission’s announcement also notes that the Commission will step up the fight against tax fraud and other unfair practices and mentions the common consolidated corporate tax base (CCCTB) as a simplified set of rules for business to compute their corporate tax base in the EU, which is thought to improve the business environment and contribute to economic growth.

The full proposal can be consulted [here](#).

### [European Commission alters tax timeline](#)

Accountancy Europe reports that the European Commission has altered the timeline and content of its upcoming tax initiatives, initially expected on June 10, 2020. The Commission now intends to launch three initiatives on July 15:

- Action Plan to fight tax evasion and make taxation “simple and easy”;
- Communication on tax good governance in the EU and beyond; and
- Proposal to amend the Directive on Administrative Cooperation to include the exchange of information from online platforms (DAC7).

Full article is available at: <https://www.accountancyeurope.eu/tax/tax-policy-200518/>

### [European Commission publishes May infringement package, including tax cases](#)

On May 14, 2020, the European Commission published its May infringement package including several tax-related infringement cases. The Commission has a.o. referred the Netherlands to the Court of Justice of the EU for discriminatory tax treatment of international versus domestic transfers of pension capital. Luxembourg and Portugal have been ordered to amend their legislation transposing the ATAD, deeming that their national measures are too lax compared to ATAD’s minimum requirements. For more information, please refer to the [press release](#).

### [Brexit update – Round three of negotiations for a new partnership between the EU and the United Kingdom](#)

On May 15, the EC published remarks by Michel Barnier following round three of negotiations for a new partnership between the EU and the United Kingdom. The discussions relate to the new text proposals sent by the UK, covering nearly all the same topics as mentioned in the EU draft legal text published on March 18, 2020. The discussions clarified a number of issues such as trade in goods, transport and the UK’s participation in future programmes of the EU. According to Barnier, the progress made on several other topics is disappointing, including the question of the level playing field (economic and commercial fair play rules agreed to with Boris Johnson in the Political Declaration)

Reference is made to [this](#) press release.

### [Commission approves extension of Croatian Tonnage Tax Regime](#)

On May 15, 2020, the decision of the European Commission to approve the extension of the Croatian tonnage tax regime was published in the Official Journal. The extension, which applies from January 1, 2021 until December 31, 2024, includes the following:

- the expanded tonnage regime will also apply to commercial yachts involved in international navigation;
- a tonnage tax reduction of 20% applies for yachts up to five years old in order to incentivize the registration and use of more efficient and environmental friendly vessels; and
- non-core activities are excluded from the regime if they account for more than 50% of a ship's total tonnage-taxed income.

For the full text of the decision in case No. SA. 55577 click [here](#).

## COUNCIL OF THE EU

### Member States representatives reach compromise on deferral of DAC6 and DAC2 deadlines

On June 3, 2020, Member State representatives on Coreper (the Permanent Representatives Committee) reached political agreement on an optional six-month deferral of reporting deadlines under the EU Mandatory Disclosure Rules (DAC6), as well as a three-month deferral for the communication of information under the EU common reporting standard (CRS) for reporting financial institutions (DAC2). The conclusion of negotiations in Council was further confirmed in the ECOFIN Report to the European Council on tax issues (see below).

In order for the deferral to become applicable, formal unanimous agreement in the Council is required. According to the ECOFIN Report, Coreper authorized the use of the written procedure for adoption of the amendment, which is expected before July 1, 2020. In addition, an opinion is required from the European Parliament, which is expected by the end of the month. It will then be up to each Member State to opt for and communicate the deferral. For further details, please refer to [Euro Tax Flash issue 430](#).

### ECOFIN report to the European Council on tax issues

On June 5, 2020 the Council (ECOFIN) issued its [Report to the European Council on tax issues](#), which presents an overview of the progress achieved in the Council during the term of the Croatian Presidency, as well as an overview of the state of play of the most important tax files under negotiations, including:

- digital taxation,
- rules on mandatory transmission and exchange of VAT-relevant payment information,
- simplification of VAT rules for small enterprises and the future of VAT rates,
- update on the EU rules on structures of excise duties on alcohol,
- updates to the EU list of non-cooperative jurisdictions for tax purposes (the EU blacklist).

