KPMG

# E-News from KPMG's EU Tax Centre



## E-News from the EU Tax Centre


**Issue 122 – October 28, 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 transfer pricing adjustment

On October 8, 2020 the Court of Justice of the EU (CJEU) issued its decision in case C-558/19, concerning a transfer pricing adjustment imposed by the Romanian tax authority on the Romanian branch of an Italian company. The case concerned two loan agreements concluded by the Romanian branch, as lender, with its parent company and that did not contain any clause concerning the charging of interest. During a tax audit of the Romanian branch, the Romanian tax authorities - having regard to the provisions of the Romanian Tax Code (according to which, transactions between Romanian taxpayers and non-resident related parties are subject to transfer pricing provisions), concluded that the interest rate on the loans in question should have been set at market price, i.e. as if they had been made under normal conditions of competition, and issued a tax assessment in this respect. The taxpayer challenged the assessment, arguing that that the national provisions relied on by the tax office infringe the EU freedom of establishment and free movement of capital, as the transfers of money between a domestic branch and its Romanian parent company are not subject to transfer pricing rules in Romania. The question was referred to the CJEU for a preliminary ruling.

The Court dismissed the relevance of the free movement of capital, citing existing case law according to which the creation and ownership by a person established in a Member State of a permanent establishment, such as a branch, situated in another Member State, fall within the scope of the EU freedom of establishment.

The Court noted that under the disputed domestic legislation, a branch of a non-resident company does enjoy less favorable treatment than a branch of a resident company carrying out similar transactions with its parent company and that such a difference in treatment is liable to constitute a restriction on the freedom of establishment. However, the Court further noted that such a difference in treatment is justified by the need to maintain a balanced allocation of the power to tax between Member States, as the purpose of the disputed legislation is to prevent profits generated in Romania from being transferred outside its tax jurisdiction, via transactions that are not in accordance with market conditions, without being taxed.

As regards the question of whether the legislation goes beyond what is necessary to attain the objective pursued, the Court noted that the income adjustment imposed concerns only the difference between the market price of the transaction at issue and the price actually applied by the parties and that taxpayers are given the opportunity to demonstrate that there were objective reasons for concluding the transaction at a price which did not reflect the market price. The Court therefore concluded (subject to verification by the referring court), that the legislation at issue does not go beyond what is necessary to attain the legitimate objective underlying it. In light of these considerations, the CJEU held that the EU freedom of establishment does not preclude the disputed national legislation.

## State Aid

### AG Kokott opinion on Polish tax on the retail sector and Hungarian advertisement tax

On October 15, 2020, Advocate General (AG) Kokott issued her opinion in Cases C-562/19 and C-596/19 on the compatibility of the Polish tax on the retail sector and the Hungarian advertisement tax, respectively, with EU State aid rules. The two disputed regimes concern direct business taxes calculated according to turnover rather than profit and based on a progressive tax rate structure. Due to their design, the two regimes primarily affect companies with a high turnover, which the European Commission found to represent an advantage for smaller undertakings, which are 'taxed at too low a level'. According to the Commission, the two taxes are incompatible with the common market and constitute State aid.

Poland and Hungary challenged the Commission's decisions before the General Court of the EU. The General Court upheld the actions in two judgments issued in 2019, noting that there was no evidence in either tax regime of any selective advantage in favor of undertakings with lower turnover. The Commission brought an appeal before the Court of Justice, which the AG proposes should be dismissed.

The AG refers to the Court's existing case law (read Euro Tax Flash Issue 426 for further details), according to which the application of a system of progressive taxation is within the power of each Member State and that progressive taxation can be based on turnover on the basis that turnover represents a criterion of differentiation that is neutral and a relevant indicator of a taxable person's ability to pay. According to the AG, the disputed tax laws just create the reference framework and therefore can constitute aid only if their design was manifestly inconsistent, which – the AG found, does not to exist.

### AG's opinion on European Commission's appeal regarding Spanish football clubs' State aid

On October 15, 2020, Advocate General (AG) Pitruzzella of the Court of Justice of the European Union (CJEU) delivered his opinion in the European Commission v Fútbol Club Barcelona (C-362/19 P) case. As previously reported, on February 25, 2019, the General Court of the CJEU released a judgment that rejected the European Commission's decision to classify a tax regime applicable to four Spanish professional football clubs as "state aid". Under the disputed regime, sports clubs were classified as non-profit legal persons and enjoyed a special rate of income tax compared to other clubs organized as public limited sports companies (SLCs). The judgement is currently in appeal (brought by the European Commission) in front of the CJEU.

