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E-News from the EU Tax Centre

Issue 130 – April 21, 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.

[Infringement Procedures and CJEU Referrals](#)

Referrals to the CJEU

Belgium – request for a preliminary ruling on additional filing requirements for corporation tax levy reduction

On January 28, 2021, the Cour d'appel de Liège (Belgium) requested the Court of Justice of the European Union (CJEU) to rule in two cases ([C-52/21](#) and [C-53/21](#)) on the compatibility with the freedom to provide services of a separate corporation tax levy for services provided by companies in another Member State.

Under Belgium tax rules, taxpayers which incur expenses related to professional services received or commissions due are subject to certain administrative obligations (i.e. submission of individual fee forms and summary statements). Companies not complying with these rules are subject to a separate corporation tax levy, amounting to 100 percent or 50 percent (in certain cases) of the expenses incurred. An “administrative tolerance”, under which the separation corporation tax levy is not due, even if no filing is done by the recipient, is available, but only if the legal entity providing the services is tax resident in Belgium or has a Belgium permanent establishment.



EU Institutions

EUROPEAN COMMISSION

European Commission provides clarifications on actions against aggressive tax planning

A member of the European Parliament [asked](#) about the actions the European Commission plans to take against jurisdictions, including Member States, with legal systems that facilitate aggressive tax planning.

The European Commission [response](#) shared the view that the global tax system is in need of a significant reform and expressed support for the ongoing work at the Organisation for Economic Cooperation and Development (OECD) level. Once agreement is reached on Pillar 2 – regarding a global minimum tax, the rules will be transposed into EU law. If no agreement is reached, the Commission is committed to designing an EU set of rules, which will also take into consideration measures discussed at global level by that point.

Further, the Commission confirmed that a revision of the Code of Conduct on Business Taxation is currently taking place, with the purpose of broadening its scope.

Impact assessment of the CBAM and the ETS amendments

The European Commission was [requested](#) by a Member of the European Parliament to provide additional clarifications on the planned proposal for a carbon border adjustment mechanism (CBAM) and on the proposed amendments of the EU Emissions Trading System (ETS), including any potential economic impact assessments carried out in this respect.

The European Commission [noted](#) that a majority of stakeholders participating in the Green Deal public consultation [argued](#) that the existing EU ETS measures are not sufficient to reduce carbon leakage and achieve the EU's climate ambitions. The impact assessment will be finalized in spring 2021 and the results will be considered when drafting the CBAM proposal in June 2021. The Commissions also confirmed that the proposal will be compliant with the World Trade Organization rules and other international obligations.

Clarifications regarding existing clauses allowing the EU to defend itself against potential UK

harmful tax practices

A Member of the European Parliament [asked](#) about the EU-UK Trade and Cooperation Agreement (TCA) clauses, which would allow the EU to introduce defensive measures, should the UK or its overseas territories decide to engage in harmful tax competition.

In their [response](#), the European Commission noted that under the TCA, the UK has committed to comply with the principles of tax good governance, and agreed to a non-regression clause on tax transparency and anti-tax avoidance.

Furthermore, the joint EU-UK political declaration includes commitments regarding countering harmful tax regimes. Whilst the TCA does not apply to UK overseas territories (UKOTs), the political declaration also includes a commitment from the UK to encourage the UKOTs to comply with the principles set out in the declaration. The Commission also confirmed that the EU retains tools to protect the internal market, including the possibility of listing a third country on the EU list of non-cooperative tax jurisdictions, or amongst high-risk third countries presenting strategic deficiencies in their anti-money laundering and counter terrorist financing (AML/CFT) framework.

EUROPEAN PARLIAMENT

FISC meeting with the Finance Committee of the Bundestag on taxing the digitalized economy and green taxation

On April 13, 2021, Members of the European Parliament Subcommittee on Tax Matters (FISC) exchanged views with the German Parliament's Committee on Finance. The event was the second in a series of meetings between FISC and their Member State counterparts, aimed at enhancing cooperation between the European Parliament and national Parliaments.