The ECOFIN Report references [a report of the Code of Conduct Group](#) (Business Taxation) to the Council that includes updates on the Group's work schedule and confirms that the update of the EU blacklist at the ECOFIN Council meeting in October 2020 should be maintained in order to:

1. delist jurisdictions that completed their commitments;
2. extend Annex II (the "Grey list") deadlines where needed (in particular those expiring end August 2020); and
3. take into consideration the new Global Forum peer review assessments under criterion 1.2 (compliance rating by the Global Forum with respect to the OECD Exchange of Information on Request (EOIR) standard).

### Council approves conclusions on future administrative cooperation

On June 2, 2020 the Council approved conclusions setting out political guidance and priorities in view of further reform of administrative cooperation in the EU. The conclusions stress that efforts to improve administrative cooperation to fight tax fraud and tax evasion are particularly relevant in the context of the need for recovery from the crisis caused by the COVID-19 pandemic. The Conclusions can be consulted [here](#).



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## OECD

### [PCT released a toolkit on the taxation of offshore indirect transfers \(OIT\)](#)

On June 4, 2020, the Platform for Collaboration of Tax (PCT) released a [Toolkit](#) on the taxation of offshore indirect transfers (OIT) providing guidance on the design and implementation issues when one country seeks to tax gains on the sale of interests in an entity owning assets located in that country by an entity which is a tax resident in another country. The toolkit addresses a concern of particular significance to developing country, primarily from the perspective of natural resource rich country.

### [In tax, gender blind is not gender neutral: why tax policy responses to COVID-19 must consider women](#)

On June 1, 2020 the OECD Centre for Tax Policy and Administration released an [article](#) on the gender impact of COVID 19 tax policy responses. The article stresses that women are at the core of the fight against the COVID-19 crisis, as they make up the vast majority of healthcare workers and are responsible for much of the childcare and home schooling burden during lockdowns. While tax policy measures play a crucial role in supporting individuals and businesses as they navigate this crisis, according to the authors of the article, the gender impact of taxation is often overlooked – with serious consequences for gender equality.

### [Updated database on tax policy measures in response to COVID-19](#)

On May 29, 2020, the OECD released an updated database on tax policy measures which have been taken in response to the COVID-19 pandemic. The database can be consulted [here](#).

### [Early restoration planning by tax administration key to support individual and business taxpayers towards economic recovery from COVID-19 pandemic](#)

On May 26, 2020, a [report](#) was released by the OECD on how tax administrations can prepare for the potentially prolonged, uncertain and complex recovery period from the COVID-19 crisis. The report highlights that even during the immediate crisis period, there will be significant benefits from early business restoration planning to help identify the main challenges and opportunities for both tax administrations and taxpayers.

An additional [report](#) published on the same day highlights the increased security risks and greater opportunities for errors, misconduct and fraud in the current environment, including as a result of remote working. The report provides examples of these high-level risks and identifies some mitigation actions that tax authorities may wish to take.

### [OECD announces delay in digital taxation agreement to October](#)

The OECD has announced that it plans to reach a political decision on a multilateral solution to address the tax challenges arising from digitalization of the economy in October (date to be determined), rather than the initially planned July deadline. The aim remains to reach a multilateral, consensus-based solution -by the end of 2020. For more information, please refer

to the [press release](#).

## Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS – MLI

### *MLI enters into force in respect of Portugal*

On June 1, 2020, the Multilateral Convention entered into force in respect of Portugal. Portugal signed the convention on June 7, 2017 and deposited its final MLI position on February 28, 2020, including the 79 tax treaties it wishes to be covered by the MLI.

### *German government approves draft MLI ratification*

On May 27, 2020 the German Federal Cabinet (*Bundesregierung*) approved a draft bill for the ratification of the MLI.

The explanatory notes to the bill state that Germany plans a double-stage process. The first step is the underlying draft bill concerning the ratification of the MLI, which also includes the list of covered tax agreements and the Reservations and Notifications made by Germany. In a second step, there will be separate application laws regarding each covered tax agreement between Germany and a given other contracting state including all modifications to the application of the covered tax agreements due to the MLI.

Germany will make use of the reservation provided for in Article 35(7) of the MLI, according to which the entry into effect of the provisions of the MLI with respect to a specific covered tax agreement depends on the condition that Germany has completed its internal ratification procedures, instead of a specific date after the MLI has entered into force for each of the contracting states to a covered tax agreement. The draft bill is still subject to approval by both the lower house of the German parliament (*Bundestag*) and the Federal Council (*Bundesrat*).

