



# E-News from KPMG's EU Tax Centre



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## E-News from the EU Tax Centre

### Issue 126 – February 23, 2021

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

#### State Aid

[Court rules in favor of French scheme deferring payment of certain taxes to support airlines impacted by COVID-19](#)

On February 17, 2021, the General Court of the EU (General Court) [ruled](#) in a state aid case concerning a deferral of tax payment introduced by France to support airlines, which hold a French licence, amid the COVID-19 pandemic (COVID-19). The state aid scheme was found to be compatible with the EU law.

The EU Commission [approved](#), on March 31, 2020, a French state aid measure enacted under Article 107(2) of the Treaty on the Functioning of the European Union (TFEU) and aimed at supporting airlines by postponing tax payments due. The deferrals benefited airlines with an

operating licence in France, and allowed for a postponement of certain taxes that would have been due between March and December 2020 to after January 1, 2021, as well as for the possibility to pay the taxes over a period of up to 24 months. The decision was challenged before the General Court of the EU on June 12, 2020, by an airline headquartered in another Member State.

The General Court held that the French state aid scheme satisfies the derogation to non-discrimination on grounds of nationality principle, as set by Article 107(2) TFEU, and that the conditions for granting the aid do not go beyond what is necessary to achieve that objective. Specifically, the analysis found that COVID-19 and related travel restrictions represent an exceptional occurrence within the meaning of Article 107(2), and that limiting the deferral of taxes payments to airlines with a French licence is appropriate for achieving the objective of reducing the economic damage caused. The measure was also found to be proportionate, as the airlines eligible for the payment deferrals are those most severely affected by the travel and lockdown restrictions adopted by France.

For more details please refer to a KPMG [Tax Newsflash](#).



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## Infringement Procedures & Referrals to CJEU

### Compatibility of certain notification obligations under EU mandatory disclosure rules with EU law

On December 21, 2020, [reference](#) was made to the Court of Justice of the European Union (CJEU) by the Belgium Constitutional Court for a preliminary ruling in a case regarding the mandatory disclosure requirements for intermediaries and relevant taxpayers under the Directive on Administrative Cooperation (DAC6). The case is Orde van Vlaamse Balies and Others (the Flemish Bar Council), C-694/20.

The question referred to the CJEU concerns the compatibility of Article 8ab of DAC6 with the right to a fair trial, as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, and the right to respect for private life, as guaranteed by Article 7 of the Charter. The Flemish Bar Council are arguing that they are not able to fulfil their obligations under the Belgium law implementing DAC6 without breaching professional secrecy. The dispute concerns the requirement for a lawyer intermediary, who wishes to invoke professional secrecy, to notify the other intermediaries involved of their reporting obligations. The parties submit that such a requirement is not necessary to ensure that the cross-border arrangement is reported, since the client can inform the other intermediaries directly and ask them to fulfil their reporting obligation.



## OECD and other International Institutions

### OECD

#### Enterprise Risk Management Maturity Model for tax authorities

On February 9, 2021, the Organisation for Economic Cooperation and Development (OECD) released the Enterprise Risk Management Maturity Model, a self-assessment tool to assist tax administrations in managing operational risks. The tool was developed and piloted by the OECD Forum on Tax Administration's Enterprise Risk Management Community of Interest, and led by the U.S. Internal Revenue Service (IRS).

The maturity model covers the organizational and operational aspects of enterprise risk management, and aims at:

- i) allowing tax administrations to self-assess through internal discussions as to how they see their current level of maturity in enterprise risk management;
- ii) providing staff and senior leadership of the tax administration with a good overview of the level of maturity based on input from stakeholders across the organization; and
- iii) allowing tax administrations to assess how they compare to their peers (the report includes a “heat map” outlining the reported maturity of the different administrations which conducted a self-assessment).

For more information please refer to OECD's [release](#).

#### Peer review reports for BEPS Action 14 on dispute resolution mechanisms

On February 16, 2021, the OECD released the final batch of the stage 1 peer review assessment for Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, United Arab Emirates and Viet Nam. The peer review process allows for an evaluation of the effort made by each jurisdiction to implement the BEPS Action 14 minimum standard on dispute resolution.

So far, the OECD has published stage 1 peer review reports for all ten batches and stage 2 peer review reports for batches 1-3. The OECD will continue to publish stage 2 peer review reports in batches in accordance with the Action 14 peer review assessment schedule.

For more information please refer to OECD's [release](#).

### International Monetary Fund

#### Thin capitalization rules report

On February 5, 2021, the International Monetary Fund (IMF) published a working paper “At A Cost: The Real Effects of Thin Capitalization Rules”, which explores to what extent investments made by multinationals respond to thin capitalization rules.