The first part of the discussion tackled green taxation. The German MPs welcomed the upcoming EU proposals in this field, while different views between the parties emerged regarding the extent to which tax policy could influence consumer behavior and the social classes that are likely to be most affected by green taxes.

The second part of the meeting focused on the global and EU initiatives on taxing the digitalized economy. Whilst parties shared the view that the current global tax system is outdated and in need of a reform, there were differences on the position the EU should take (e.g. whether to move forward with its own initiative) if discussions at the OECD level falter.

The third meeting in the series will be an exchange with the French MPs and is scheduled for June 16, 2021.

For more details please refer to the European Parliament's [press release](#).



OECD and other International Institutions

OECD

Report to G20 on status of international tax agenda

On April 7, 2021, the OECD released a report to the G20 Finance Ministers and Central Bank Governors. The report outlines the state of play of the OECD's international tax agenda and the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Key areas include:

- an update on tax policy during the coronavirus (COVID-19) pandemic, outlining tax measures introduced by 66 jurisdictions;
- the state of play of work on taxation of the digitalized economy, including: the BEPS 2.0 project, indirect taxes applicable to online transactions and greater transparency on crypto-assets;
- a summary of work on tax policy and the environment, focusing in particular on carbon pricing;
- an update on other G20 tax deliverables – including tax transparency, implementation of the BEPS measures and support for developing countries. No changes have been made to the list of countries rated as non-compliant based on Exchange of Information on Request reviews. The list currently includes Dominica, Niue, Sint Maarten and Trinidad and Tobago and Anguilla.

For more details please refer to OECD's [report](#).

Peer review report on the prevention of tax treaty shopping under BEPS Action 6

On April 1, 2021, the OECD released the third peer review report on the prevention of treaty shopping. The report includes results of the peer review of each of the 137 jurisdictions members of the OECD/G20 Inclusive Framework on BEPS on June 30, 2020. Based on the findings, a large majority of members are translating their commitments on treaty shopping into actions and are modifying their treaty network accordingly.

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

Country tax measures during COVID-19

On April 7, 2021, the OECD published an updated database with the latest data on tax measures taken by governments in response to the COVID-19 pandemic.

For more information on the measures please refer to the OECD's [database](#).

Policy responses to COVID-19: lessons learned to “build back better”

On April 8, 2021, the OECD published a paper analyzing the various policy measures implemented during the COVID-19 crisis, with respect to small and medium-sized enterprises (SME) and entrepreneurship. The purpose of the document is to identify lessons learned and help governments design policies to support SME recovery and resilience.

The paper notes that SMEs faced unique challenges and, one year into the pandemic, are still in a precarious position. This is the case in particular for young firms and start-ups, the self-employed, as well as women-led or minority-owned businesses. Governments acted swiftly to support SMEs and entrepreneurs, and emergency liquidity support remains essential one year later. However, a complex dilemma arises, as these types of measures are not sustainable over the longer term.

For more information refer to the [OECD's paper](#).



Local Law and Regulations

Cyprus

Law transposing DAC6 into domestic legislation published

On March 31, 2021, the Cyprus law transposing the EU Directive on mandatory disclosure requirements (DAC6) into domestic legislation was published. The transposition law follows the Directive closely. Official guidance, providing clarifications on the interpretation of specific terms and provisions of the Cypriot mandatory disclosure requirements, is expected to be issued by the end of April 2021.

Due to the late implementation of DAC6, the reporting deadlines have been postponed to June 30, 2021. However, DAC6 reporting is already possible in Cyprus.