The AG noted that, in the judgment under appeal, the General Court ruled that in order to assess whether the measure was likely to confer an advantage, the various components of the tax regime for non-profit entities had to be assessed as a whole. This was relevant because the regime consisted not only of a preferential tax rate (applied to the four clubs), but also of tax deductions for the reinvestment of extraordinary profits, which was also available (and in some instances larger) for SLCs. The General Court essentially found fault with the European Commission for failing to examine properly the extent of the tax deductions for the reinvestment of extraordinary profits permitted under the disputed regime, in order to determine whether an advantage exists for the purposes of Article 107(1) TFEU.

Citing existed case-law of the CJEU, the AG noted that the Commission is required to prove that all the criteria constituting State aid have been met, on the basis of an overall analysis which takes into account all the legal and factual circumstances surrounding that aid, but may confine itself to examining the general characteristics of the scheme in question, without being required to examine each particular case in which it applies. The AG also reiterated that, based on existing case-law, such analysis must be carried out ex ante – i.e. before the preferential regime is put in place and based on information available at that stage.

The AG is of the opinion that, as the deduction for the reinvestment of extraordinary profits was not granted automatically, but only under certain conditions, which did not apply continuously, the advantage granted by the preferential tax rate applicable to the four football clubs could not be neutralized systematically each year. Indeed, it was not designed to do so. Moreover, due to these uncertainties, it was impossible for the European Commission to assess ex ante the level and actual impact of the deductions. The deductions would therefore only be relevant at the time of recovery of the aid, when quantifying the aid for the relevant tax years (ex post analysis). Therefore, the AG advised that the judgement under appeal should be set aside and the case should be referred back to the General Court.

## EU Institutions

### EUROPEAN COMMISSION

#### Further extension and expansion of the EU State Aid Temporary Framework

On October 13, 2020, the Commission announced its decision to prolong all sections of the Temporary Framework for six months, i.e. until June 30, 2021, and the section to enable recapitalization support for three months, i.e. until September 30, 2021.This fourth amendment of the Temporary Framework includes provisions to:

- enable Member States to contribute, on a temporary basis, to the fixed costs of companies that are not covered by their revenues (up to a maximum of EUR 3 million per undertaking). The measure is intended to support companies facing a decline in turnover during the eligible period of at least 30% compared to the same period of 2019 due to the coronavirus outbreak.
- adapt the conditions for recapitalization measures under the Temporary Framework, in particular for the State's exit from enterprises where the State was an existing shareholder prior to the recapitalization, through an independent valuation, whilst maintaining the safeguards to preserve effective competition in the Single Market.

As at October 15, 2020, the European Commission had approved over 250 State Aid Measures adopted under the Temporary Framework and Article 107(2)b of the Treaty on the Functioning of the EU (TFEU). Among the approved measures, those related to tax include a French scheme deferring the payment of certain tax by airlines, a German scheme providing tax advantages including tax allowance, tax base reduction, tax deferment, and tax rate reduction and an Italian schemes to support companies and self-employed workers affected by coronavirus outbreak.

For further details on the Temporary Framework, please refer to the European Union section of KPMG's overview of jurisdictional tax measures and government reliefs in response to COVID-19.

#### Proposal for further amendments to DAC expected

According to a summary published on the European Commission's initiatives website, the European Commission intends to amend the Directive on Administrative Cooperation (DAC) to include alternative means of investment and payment ((e.g. crypto-assets, e-money) in the scope of exchange of information. A roadmap for the publication of the proposal (DAC8) is anticipated, with a consultation period running in the first quarter of 2021 and a legislative proposal expected in third quarter of 2021.

### COUNCIL OF THE EU

#### Cayman Islands and Oman delisted, Barbados and Anguilla added to the EU list of non-cooperative jurisdictions

On October 6, 2020, the Economic and Financial Affairs Council of the EU (ECOFIN) adopted a revised EU list of non-cooperative jurisdictions for tax purposes (the EU blacklist). The EU Finance Ministers agreed to add two new jurisdictions to the list: Anguilla and Barbados, as well as to remove the Cayman Islands and Oman from the EU blacklist.