While acknowledging that intra-company borrowing and lending is one of the most common channels through which multinationals shift profits between countries to minimize their overall tax liability, the paper argues that thin capitalization rules, often used to restrict deductible debt relative to equity, can reduce or suppress domestic investment. This would reduce the benefits of the thin capitalization rules, especially when multinational investments yield positive productivity spillovers to domestic companies.

For more information please refer to IMF's [report](#).



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## Local Law and Regulations

### Belgium

#### Annual tax on securities accounts adopted

On February 11, 2021, the Belgian Parliament adopted the law introducing a new annual tax on securities accounts (“solidarity contribution”).

The tax will be imposed on the average value of the taxable financial instruments (certain exemptions apply) on that securities account, if that average value exceeds EUR 1 million. For more details please refer to E-news [Issue 123](#).

Several amendments were discussed during the parliamentary process, but only one technical change was made, i.e. a clarification that securities accounts that are part of the property of a Belgian establishment (i.e. a non-resident for income tax purposes) will also be within the scope of the tax, irrespective of whether the account is held with a Belgian or foreign financial intermediary.

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

#### Draft law revising the taxation of foreign rental income

On November 12, 2020, the CJEU held that Belgium breached its obligations under EU law by failing to amend its legislation which provided for an unequal tax treatment of rental income derived by Belgian taxpayers, depending on whether the real estate property was located in Belgium or abroad. The case is C-842/19; for more details please refer to E-news [Issue 123](#).

Following the CJEU's ruling, which imposed a lump sum fine and daily penalties, Belgium submitted to the Parliament on January 29, 2021 a draft bill which aims to end the unequal tax treatment of rental income, by proposing the use of cadastral value for both property located in Belgium, as well as abroad.

### Germany

#### Draft bill introducing defensive measures against non-cooperative jurisdictions

On February 15, 2021, the Ministry of Finance announced a draft law aimed at introducing anti-avoidance rules based on the EU list of non-cooperative jurisdictions.

The proposal follows guidance from the Council of the EU on coordination of national tax defensive measures against non-cooperative jurisdictions, whereby Member States were invited to apply legislative defensive measure as of January 1, 2021 (or July 1, 2021 should they face institutional or constitutional issues) – see KPMG’s EU Tax Centre [ETF 435](#) for more details.

Countries in scope are those included on the EU list of non-cooperative jurisdictions, and which do not provide sufficient transparency in tax matters, engage in unfair tax competition and do not commit to the implementation of BEPS minimum standard.

If a jurisdiction is considered non-cooperative, the following defensive measures would apply:

- disallowing the deductibility of payments made to that jurisdiction;
- stricter controlled foreign corporations rules;
- denial of reduced withholding tax rates;
- denial of participation exemptions for dividends received / gains from the sale of shares in a subsidiary resident in that jurisdiction;
- introduction of documentation requirements for transactions with non-cooperative jurisdictions.

The defensive measures would generally apply from January 1, 2022, except for jurisdictions not listed as at January 1, 2021 (were the measures would apply from January 1, 2023).

## Greece

### Clarifications issued on the application of interest limitation rules (ATAD)

On January 11, 2021, the Greek tax authorities issued a circular clarifying several aspects on the application of the interest deduction limitation rules previously introduced and line with the EU Anti-Tax Avoidance Directive (ATAD). New provisions include, *inter alia*:

- the interest deduction limitation rule applies at the level of individual legal entities, irrespective of whether they are part of a group;
- financial undertakings as per Article 2 of ATAD are exempted from the limitation rules, while certain entities exempted under prior rules – including leasing companies and business receivables agency companies – are no longer exempt.
- exempt interest income, pursuant to a participation program in the Greek debt restructuring will not be considered when calculating EBITDA;
- in case of reorganizations (conversions, mergers and divisions), any balance of non-deductible exceeding borrowing costs from previous years will be transferred for its deduction (without time limitation) to the company which results from the reorganization.

## India

### Tax Measures in Union Budget 2021-22

On February 1, 2021, the Finance Minister presented the Union Budget 2021-22 before the Indian Parliament. Tax measures proposed in the Budget include, *inter alia*:

- *equalisation levy*: clarifies that the taxation of royalties and “fees for technical services” and the “equalisation levy” are mutually exclusive, i.e. the equalisation levy would not apply if the consideration paid is taxable as a royalty or as fees for technical services;
- *non-resident taxation*: addresses the withholding tax on income realized by foreign investment institutions from securities;
- *depreciation (amortization) of goodwill*: the goodwill of a business or profession would not be considered as a depreciable asset and no depreciation is allowed (even when purchased);
- *capital gains*: the definition of a “slump sale” would be expanded to include all types of “transfers” including exchanges;
- *start-ups*: a tax deduction would be extended to eligible start-ups that incorporated before April 1, 2022, and the time limit for making an investment of net consideration from a transfer of “house property” in start-ups would be extended to March 31, 2022 (from March 31, 2021).
- *other proposals*: an exemption from withholding tax would be available for dividend payments made by certain special purpose vehicles to business trusts.

