E-News from KPMG's EU Tax Centre

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Issue 133 – May 31, 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

Italy appeals against European Commission's decision regarding corporate tax exemptions for ports

Italy has decided to appeal the European Commission's decision according to which the domestic corporate tax exemptions for ports are not compliant with the EU State aid rules. In December 2020, the Commission determined that Italy's corporate tax regime for port authorities (fully exempt from corporate income tax) represents a selective advantage, which breaches EU State aid rules. Italy was requested to abolish the tax exemption by January 1, 2022. For more details on the decision please refer to E-news 124.

For more information on the appeal, please see Case T-166/21.

Infringement Procedures and CJEU Referrals

Referrals to the CJEU

Italy: Compatibility of reporting and withholding tax obligations with EU law

On February 9, 2021, the Consiglio di Stato (Italy) made a reference for a preliminary ruling in the a case (C-83/21) that concerns the compatibility with the freedom to provide services of certain reporting and withholding obligations imposed on online property intermediation service providers. Specifically, intermediaries are required to (i) collect information relating to short-term rental agreements and report it to the tax authorities, and (ii) withhold tax on payments performed by the users of the services and remit it to the Italian treasury.

EU Institutions

EUROPEAN COMMISSION

Communication on Business Taxation for the 21st century published

On May 18, 2021, the European Commission released a Communication on Business Taxation for the 21st century that is intended to promote “a robust, efficient and fair business tax system in the European Union.”

The plan sets out both a long-term and short-term vision to support Europe's recovery from the coronavirus (COVID-19) pandemic and introduces a set of action points:

1. Legislative proposal for the publication of effective tax rates paid by large companies, based on the methodology under discussion in Pillar 2 (by 2022).

2. Legislative proposal setting out rules to rules to neutralize the misuse of shell entities for tax purposes (referred to as "ATAD 3" in the Commission Q&A) (by Q4 2021) – but subsequently postponed to Q1 2022.

3. Recommendation on the domestic treatment of losses (released alongside the Communication).

4. Legislative proposal creating a Debt Equity Bias Reduction Allowance (DEBRA) (by Q1 2022).

5. Business in Europe: Framework for Income Taxation or BEFIT, moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States (2023).

For more details please refer to ETF 448 and the Commissions’ Q&A webpage.

First steps after Commission Communication on Business Taxation for the 21st century

As a first set of actions following its May 18, 2021 Communication on Business Taxation for the 21st Century, on May 20, the European Commission started a consultation process for a legislative proposal setting out rules to neutralize the misuse of shell entities for tax purposes (Action 2 of the Communication).

The same day, a Recommendation on the tax domestic treatment of losses (Action 3 of the Communication) was published in the Official Journal of the European Union.

For more details please refer to ETF 449.

2021 Annual Report on Taxation

On May 18, 2021, the European Commission published the 2021 Annual Report on Taxation. The document provides an yearly assessment of EU Member States' tax policies and their progress towards achieving the EU's main tax priorities, which include digital and green transitions, social fairness and prosperity and combatting tax fraud.

Findings of the report include:

- a slight reduction of the average corporate income tax rate across Member States (to 21.5 percent in 2020 from 21.9 percent in 2019);
- Member States continued to introduce tax measures aimed at supporting innovation and productivity, as well as at addressing the corporate debt bias;
- environmental taxation remained underused in many Member States;
- while Member States have introduced several measure against aggressive tax planning, significant measures are still needed.

For more details please refer to the Commission's press release.

EUROPEAN PARLIAMENT

FISC draft report on reforming the Code of Conduct Group

On May 25, 2021, the draft report on "Reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group)" was presented during a meeting of the European Parliament's Subcommittee on Tax Matters (FISC). The discussion was preceded by a public hearing attended by the Chair of the Code of Conduct Group and by tax policy experts - see E-news 131.

The draft report sets out several recommendations, including:

- the adoption of an EU definition for "minimum level of economic substance", preferably based on a formulaic approach;
- the revision of the criteria, the governance and the scope of the Code of Conduct on Business Taxation through a legally binding instrument, that would allow for a transition to qualified majority voting;
- the assessment of all regimes proposing a tax rate below the one globally agreed under

the Organisation for Economic Co-operation and Development's (OECD) Pillar 2;
- an increased role of the Parliament in designing and adopting measures targeted at tackling harmful tax competition.

The FISC vote on the report is scheduled for July 13 and a final vote is expected during the European Parliament's plenary session in September.

For more details please refer to the related press release.

FISC report on an European tax system in the post-COVID economy

On May 25, 2021, the FISC sub-committee discussed amendments to the draft own-initiative report "Creating an economically, socially and environmentally sustainable European tax system in the post-COVID environment". The report asks the Commission to design a tax framework that would accomplish three main objectives: ecological transition, reduce social inequalities and restore business competitiveness – see E-news 129.