## EUROPEAN PARLIAMENT

### New permanent subcommittee on tax matters holds constitutive meeting, elects Chair and Vice-Chairs

On September 23, 2020, the European Parliament new subcommittee on tax matters (FISC) held its constitutive meeting and elected its Chair (Paul Tang) and Vice-Chairs. The subcommittee on tax matters was approved by the European Parliament in the June plenary and is set up as a subcommittee to the EP's Committee on Economic and Monetary Affair (ECON). The new subcommittee is responsible for tax-related matters, with a focus on the fight against tax fraud, tax evasion and tax avoidance, as well as financial transparency for taxation purposes and will have 30 members.

### Draft ECON report on an EU carbon border adjustment mechanism

On October 2, 2020, the European Parliament's Committee on Economic and Monetary Affairs (ECON) issued an opinion for the Committee on the Environment, Public Health and Food Safety (ENVI) on an EU carbon border adjustment mechanism. The ECON sent a series of suggestions to the ENVI – the committee responsible for the carbon border adjustment mechanism (CBAM) proposal, calling for these to be included in its motion for a resolution. Among its suggestions, the ECON proposes that the CBAM be implemented as an extension of the EU emissions trading system (EU ETS), which would require importers to purchase allowances for the volume of carbon emissions incorporated in their products and notes that the mechanism should ensure a single carbon price, both for domestic producers and importers. The ECON also calls for the inclusion of CBAM revenues into the EU budget.

For further details on the CBAM proposal, please refer to E-news Issue 121.

---

## OECD

### OECD publishes Pillar One and Pillar Two "Blueprints" - tax challenges of the digital economy

On October 12, 2020, the Organisation for Economic Cooperation and Development (OECD) officially released reports described as "Blueprints" concerning solutions to the tax challenges arising from digitalization of the economy. These reports reflect efforts for reaching a multilateral, consensus-based solution to the tax challenges arising from the digitalisation of the economy, and other tax deliverables, and were reported by the OECD Secretary-General to the G20 Finance Ministers.

- The OECD report of the Pillar One Blueprint reflects a focus on new nexus and profit allocation rules so that, in an increasingly digital age, the allocation of taxing rights with respect to business profits is no longer exclusively circumscribed by reference to physical presence. Read KPMG's Summary and initial analysis of the Pillar One Blueprint for further details.

- The OECD report of the Pillar Two Blueprint reflects an approach that is focused on the remaining base erosion and profit shifting (BEPS) challenges and proposes a systematic solution designed so that all internationally operating businesses pay a minimum level of tax. Pillar Two leaves jurisdictions free to determine their own tax system, including whether they have a corporate income tax and where they set their tax rates, but also considers the right of other jurisdictions to apply the rules contained in this report where income is taxed at an effective rate below a minimum rate. Read KPMG's Summary and initial analysis of the Pillar Two Blueprint for further details.

### OECD publishes new peer review assessments for eight additional jurisdictions

On October 22, 2020, the OECD released stage 2 peer review monitoring reports for the Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain. The review was conducted as part of these jurisdictions' commitment under BEPS Action 14 to implement a minimum standard to improve the resolution of tax-related disputes and assessed progress made by these eight jurisdictions in implementing any recommendations resulting from the stage 1 peer review reports.

According to the OECD press release, the peer review monitoring process show positive changes across all eight jurisdictions, including in the following areas:

- The Multilateral Instrument was signed by all eight jurisdictions and has been ratified by five of them, therefore bringing a substantial number of their treaties in line with the standard.
- Denmark, Finland, Korea, Norway, Poland, Singapore and Spain now have a documented notification/bilateral consultation process to be applied in cases where an objection is considered as being not justified by their competent authority.
- All jurisdictions have added more personnel to the competent authority function and/or made organizational improvements with a view to handle MAP cases in a more timely, effective and efficient manner.
- Denmark, Finland, Korea, Norway, Singapore and Spain decreased the amount of time needed to close MAP cases.
- Denmark, Finland, Korea, Norway and Singapore have issued or updated their MAP guidance.

## Local Law and Regulations

### Austria

#### Landmark decision confirms refund of dividend withholding tax to Canadian pension fund

In a landmark decision issued on September 11, 2020, the Supreme Administrative Court of Austria confirmed an application for a full refund of withholding tax on dividends paid to a Canadian pension fund. The case concerned dividends received from Austria by a Canadian pension fund (a Canadian crown corporation) on which a 25% withholding tax was withheld in Austria. Under the Double Tax Treaty between Austria and Canada, the taxpayer could apply for a 15% withholding tax, which they tried to reduce to 0% based on a domestic tax rule, which provides (under certain conditions) for a full recovery of Austrian withholding taxes on dividends paid to EU corporations. The request for a further WHT refund to the Canadian pension fund was rejected by the Austrian Tax Authority (ATA) because the corporation is a third country claimant and not an EU/EEA-resident.