For more details please refer to a [report](#) prepared by the KPMG firm in India.

## Ireland

### Clarification with respect to certain distributions post-Brexit

On February 5, 2021, the Irish Revenue released guidance essentially extending the exemption for interest on certain securities paid by an Irish company to a 75 percent parent or sister established in the United Kingdom (previously only referred to an a EU Member State ).

Moreover, the Irish Revenue confirmed that the exemption from the definition of "distribution" for the purposes of the exemption will also apply in respect of certain transfers of assets or liabilities between two Irish tax resident companies where one party is a 51 percent subsidiary of the other or both are 51 percent subsidiaries of a third company which is resident for tax purposes in EU Member States or the United Kingdom.

### Updated guidance on Controlled Foreign Company (CFC) rules

On February 12, 2021, the Irish Revenue published revised guidance to reflect the defensive measure for non-cooperative jurisdictions introduced with the 2020 amendments to the CFC rules, which are effective for the CFC’s accounting periods beginning on or after January 1, 2021.

In particular, the guidance provides that the effective tax rate exemption, the low profit marking exemption and the low accounting profit exemption will not apply for an accounting period of a CFC where that CFC is resident in a jurisdiction listed in Annex 1 of the EU list of non-cooperative jurisdictions for tax purposes.

For more details please refer to the Revenue’s manual, [Part 35b-01-01](#).

## Jersey

### Economic substance requirements for self-managed funds

On February 10, 2021, the Jersey States Assembly (Jersey's Parliament) adopted a law extending the economic substance test to self-managed funds. For more details on the substance requirements in Jersey please refer to Jersey government [website](#).

The law applies to funds resident in Jersey for financial periods commencing on or after January 1, 2021.

The law was adopted on February 10, 2021 and will enter into force seven days after it is registered by the Royal Court.

## Kazakhstan

### Tax changes affecting Controlled Foreign Companies

On December 10, 2020, changes to the taxation of CFCs and permanent establishments of CFCs were enacted in Kazakhstan.

Under the new law, the criteria for determining ownership or control over a foreign company are determined as of December 31, of the reporting period. A foreign entity is not regarded as a CFC if it is established in a treaty-partner country that has a nominal corporate income tax rate greater than 75% of the corporate tax rate in Kazakhstan and where the entity has an aggregate income less than certain thresholds and reports losses in stand-alone financial statements. Specific exemptions apply when taxing the CFC's profits, and the law extends and clarifies the list of documents substantiating the CFC's tax exemptions.

For more information, please refer to a [tax alert](#) prepared by the KPMG firm in Kazakhstan.

### Tax exemption for dividends paid to non-residents

On December 10, 2020, amendments were made to rules on the taxation of dividends paid by Kazakh companies to foreign shareholders.

The new provisions, effective January 1, 2021, provide that the exemption for dividends paid to non-residents (shareholders or participants) is applicable only to income on which corporate income tax has been paid. In practice, taxpayers with no taxable income or with losses reflected on their corporate income tax return would not be able to distribute tax exempt dividends to non-residents.

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

## Kenya

### Guidance clarifying application of the minimum tax

The Kenya Revenue Authority issued guidelines on the application of the recently introduced minimum tax. The minimum tax is effective from January 1, 2021, is imposed at a rate of 1

percent of gross turnover and due when the amount of a taxpayer's instalment tax payable is less than the amount of the minimum tax.

The guidelines clarify issues such as how the gross turnover is computed, taxpayers in scope of the minimum tax, procedural aspects for entities with a tax year different from the calendar year, and the carry forward of losses. A key change is that income from insurance business and income from businesses whose retail price is controlled by the government is exempt from the minimum tax.

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

#### [Guidance on applying partial exemption for dividend and interest income](#)

On January 27, 2021, the Mauritius Revenue Authority issued guidance aimed at clarifying the criteria under which companies can benefit from partial exemption on certain qualifying income, i.e. foreign source dividends, interest and income derived by collective investment schemes. The partial exemption (80 percent) is effective January 1, 2019 and replaced the deemed foreign tax credit system.

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

### **North Macedonia**

#### [Ultimate beneficial owners disclosure requirements](#)

Effective January 27, 2021, the Register of Ultimate Beneficial Owners (UBO) is operational, and entities are required to comply with the disclosure requirements within the next three months.

Non-compliance with the UBO disclosure requirement may result in financial sanctions for companies, ranging from EUR 5,000 to EUR 10,000 and 30 percent of the penalty applied to the legal entity is to be imposed to the responsible persons.

For more details please refer to a [tax alert](#) prepared by the KPMG firm in North Macedonia.