### *Switzerland confirms completion of its internal ratification procedures*

On May 27, 2020, [the OECD announced](#) that Switzerland had confirmed the completion of its internal procedures for the entry into effect of the provisions of the MLI for its tax treaty with Luxembourg (1993). Similarly to Germany, Switzerland has opted to make use of Article 35(7) of the MLI and therefore must complete the relevant internal procedures for the remaining 11 treaties it has [notified](#) at Covered Tax Agreements.

### *Czech republic and Korea deposit their instrument of ratification for the MLI BEPS Convention*

On May 13, 2020, the Czech Republic and Korea deposited their instruments of ratification for the MLI with the OECD's Secretary-General. For the Czech Republic and Korea, the MLI will enter into force on September 1, 2020.

More information can be found [here](#).



## Local Law and Regulations

### Belgium

#### Belgian Federal Tax Authorities announce DAC6 deferral

On June 3, 2020 the Belgian Federal Tax Authorities issued a communication announcing that administrative deferral of six months is granted for the reporting obligations under Belgian legislation transposing DAC6. The following deadlines therefore apply in Belgium:

- February 28, 2021, with respect to reporting of historical arrangements, i.e. where the first step of implementation is made between June 25, 2018 and June 30, 2020;
- April 30, 2021, for the first periodic report for marketable arrangements;
- January 1, 2021 for all other reportable cross-border arrangements, including those for which the reporting trigger occurs in the period between July 1, 2020 and December 31, 2020.

For further details, please refer to a tax alert published by KPMG Belgium, available [here](#).

### Denmark

#### Danish Government and banks agree on new dividend withholding tax procedure

The government has reached an agreement with the Danish financial sector regarding a new dividend withholding tax procedure. The new procedure obliges foreign shareholders of Danish companies to register themselves with the Danish tax authorities before any dividends are paid by Danish companies (and their Danish bank accounts). The agreement was reached on May 18, 2020 with the aim to ensure that the correct amount of dividend withholding tax is levied before the dividend is paid.

This means that, for example, the withholding tax rate under an applicable tax treaty is applied at source, which should eliminate the need for a refund procedure. If it is subsequently concluded that not enough withholding tax was levied, the tax authorities can, in principle, collect the underpaid tax from the Danish banks instead of trying to recover the unpaid tax from abroad. Details of the new procedure and its implementation are to be determined.

### Finland

#### Tax Administration published guidance on exit tax rules for companies

On May 25, 2020, the Finnish tax administration has published guidance on the exit tax rules for companies. The guidance elaborates on the exit tax rules, which transposed article 5 of the EU ATAD into the domestic legislation, with effect from January 1, 2020.

The guidance is available (in Finnish) [here](#).



## France

### Digital taxation – France will impose digital tax this year regardless of any new international levy

Reuters report that on May 13, 2020 Bruno Lemaire (the French Finance Minister) announced that France will introduce a new tax on big digital business this year, whether or not progress is made towards an international OECD agreement. According to Lemaire, given the corona context and economic strain caused by it, such a tax has never been more legitimate or necessary.

The article can be consulted here: <https://uk.reuters.com/article/us-france-digital-tax/france-to-impose-digital-tax-this-year-regardless-of-any-new-international-levy-idUKKBN22Q25B>.

### Tax authorities publish final guidelines on ATAD interest limitation rules

On May 13, 2020, the French tax authorities published their final [guidance](#) on interest deductibility rules applicable as of January 1, 2019, which are the transposition into domestic law of article 4 of the ATAD. The final guidance also comments on the new rules applicable to standalone entities allowing the deduction of an additional 75% of the fraction of net interest exceeding the standard EUR 3 million or 30% thresholds.

## Italy

### Withholding tax on dividends distributed to pension funds; possible refund opportunities

On May 28, 2020, the Italian tax authority issued a ruling to address the tax treatment of dividends distributed to pension funds participating in an “Authorized Contractual Scheme” (ACS). The ruling may provide an opportunity for withholding tax agents to seek a refund of the difference between the 26% rate of withholding tax levied domestically and an income tax treaty rate (such as the 15% withholding tax rate under the income tax treaty between Italy and the UK).

Read a [June 2020 report](#) [PDF 156 KB] prepared by the KPMG member firm in Italy.