The claimant (supported by KPMG Austria) argued that no allowing a refund to third country claimants that meet the required conditions leads to discrimination, which is prohibited under the EU's free movement of capital. The issue was first brought before a lower court that confirmed that the disputed national rule is contrary to the EU free movement of capital and granted the request for a full WHT refund. The ATA brought an appeal against the lower court's decision, which was denied by the Supreme Administrative Court.

The outcome of this decision is a milestone for all future WHT claims in Austria by third country investors, which are now able to claim a refund of the full 25% Austrian dividend withholding tax.

Read a report by the KPMG firm in Austria for details.

**Czech Republic**

### Status of digital tax proposal

A proposal for a digital tax has been under discussion in the Czech Republic since November 2019, when the Czech government approved its introduction and submitted the proposal to parliament. It was originally proposed that the digital tax would be effective from mid-2020 and would be levied at a rate of 7% on the provision of digital services in the territory of the Czech Republic for certain providers that satisfy the following criteria:

- Total consolidated revenues of the group in which the provider is a member (or of a stand-alone entity that is not member of a group) greater than EUR 750 million;
- Total revenues from taxable digital services from the Czech Republic of the group in which the provider is a member (or of a stand-alone entity that is not a member of a group) greater than CZK 100 million (approximately EUR 2 million).

Earlier this year, a proposal to reduce the rate from 7% to 5% was considered; however, this reduction has not yet been passed. The effective date of the digital tax is not certain. One option would be to postpone the effective date to January 1, 2021. To achieve this, debate on the bill and related amending proposals in the chamber of deputies will have to conclude in the upcoming weeks.

Read a report from the KPMG firm in the Czech Republic for further details.

**France**

### Minister of Finance announces that digital services tax will be required in December 2020

Mid-October 2020, the French minister of Finance, Bruno Le Maire, announced that the digital services tax (DST) payment for the year 2020 will be due in December 2020.

In February 2020, pending the outcome of the OECD's work on reforming international tax rules, the payment of installments of the French digital services tax was suspended, with no late payment interest or penalties for the April and October installments. These installments, thus, could be replaced with the remittance of a single payment in December 2020.

Read TaxNewsFlash for further details on the announcement and the French DST.

### Tax measures announced in Finance Bill for 2021

On September 28, 2020 the French government released its Finance Bill for 2021 that is expected to be debated in Parliament during the fall and finally adopted by mid-December. The draft includes measures regarding production taxes (a permanent decrease in the territorial economic contribution and the company property tax) and proposals to support French businesses. One aims at tax neutralizing capital gains arising from revaluations of assets and the other at postponing the taxation of capital gains realized on real estate assets in sale and leaseback transactions.

Regarding research and development (R&D) tax credit, outsourced expenditures would be harmonized. Finally, VAT measures are also foreseen (clarification of applicable rules as regards to complex transactions, deferral of the effective date of the Directive on distance sales of goods, and creation of a VAT group regime as from January 1, 2023) that will be commented on in a next alert.

Read an alert prepared by KPMG Avocats in France.

## Ireland

### Tax measures in Budget 2021

On October 13, 2020, the Irish government announced the details of budget 2021, which contains certain business tax and capital gains tax measures, including:

- Re-affirmation of commitment to Ireland's 12.5% corporation tax rate.
- Exit tax rules to be amended to clarify the operation of interest on instalment payments.
- Knowledge development box (KDB) relief to be extended for a further two years to December 31, 2022.
- Existing scheme of accelerated capital allowances for investment in energy efficient equipment to be extended for a further three years to December 31, 2023.
- Entrepreneur's relief to be available on disposals of shares by persons who have held the shares for a continuous period of three years at any time prior to the disposal (rather than a continuous period of three years in the five years prior to disposal as is the requirement currently).
- Introduction of a capital gains tax anti-avoidance measure to address the disposal of certain foreign currency debts.

Read an October report from the KPMG firm in Ireland for further details.