A total of 256 amendments were tabled to the draft report and a final vote is expected during the European Parliament's plenary session in the third week of June.

FISC public hearing on how technology could support tax fraud reduction

On May 25, 2021, the FISC sub-committee held a public hearing on the digitalization of tax administrations and the opportunities brought by the tax technology in the fight against tax fraud, evasion and avoidance.

Peter Green (Forum on Tax Administration, OECD) presented the report Tax Administration 3.0, which was published in December 2020 and is focused on the digital transformation of tax administrations. Experts from the European Commission described their work in helping national tax authorities share data and the use of Blockchain to simplify tax compliance and reduce tax fraud.

For more details please refer to the European Parliament's press release or watch the replay of the hearing.

Fiscalis Programme 2021 – 2027 approved

On May 20, 2021, the European Parliament approved the Regulation establishing the Fiscalis Programme for cooperation in the field of taxation 2021–2027 (Fiscalis). The programme is based on a proposal published by the European Commission in 2018. An early second-reading agreement was reached during trilogue negotiations in March 2021, and the vote represents the Parliament's formal approval of the Regulation.

Fiscalis aims to enhance cooperation between national tax authorities, encourage the exchange of information and support the build of administrative capacity, for the purposes of combating tax fraud, tax evasion and tax avoidance, and improve tax collection. Over the seven year period, a total of EUR 269 million will be allocated for its implementation. Similar initiatives have been in place in the EU since 1998.

Several changes requested by the Parliament were included in the final text, such as:

- a list of priority actions for national tax authorities, aimed at fighting tax evasion and tax avoidance;
- the financing of joint audits of several national tax authorities;
- opening the Programme to certain third countries;
- annual hearings to discuss lessons learnt from the Programme.

For more details please refer to the European Parliament's press release or the factsheet of the Programme.

OECD and other International Institutions

OECD

Conference of the parties to the MLI approve an opinion on interpretation and implementation

On May 20, 2021, the OECD announced that the Conference of the Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) approved an opinion setting out a series of guiding principles for addressing questions about the interpretation and implementation of the MLI, i.e.

- the MLI should be interpreted in light of its object and purpose (i.e. implement the BEPS measures related to double tax treaties);
- each of the provisions of the MLI should be interpreted and implemented in light of the policy objectives of the relevant tax treaty-related BEPS measures implemented via the MLI;
- the MLI applies alongside double tax treaties. In case of incompatibility, the MLI provisions will prevail;
- the MLI should be interpreted in light of the consent given by each contracting jurisdiction, as stated in their MLI Positions;
- compatibility clauses set out whether, and to what extent, provisions in the MLI interact with existing provisions of covered tax agreements;
- the notification clauses ensure clarity and transparency about the existing provisions of covered tax agreements.

For more details, please refer to the OECD's opinion.

Report on tax cooperation for development in the COVID-19 era

On May 19, 2021, the OECD released the report "Tax cooperation for development: progress report in the COVID-19 era". The document outlines how developing countries have interacted with the OECD on various tax policy and administration issues, including the development and implementation of international standards, country-level capacity building programmes delivered through a variety of platforms and modalities, guidance and data developed and analyzed by world-class experts on tax policy and administration.

For more details please refer to OECD's report.

BEPS Action 14 stage 2 peer review monitoring reports for Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey

On May 25, 2021, the OECD released stage two BEPS Action 14 (minimum standard on tax-treaty related dispute resolution) peer review monitoring reports for Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey

Based on the OECD's announcement, the results from the peer review and peer monitoring process show positive changes across all eight jurisdictions. Highlights include:

- the MLI was signed by all eight jurisdictions and has already been ratified by three of them;
- Hungary, the Slovak Republic, Slovenia and Turkey have a documented bilateral notification/consultation process when an objection is considered as being not justified by their competent authority.
- Estonia, Iceland, Romania, Slovenia and Turkey closed MAP cases within 24 months, while Greece decreased the time needed to close MAP cases.
- all jurisdictions have issued or updated their MAP guidance.

For more details please refer to OECD's announcement.

Local Law and Regulations

Czech Republic

Digital services tax update

On May 12, 2021, the Czech digital services tax (DST) bill went through the second reading in the lower house of the Parliament. Several amendments were proposed, which will be voted on in the third reading, including:

- postponing the date when the DST would enter into force to January 1, 2022;
- a decrease of the DST rate from 7 percent to 5 percent;
- an additional reduction of the tax rate to 3 percent (unclear if for all types of digital services or only for intermediation through digital platforms and sale of data);
- excluding the intermediation of the sale of goods through digital platforms from the scope of the DST.