### Tax authorities provide clarifications on reporting obligations for e-commerce platforms

On June 3, 2020 the Italian tax authorities issued a [circular](#) providing clarifications on current reporting obligations for e-commerce platforms. Under local law, a taxable person which facilitates, through the use of an electronic interface, distance sales of imported goods or distance sales of goods within the EU, must communicate to the tax authorities relevant data for each supplier that made at least one supply in the relevant quarter. In the circular, the tax authorities provide clarifications with respect to qualifying platforms, required data and the transmission procedure.

## Luxembourg

### Deadlines for DAC 6, CRS and FATCA reporting postponed

On June 4, 2020, the Luxembourg government announced that pursuant to an agreement reached by EU Member States, the deadlines for DAC6 and under the common reporting standard (CRS) regime are postponed in response to the coronavirus (COVID-19) pandemic.

With the postponed deadlines, an additional three months is provided to submit CRS reporting for the year 2019, and an extra six months for DAC6—a three-month increase on the initial EC proposal of three months. Luxembourg has opted to postpone the deadlines and is expected to issue a bill that would implement these changes in the coming weeks. The bill is also expected to include a similar concession for FATCA reporting, with deadlines expected to be pushed back by three months for the year 2019. Until these expected legislative amendments are enacted, penalties for late transmissions of the information would not be expected to apply.

Read a [June 2020 report](#) prepared by the KPMG member firm in Luxembourg

## Malta

### Commissioner for revenue adopts guidelines on group consolidation rules

On May 18, 2020 the Maltese Commissioner for Revenue adopted a number of guidelines relating to the application of the Consolidated Group (Income Tax) Rules (the "Rules") introduced in 2019. The guidelines aim to provide clarity on some uncertainties resulting from the introduction of the Rules, limited to matters pertinent to the registration of fiscal units. It is expected that further guidance on other matters relevant to fiscal units will be issued in the future.

The guidelines are available [here](#).

## Netherlands

### Dutch government announces new withholding tax on dividends to low-tax jurisdictions

On May 29, 2020, the Dutch government announced its intention to implement a withholding tax on dividend payments to low-tax jurisdictions (i.e. a jurisdiction with a statutory corporate income tax rate of less than 9%) as of January 1, 2024. This new tax would work alongside the withholding tax on royalty and interest payments to such jurisdictions, taking effect from 2021.

Read a [June 2020 report](#) prepared by the KPMG member firm in the Netherlands.

### Dutch tax administration publishes guidance on DAC6

The Dutch tax administration published high-level guidance on the application of Directive 2018/822 on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (or "DAC6"). The guidance clarifies a.o. the data to be reported by intermediaries, data to be reported by taxpayers, schemes to be reported, taxes covered, reporting method and deadlines. The full text of the guidance is available [here](#) (in English).

### [New Decree on deductibility of expenses Gazetted](#)

On May 12, 2020 a new [decree](#) on non-deductible and partially deductible expenses relating to income from business activities and other activities was published in the Dutch Official Gazette. As a result of the decree, the section of non-compliance penalties has been deleted. Before January 1, 2020, such penalties were deductible as they were not considered fines. From that date, however, (foreign) non-compliance penalties are added to the list of non-deductible expenses.

### [Tax Plan 2021: Government submits list of probable budget measures](#)

On May 19, 2020, the State Secretary for Finance sent to the lower house of the Dutch parliament a list of measures which are likely to be included in the Tax Plan 2021 package. That plan will be presented on September 15, 2020.

Amongst others, the following measures have been submitted:

- Increase in the effective tax rate of the innovation box from 7% to 9%;
- Restrictions on interest deductibility to prevent tax avoidance;
- Clarification on the possible conflict of the hybrid mismatch rules and interest limitation rules.

Read a [May 2020 report](#) prepared by the KPMG member firm in the Netherlands.

## **Russia**

### [Documents needed to confirm beneficial owner status](#)

By means of Letter 03-08-05/28323 published on April 9, 2020, the Russian Ministry of Finance pointed out that there is no strict list provided in tax law regarding documents required to prove the beneficial owner status of a shareholder in case of receiving dividends paid by a Russian company.

However, the following documents can be potentially relevant:

- Documents certifying the legal rights to use and enjoy the dividends;
- Documents confirming the tax paid on dividends by the recipient in its state of residence; and
- Documents confirming that the receipt of the dividends is performing a real business activity in its state of residence.

### [Federal Tax Service clarifies companies' right to pay corporate income tax on quarterly basis](#)

On May 23, 2020 the Russian Federal Tax Service communicated clarifications of law including that entities whose sales revenues did not exceed RUB 25 million per quarter for the previous four quarters, may opt to pay corporate income tax on a quarterly basis as from 2020. Consequently, if the taxpayer's revenue did not exceed RUB 25 million in the period between the second quarter of 2019 and the first quarter of 2020, the taxpayer may opt for to quarterly advance payments.