## Luxembourg

### DAC6 reporting guidelines released

On October 14, 2020, the Luxembourg tax authorities added new guidelines relating to the reporting under domestic rules implementing the provisions of the EU Mandatory Disclosure

Rules (DAC6/ MDRs). A reporting user guide and the reporting XML file are now available online. According to the new guide, as of January 1, 2021, intermediaries and relevant taxpayers will be able to file DAC6 reports either through a dedicated form or via a dedicated XML file.

Read a recent report from the KPMG firm in Luxembourg for further details.

### Tax measures announced in Finance Bill for 2021

The draft budget for 2021 was presented on October 14, 2020 and does not include tax increases or plans for major tax reform for 2021. Several tax measures were previously announced in the coalition government agreement, including:

- A non-deductible tax at a rate of 20% on all rental and capital gains income from Luxembourg real estate held by specialized investment funds (SIFs), reserved alternative investment funds (RAIFs), and UCI part II funds would be introduced.
- As a result of the CJEU judgment of May 14, 2020 in case C-749/18 (read E-news Issue 119 for details), there would be an amendment to the fiscal unity regime to provide that a group forming a vertical fiscal unity can form a new horizontal fiscal unity without a prior dissolution of the existing fiscal unity.
- The introduction of a $CO_2$ tax that would trigger an increase in fuel and diesel prices. The government announcements suggest that the increase will be approximately €0.05 per liter.
- A reduction in the subscription tax for investment funds from the rate of 0.05% to 0.04% for funds investing at least 5% of their assets under management in sustainable projects that meet EU criteria.

The proposals will go through the usual legislative process, and thus may be subject to amendments as a result of various consultations in the coming weeks.

Read an October report from the KPMG firm in Luxembourg.

## Netherlands

### Amendment to dividend withholding tax proposal

A private member's bill on the "Conditional Final Settlement of Dividend Withholding Tax Emergency Act", which was submitted in July 2020, has been amended to cover all withholding agents in the Netherlands (previously, only members of a group with a consolidated net turnover of EUR 750 million or more were covered). The proposal is for a final dividend withholding tax settlement obligation for cross-border relocations of a taxpayer's registered office and for mergers, split-offs/divisions, and share mergers if, as a result of these actions, the (deferred) profit reserves of the withholding agent established in the Netherlands is transferred to a jurisdiction that is not aligned with the Dutch dividend withholding tax.

Read a report by the KPMG firm in the Netherlands for further details.

### Spain

Spanish Senate approves Digital Services Tax

On October 7, 2020, the Spanish Senate approved the Spanish digital services tax (DST). It is expected that the law will be promulgated by the King and published in the Official Gazette ("BOE") in the coming weeks, with expected entry into force in January 2021. Related regulations are also in the process of being approved. As approved, the Spanish DST will be levied at 3% on gross revenues from three types of digital services:

- digital intermediation services,
- digital advertising services, and
- sale of user data generated through a digital interface.

The DST will affect taxpayers that meet the following criteria (on a group basis):

(1) EUR 3 million in Spanish-source taxable digital services revenues; and
(2) EUR 750 million in worldwide revenues.

Exemptions could apply for certain business models, e.g., communications and payment services, certain financial services, and the provision of digital content (which must be analyzed on a case-by-case basis).

Upper house of Spanish parliament approves Financial Transactions Tax

On October 7, 2020, the upper house of the Spanish parliament approved legislation for the introduction of a tax on certain financial transactions (FTT). Once adopted, the FTT would be levied at a rate of 0.2% on the purchase of shares of Spanish companies with a market capitalization of more than EUR 1 billion. The tax would apply irrespective of the place of residence of the parties to the transactions and would be due by the financial intermediary conveying or executing the acquisition order (investment services companies or credit institutions performing acquisitions for their own accounts).

The law provides for a series of exemptions, including for shares under initial public offerings, shares received from related parties or shares acquired under the merger and acquisition tax regime. It is expected that the legislation for the financial transaction tax would be effective in January 2021 (three months after its anticipated date of publication in the official bulletin).

Read TaxNewsFlash for further details.

---

## Local Courts

### France

Withholding tax on capital gains derived by non-resident shareholders on substantial participations held in a French resident entity: a full refund can be claimed

In a decision dated October 14, 2020, the French Supreme Administrative Court (*'Conseil d'Etat'*) held that the French Tax Authorities do not have the power to limit the amount of a French domestic withholding tax to make it compatible with EU law. Rather, as the domestic legislation is contrary to EU freedoms, the corresponding withholding tax must be refunded for its full amount.