Germany

Law on defensive measures against non-cooperative jurisdictions – update

On March 31, 2021, the Federal Cabinet of Germany adopted a bill aimed at introducing anti-avoidance rules against countries included on the EU list of non-cooperative jurisdictions – see E-news [Issue 126](#) for an overview of the tax measures included in the original proposal. Key changes compared to the previous draft version include, *inter alia*:

- the introduction of a phased model for the application of certain defensive measures after a jurisdiction was included on the EU list;
- the removal of a defensive measure under which treaty / domestic withholding tax relief could have been denied;
- tightened CFC rules extended to cover lower-tier companies and their foreign downstream companies;
- additional cases where the participation exemptions for dividends / capital gains can be denied.

The bill has to go through several additional steps before being enacted. However, the legislative process is expected to be completed in the second quarter of 2021 (to comply with the final deadline of July 1, 2021 agreed by the EU Member States).

India

Amendments to Finance Bill 2021

On March 23, 2021, the lower house of the Indian Parliament passed the Finance Bill, 2021 with several amendments – see E-news [Issue 126](#) for an overview of key tax measures included in the original proposal. Key changes include, *inter alia*:

- additional clarifications brought with respect to the “equalisation levy” – India’s digital services tax: the taxable base would exclude consideration for the sale of goods or provision of services which are owned or provided by a resident in India or by a permanent establishment (PE) in India, if effectively connected with the PE;
- a revised definition of “liable to tax”;
- the exclusion of self-generated goodwill from the net worth of undertakings transferred as a slump sale.

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

Ireland

Consultation on tax treaty policy

The Irish authorities announced the launch of a [public consultation](#) on the country’s tax treaty policy. The consultation period runs from April 7 to May 7, 2021 and is focused on two main areas, i.e. economic considerations and policy on developing countries.

The feedback received will be considered by the authorities when drafting a tax treaty policy statement, which will take into account international developments and is expected by the end of 2021.

Updated guidance on anti-hybrids

Ireland’s revenue authority published [eBrief 068/2021](#) regarding technical clarifications on the application of anti-hybrid rules. The updated guidance includes: amendments made by Finance Act 2020, clarifications on the interpretation of key terms such as “payee”, “reasonable to consider” and “associated enterprise” and guidance on the “imported mismatch” rule.

Italy

Extension of the digital services tax deadlines

On March 22, 2021, the Italian Government issued a decree introducing tax measures intended to provide relief in response to COVID-19. A key measure is the postponement of the payment and filing deadlines of Italian digital services tax, from February 16 to May 16 and for the DST declaration, from March 31 to June 30 respectively. The postponement had previously been announced by the Italian Ministry of Finance – see E-news [Issue 129](#).

While the decree came into force on March 23, 2021, it must be converted into law within 60 days of its publication in the Official Gazette (March 22, 2021). It is possible that certain

measures are amended during the legislative conversion process.

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

Withholding tax exemption on interest on certain loans paid to UK banks during the Brexit transition period

On April 9, 2021, the Italian Revenue Agency published a statement providing clarifications on the withholding tax exemption for interest and other income deriving from medium/ long-term loans paid by resident companies to, *inter alia*, banks established in a Member State. The statement specifies that the exemption was also available to banks established in the UK until the end of the Brexit transition period.

Following this clarification, there may be possible refund opportunities for UK banks regarding tax withheld on interest payments during the Brexit transition period (February 1 to December 31, 2020).

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

Poland

Fifth EU Anti-Money Laundering Directive implemented

On March 25, 2021, the Polish Parliament approved a law implementing the 5th EU Anti-Money Laundering (AML) Directive.

Explanatory note on transfer pricing adjustments

On April 2, 2021, the Policy Ministry of Finance issued guidance on a taxpayers' ability to make transfer pricing adjustments under an ex-ante arm's length price setting approach. The note also includes relaxed requirements for statements on corresponding adjustments in response to COVID-19.

Russia

Malta double tax treaty update

On March 23, 2021, the amending protocol to the double tax treaty between Malta and Russia entered into force. Among others, the protocol provides for an increased minimum withholding tax rate (15 percent) on dividend and interest income, with some exceptions.