## Spain

### [Spanish Tax Authorities modify payment period of tax on economic activities](#)

The voluntary payment period of the tax on economic activities for the financial year 2020 has been modified by the tax authorities and now ranges from September 16, 2020 to November 20, 2020. The tax on economic activities is a local business tax imposed annually on entities conducting business, professional or artistic activities in Spain. The resolution of May 18 can be consulted [here](#) (in Spanish).

## Turkey

### [Turkey increases withholding tax on capital gains from free foreign exchange funds](#)

Turkey increased withholding tax on capital gains from free foreign exchange funds from 10% to 15% by Presidential Decree of June 3, 2020. The text of the Presidential Decree can be consulted [here](#) (in Turkish).

### [Turkey increases banking and insurance transaction tax rate](#)

On May 24, 2020 a decision was gazette, increasing the Turkish banking and insurance transaction tax rate from 0,2% to 1% for foreign exchange transactions. The text of the decision is available [here](#) (in Turkish).

## Ukraine

### [Ministry of Justice clarifies beneficial ownership disclosure requirements](#)

The Ministry of Justice clarified the new beneficial ownership disclosure requirements that entered into force on April 28, 2020. The Ministry explained that beneficial owners must be confirmed annually starting from 2021.

## United Arab Emirates

### [The UAE Ministry of economy published the economic substance regulations notification form](#)

On June 2, 2020 the UA Ministry of economy published the Economic Substance Regulations (ESR) notification [form](#) along with the filing guidelines. The purpose of this notification is to provide the regulatory authority with certain initial information on the entity and its activities in the UAE. The UAE economic substance regulations apply on any UAE entity that undertakes "relevant activities", which consists of any of the following businesses licensed in the UAE: banking, insurance, investment fund management, lease finance, headquarters, shipping, holding company, intellectual property or distribution and service centers.

More information on the economic substance regulations in the UAE can be found in [this](#) tax flash.



## Local Courts

### Netherlands

#### Appeal Court decides that Dutch subsidiary is not beneficial owner of dividends – no set off of dividend withholding tax

On May 12, 2020, the Amsterdam Court of Appeal decided that a Dutch subsidiary of an American banking group may not offset dividend withholding tax against corporate tax. The Court held that even if the taxpayer would have been the legal owner of the shares, it cannot be regarded as the beneficial owner of the dividends. This was based on the fact that it would have been more favorable for the taxpayer to obtain a dividend replacement payment than to always repay the stock loan prior to a dividend payment. This would result in a liquidity advantage because the dividend withholding tax would not always have to be credited with the corporate income tax and no uncertainty would arise if a credit for the dividend withholding tax would be granted. Furthermore, the taxpayer would not be entitled to the lending fee during the period between the date of repayment of the stock loan and the renewed lending of the stock.

In addition, it was found that instructions with respect to the deposit were given by the French company purchasing the shares without any management role for the taxpayer. From the facts, the Court also deduced that a French company had a decisive influence on the booking of the dividends on the shares. Due to this influence it was decided that the taxpayer was not the beneficial owner of the shares, particularly because the taxpayer had no (economic) interest in the temporary transfer of the shares into its securities deposit. Consequently, the taxpayer was not entitled to a credit of the dividend withholding tax.

### Ukraine

#### Supreme Court Rules treaty for avoidance of double taxation not applicable in case of net of tax clause

On May 6, 2020 the Supreme Court of Ukraine issued a judgment on applicability of double tax treaties in case of a net of tax clause. Income for advertising services performed by a non-resident and paid by a Ukrainian resident is deemed to be sourced in Ukraine and subject to withholding tax at the rate of 20% regardless of the actual place where the services are provided. A treaty for the avoidance of double taxation may apply to mitigate the withholding tax. Nevertheless, if in the agreement for the provision of advertising services a net of tax clause is included based on which the income should be paid net of any withholding taxes by the Ukrainian resident, the withholding tax of 20% is still due and the treaty for the avoidance of double taxation is not applicable. This is because the withholding tax is a cost for the payer of the income and not deducted from the income paid to the non-resident.



## [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](#).



**Raluca Enache**  
Director, KPMG's EU Tax Centre

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