### **Rwanda**

#### [Transfer pricing rules](#)

On December 20, 2020, transfer pricing rules were introduced in Rwanda. The transfer pricing rules apply to both domestic and cross-border related-party transactions as well as transactions between independent parties when undertaken with parties based in "beneficial tax jurisdictions."

From a compliance perspective, taxpayers with an annual turnover greater than FRW 600 million (approximately EUR 500,000) or having substantial controlled transactions must prepare detailed transfer pricing documentation. Taxpayers need to prepare the transfer pricing documentation before filing their annual tax returns and, if a request is done by the tax authorities, are required to disclose it within seven days. The new rules also introduce the requirement to file a country-by-country (CbC) report.



For more information, please refer a [detailed report](#) prepared by the KPMG firm in Rwanda.

### [Beneficial Ownership Disclosure rules](#)

Effective February 8, 2021, companies resident in Rwanda are required to maintain a register of beneficial owners for at least the previous ten years. The register shall contain the beneficial ownership information with respect to shares and other rights in the company. The information must then be disclosed to the Registrar General every year, and any changes shall be notified within 14 days from the date of such changes.

In case of non-compliance with the rules, restrictions may be imposed (e.g. restrictions on the rights to transfer of the interest, any voting rights, any right to further shares in respect of shares already held, any right to payment due to the member's interest, whether in respect of capital or otherwise; or cancel the member's interest in the company). In addition, an administrative fine between RWF 500,000 and RWF 1,000,000 applies for failure to disclose information of the beneficial owner or any information requested by the competent authority by the company secretary or any other competent person.

### **Spain**

#### [Limitations on dividend distributions and tax transparency measures for companies benefiting from public aid](#)

On January 27, 2021, Spain published Royal Decree 2/2021 in the Official Gazette, which extended certain temporary measures to facilitate the process of suspending employment contracts due to the COVID-19 pandemic.

Specifically, in the case of temporary workforce restructuring plans, the temporary suspension of contracts based on force majeure related to the COVID-19 pandemic has been extended until May 31, 2021. However, to be entitled to the force majeure temporary restructuring plans, companies should not have their fiscal domicile in jurisdictions considered as tax havens under current regulations, and companies with more than 50 employees shall not distribute dividends until May 31, 2021.

### **United Kingdom**

#### [What to expect from the Budget on March 3](#)

The UK Budget is expected to be released on March 3, 2021. For a discussion on options available to the Chancellor , please refer to the [tax alert](#) prepared by the KPMG firm in the UK.



## Local Courts

### France

#### Supreme Administrative Court Rules on Beneficial Ownership of Royalties Paid to UK Company

The French Supreme Administrative Court (Conseil d'État, CE) has ruled (decision no. 430594 of February 5, 2021) that a UK resident company undertaking collective rights management for musical works on behalf of its members is not the beneficial owner of French-source royalties derived from these rights. As a result, any tax relief should be sought under the double tax treaty concluded between France and the country of residence of each member, as the beneficial owners of the payments.

### Czech Republic

#### Evidence establishing a foreign entity's permanent establishment

The Supreme Administrative Court, in a case concerning whether a foreign entity had a permanent establishment in the Czech Republic, held that the tax administrator must produce sufficient evidence proving beyond any doubt the existence of a permanent establishment.

The case involved a dispute between a UK company that had established a registered branch in the Czech Republic and a tax administrator who had registered this branch as a permanent establishment for corporate income tax purposes.

For more details please refer to a [tax alert](#) prepared by the KPMG firm in the Czech Republic.

### Spain

#### Wealth tax on real estate property indirectly owned by non-residents

The Superior Court of Justice of the Balearic Islands ruled on a case concerning the treatment of property in Spain, for wealth tax purposes, when indirectly owned by non-residents through foreign entities. Under Spanish wealth tax law, non-resident individuals are liable to wealth tax in respect of real estate located in Spain, which they directly own. The law makes no provisions for the indirect ownership of real estate. As several double tax treaties concluded by Spain allocate the right to tax real estate (directly or indirectly owned) to the jurisdictions where the property is located, previous domestic administrative practice ruled that wealth tax applies to indirect ownership (if provided by the relevant treaty).

The Superior Court of Justice of the Balearic Islands rejected this interpretation and noted that the Spanish wealth tax law does not expressly implement the authority to tax indirectly owned property, irrespective of the provisions included in an applicable treaty.

For more details please refer to a [tax alert](#) prepared by the KPMG firm in Spain.



## [KPMG Insights](#)

### Taxation of the Digitalized Economy

KPMG publishes [an overview](#) of tax measures implemented, proposed and announced in response to the challenges arising from the digitalized economy. For further details concerning the tax treatment of the digital economy, including digital services tax, please refer to the dedicated [KPMG page](#) and the [KPMG digital economy tax tracker mobile app](#)

### 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](#).



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