South Africa

Amendments to carbon offset regulations

The South African Treasury has issued a public consultation on draft amendments to the carbon offset regulations. Interested stakeholders are invited to submit comments by April 30, 2021.

The Carbon Tax Act came into effect from June 1, 2019 and provides for a carbon offset tax-free allowance. Following the implementation of the Carbon Tax Act, clarification was requested on

eligible electrical efficiency projects, the development of a comprehensive framework for inclusion of local standards, and the double dipping limitation on projects qualifying for the energy efficiency savings tax incentive as eligible carbon offset activities.

Spain

Mandatory disclosure regulations published

Royal Decree 243/2021 of April 6, 2021, introducing regulations on the implementation of EU mandatory disclosure requirements (DAC6) into Spanish law, was published in the Official Gazette and entered into force on April 8, 2021.

On April 13, 2021, a ministerial order introducing the model DAC6 reporting forms was issued, which triggered the start of DAC6 reporting deadline. This is now set for May 13, 2021.

The tax authorities have released a [guide](#) (in the form of FAQs), clarifying certain (mainly procedural) aspects of the DAC 6 obligations, as well as a [technical manual](#) on the reporting forms.

Turkey

Increase of corporate income tax rate

On April 2, 2021, the Turkish parliament submitted a draft law providing for an increase in the corporate income tax rate for tax years 2021 and 2022. Turkey's current corporate income tax rate (20 percent) would be increased to 25 percent for 2021 and 23 percent for 2022.

Ukraine

Completion of work for introduction of three-tiered transfer pricing documentation

Ukraine's Ministry of Finance noted the completion of work for the introduction of the three-tiered transfer pricing documentation of BEPS Action 13, including the Local file, Master file, and Country-by-Country (CbC) report.

The release also confirmed that the CbC reporting requirement applies for the first time for the financial year ending in 2021, but not earlier than the year in which the competent authorities conclude a multilateral agreement on the automatic exchange of CbC reports (the CbC MCAA). The Master file requirement applies for the first time for the financial year ending in 2021 and the notice of participation requirement applies for the first time in 2021 in respect of 2020.

United Kingdom

HMRC guidance on crypto assets

HMRC have replaced their papers on the taxation of crypto assets with a dedicated HMRC Manual. The new document largely reflects pre-existing guidance but has been extended to cover new topics – such as staking, derivatives over crypto assets, and clarifies previous comments on gambling. In addition, the guidance provides some commentary on differences in tax treatment of non-fungible tokens.

For more details please refer to KPMG's [TaxNewsFlash](#)



Local Courts

Spain

Dividend withholding tax on sovereign wealth funds

The Spanish Supreme Court recently held that the dividend withholding tax imposed under Spanish law on distributions to non-Spanish sovereign wealth funds is contrary to EU law.

In both cases (no. 253/2021 and no. 290/2021) the taxpayer was a Norwegian public entity that had been subject to Spanish withholding tax on dividends sourced in Spain. The possibility to apply any exemption under Spanish domestic tax law was not available to the Norwegian entity. However, the income would have been exempt if it had been received by a Spanish equivalent government body. The Spanish Supreme Court held that the disputed regime was contrary to the EU / EEA free movement of capital.

The decisions may provide opportunities for refunds of the Spanish withholding tax where unduly applied to foreign sovereign wealth funds.

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



KPMG Insights

Future of Tax webcasts

Visit the [Future of Tax & Legal Webcast Series page](#) for webcasts currently open for registration, browse upcoming topics that will be covered and watch any webcasts replays you might have missed.

Registration now open

Towards an effective Carbon Border Adjustment Mechanism

26 April (9:00 EST) | [Register](#)

EU Financial Services Tax perspectives

28 April (9:00 EST) | [Register](#)

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 \(updated February 23, 2021\)](#). 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

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