If the bill is approved by the Lower House of the Czech Parliament, it will be discussed in the Senate, which can either approve it or send it back to the lower house of Parliament.

Germany

Tightening of German anti-treaty shopping rule – approved

On May 31, 2021, the German Parliament passed the "Act to modernize the relief from withholding tax and the certification of capital gains tax", in the version proposed by the Finance Committee.

Under the Act, a foreign entity, irrespective of existing double tax treaties provisions, would not be entitled to claim withholding tax relief to the extent that:

- persons holding shares in the company would not be entitled to relief if they earned the income directly ("personal entitlement to relief"); and
- the source of income has no material connection to an economic activity of the foreign entity ('material entitlement to relief').

The provision represents a significant tightening of the German anti-treaty shopping rule and was triggered by a series of rulings from the CJEU including in in joint cases C-504/16 Deister Holding and C-613/16 Juhler Holding, the C-440/17 GS case, as well as in the so-called the "Danish beneficial ownership" cases, i.e. cases C-115/16, C-118/16, C-119/16 and C-299/16 on the Interest and Royalties Directive and cases C-116/16 and C-117/17 n the Parent-Subsidiary Directive),

Real estate transfer tax – anti-abuse measures approved

On May 7, 2021, the German Federal Council approved a law introducing measures aimed at tackling real estate transfer tax avoidance schemes, such as abusive share deals. Changes include:

- reducing the participation threshold for transactions subject to transfer tax (from 95 percent to 90 percent);
- increasing the period during which ownership changes would trigger taxes (from five to ten years).

The law will enter into force on July 1, 2021.

Greece

Corporate income tax reduction enacted

On May 18, 2021, the law enacting the corporate income tax reduction was published in the Greek Official Gazette. Based on the new provisions, the standard corporate income tax rate decreases to 22 percent (from the current 24 percent) starting with the profits of 2021.

Changes brought to the treatment of foreign permanent establishment losses

On May 18, 2021, the Greek tax authorities issued Circular E. 2100 amending the tax treatment of losses incurred by foreign permanent establishments.

Based on previous guidelines, while both business profits originating domestically and those originating in another EU/EEA state were subject to taxes in Greece, companies were not allowed to deduct non-final permanent establishment losses incurred abroad. The different treatment was considered a restriction on the right of establishment by the European Commission, which sent a reason opinion to Greece asking for the guidelines to be amended.

Based on the new circular, foreign losses incurred by a permanent establishment (PE) in an EU/EEA country can be deducted in Greece under certain conditions, provided that the double tax treaty concluded between Greece and the PE country does not allow for the exemption of permanent establishment profits.

Italy

Italian tax agency clarifies taxation of dividends paid by Italian companies to EU/EEA investment funds

On May 11, 2021, the Italian Revenue Agency published Tax Ruling no. 327/2021, providing clarifications on the taxation of dividends paid by Italian companies to investment funds incorporated in the Netherlands. The clarification is a result of an query by a Dutch-based asset management company (a tax resident in the Netherlands) that manages various investment funds which are pass-through entities and have no tax liability in the Netherlands. The Dutch company inquired as to the application to such dividend distributions of the withholding tax (WHT) exemption introduced by Italian Budget Law for 2021. The Italian Revenue Agency confirmed that dividends distributed as of January 1, 2021 by Italian companies to investment funds are entitled to benefit from the WHT exemption if one of following conditions is met:

- the fund is set up under Directive 2009/65/EC of 13 July 2009 of the European Parliament and of the Council ("UCITS Directive"); or
- the Non-UCITS fund is managed by an Alternative Investment Fund Manager (AIFM) or management company subject to regulatory supervision in its country and established in accordance with the EU Directive 2011/61/EU (AIFM Directive).

Moreover, to benefit from the WHT exemption, both UCITS and alternative investment funds must be established in an EU/EEA Member States.

The Agency further noted that the WHT exemption applies to EU/EEA investment funds complying with these regulatory requirements, irrespective of their legal form and tax status.

Kenya

Digital services tax update and country-by-country reporting introduced

Kenya's Finance Bill, 2021 has been introduced in the National Assembly for first reading. Proposed changes include limiting digital services tax to non-resident entities, updated beneficial ownership requirements for the purposes of applying the reduced double tax treaty rates and the introduction of country-by-country reporting for multinationals.

For more details please refer to a KPMG TaxNewsFlash.