Under French law:

- capital gains derived by resident companies on the sale of subsidiaries are generally subject to corporate tax. An 88% exemption nevertheless applies to gains on the sale of certain shareholdings held for more than two years, subject to certain conditions;

- non-resident companies selling shares in French companies are subject to French taxation (at the standard rate of French corporate income tax, currently of 28% - Article 244 bis B of the French Tax Code) if the participation exceeds (or exceeded at any time in the previous five years) a 25% threshold. In order to make this domestic legislation compatible with EU law, French administrative regulations (BOI-IS-RICI-30-20-01/08/2018) allow parent companies resident in another EU Member State to qualify for the above participation exemption, provided certain conditions are met. Specifically, such companies may claim a partial refund of the capital gains tax withheld, equal to the difference between the tax due by non-resident companies and the amount of the French corporate income tax that would have applied under the participation exemption regime had the seller been a French resident entity, leaving the final tax burden at approximately 3.36% currently (28% multiplied by the 12% taxable portion).

In the case at hand, the taxpayer – a company tax resident in Italy that sold its French subsidiary – requested a full refund of the capital gains tax withheld in France. The Court of appeal admitted that the French law breaches the EU freedom of establishment and free movement of capital, as non-resident EU companies are taxed on a different basis compared to that applicable to resident sellers. Nevertheless, it held that the tax authorities were right in not allowing a refund for the part of tax corresponding to what would have been paid by a resident seller.

The Supreme Administrative Court concluded that, as the domestic withholding tax on capital gains is incompatible with EU law, the French tax authorities may not rely on their own guidance to provide a partial refund. The Court further held that the taxpayer is entitled to a full refund of the French withholding tax.

As only the French Parliament has authority to adapt French legislation to bring it in compliance with EU law, the French WHT on capital gains should no longer be applicable to parent companies resident in the EU which qualify for the participation exemption regime (even if the French tax authorities corrected the breach through their regulations) as long as the law itself did not limit its amount to the French tax that would have applied under the participation exemption regime had the seller been established in France.

For the French WHT already paid, EU residents should be entitled to claim a refund of the full WHT paid on the sale of French qualifying participation since 2018 (provided the claim is filed before December 31, 2020). The decision of the 'Conseil d'Etat' can in addition be invoked in pending litigations.

The claim for refund should be considered in the situation of parent companies resident in another EU Member State that has concluded a double tax treaty with France under which the right to tax capital gains on substantial shareholdings is attributed to France (such as, inter alia, Austria, Italy, Spain, Sweden) or another EU Member State that doesn't have any tax treaty in place with France (Denmark). A potential extension of this opportunity to parent companies resident in EEA Member States (such as Iceland or Lichtenstein) can be considered.

### Netherlands

Dutch Supreme Court decision on Dutch WHT on dividends paid to foreign investment funds

On October 23, 2020 the Dutch Supreme Court issued its ruling following the CJEU's decision in the in the Köln Aktienfonds Deka case (C-156/17) concerning the compatibility with EU law of Dutch withholding tax on dividends distributed to non-resident investment funds (see this Euro Tax Flash from KPMG's EU Tax Centre for further details on the CJEU's decision). The Supreme Court ruled that its earlier judgments from 2013 and 2015 were an incorrect interpretation of EU law and that foreign investment funds should be entitled to a refund of the Dutch dividend withholding tax paid if certain conditions are met. These conditions are however very difficult to meet. Furthermore, it seems that foreign funds – unlike Dutch funds – are not provided with a mechanism to avoid economic double taxation. This raises the question whether this decision is contrary to case law of the CJEU.

Read an October 2020 report from KPMG in the Netherlands for further background information and insights into possible next steps.

---

## KPMG Insights

### COVID-19 Resources

KPMG publishes an overview of tax developments being reported globally by KPMG firms in response to the Novel Coronavirus (COVID-19). For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated KPMG page.

### DAC6 Resources

KPMG's EU Tax Centre publishes an overview of latest developments and country summaries on the implementation of the Mandatory Disclosure Requirements (MDR of DAC6), including a DAC6 transposition and reporting overview. KPMG's DAC6 Summary and Observations memo is also available for download. For further information on how KPMG can assist you in meeting the demands of the EU MDR regime, please refer to the dedicated KPMG page.

---

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

## Key links

- Visit our website for earlier editions



If you have any questions, please send an e-mail to eutax@kpmg.com.
KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

.



© 2020 Copyright owned by one or more of the KPMG International entities. KPMG International entities provide no services to clients. All rights reserved.