Nigeria

Country-by-country reporting suspended

The Federal Inland Revenue Service issued a notice suspending country-by-country (CbC) reporting obligations for branches and subsidiaries of multinationals operating in Nigeria. The suspension is aligned with Nigeria's current status as a "non-reciprocal jurisdiction", based on which Nigeria provide CbC reports to the 61 exchange partners under the OECD's Multilateral Competent Authority Agreement, but does not receive any CbC reports.

For more details please refer to a KPMG TaxNewsFlash.

Norway

Proposed defensive measures against low-tax countries

On May 11, 2021, the Norwegian Government presented the revised national budget for 2021, which is expected to be finalized by the end of June.

From a tax perspective, key measures include updated controlled foreign companies (CFC) rules, as well as defensive measures against low-tax countries, i.e. a jurisdiction that imposes an effective corporate income tax rate that is lower than two-thirds of the equivalent Norwegian rate)In short, a 15 percent withholding tax would apply on interest, royalties, and rent payments made to a company located in a low-tax jurisdiction (currently these payments are not subject to withholding tax in Norway). If enacted, the new withholding tax rules would apply from July 1 (for interest and royalties), respectively from October 1 (for rent payments).

Poland

Proposed economic stimulus plan includes R&D incentives

On May 15, 2021, Poland's government unveiled details about a new stimulus plan designed to bolster the economy following the coronavirus (COVID-19) pandemic. Concerning corporate income tax, the plan would introduce a new relief related to automation and would extend the existing research and development (R&D) and intellectual property (IP) relief schemes.

For more details please refer to a KPMG TaxNewsFlash.

Law to implement the 5th EU Anti-Money Laundering Directive published

On May 14, 2021, Poland published the law for the implementation of the 5th EU Anti-Money Laundering (AML) Directive.

Qatar

Transfer pricing clarifications

The General Tax Authority issued a set of "frequently asked questions" (FAQs) intended to clarify transfer pricing documentation rules—including clarifications for the preparation of the Master file and Local file, as taxpayers prepare for their first transfer pricing compliance for the financial year 2020.

The FAQs specify that the main purposes of the transfer pricing documentation are to demonstrate that taxpayers have given proper consideration to the transfer pricing requirements and to provide the tax authority with the necessary information and tools to evaluate the taxpayer's overall tax risk. The FAQs stress the responsibility and importance of contemporaneous documentation, as required by regulations.

For more details please refer to a KPMG [TaxNewsFlash].

Russia

Russia / Netherlands double tax treaty officially terminated

On May 26, 2021, the President of Russia signed a law ratifying the unilateral termination of the 1996 tax treaty with the Netherlands.

Negotiations to amend the treaty follow an instruction from the Russian president earlier in 2020 for the Russian Ministry of Finance to review and negotiate revisions to any tax treaties providing for a withholding tax rate lower than 15 percent on dividend and interest income. Negotiations with the Netherlands were not successful and the Russian Federation decided to move forward with the termination of the treaty.

Sweden

Proposed environmental tax measures

According to a new proposal, a tax credit of 3.9 percent would be available for equipment acquisitions made in 2021 by business taxpayers. The legislation is designed to encourage businesses to take action to reduce further their CO_2 emissions.

The tax credit would be based on a specially calculated basis related to the acquisition value for such eligible equipment—defined under the tax law to include machinery and other fixtures and fittings intended for permanent use; certain building and ground equipment; and, in certain instances, intellectual property rights treated as equipment. However, patents, licenses, and trademarks that are acquired from another would not be eligible equipment for these purposes.

For more details please refer to a KPMG [TaxNewsFlash].

Switzerland

Proposed environmental tax measures, increased CO_2 tax levy

Businesses that do not commit to implement a sustainable business strategy may face financial consequences, according to the new Swiss CO_2 Act, which is expected to be approved by referendum on June 13, 2021 and come into force by 2022.

Sectors that may be affected include:

- businesses using thermal fossil fuels: the proposed CO2 law would provide for an increase of the CO2 levy on thermal fossil fuels. Taxpayers that commit to improve the efficiency of their installations with regards to CO2 emissions by a certain factor each year until 2030 would, however, be able to avoid an increase in their tax liabilities by claiming a refund of the CO2 levy;
- oil industry: with the proposed CO2 law, producers and importers of fossil fuels in Switzerland would have to compensate a higher rate of their CO2 emissions. In instances of a failure to comply, the new measures would result in greater penalties that could not be offset by a surcharge on fuel, resulting in a potential loss of profitability;
- automobile industry: automotive manufacturers and importers would be subject to progressively tighter CO2 emission targets for new passenger cars and new light commercial vehicles. New target values would also be introduced for heavy commercial vehicles imported into or produced in Switzerland;
- real estate and construction sectors: new buildings constructed as of 2023 would not be allowed to generate CO2 emissions. Stricter CO2 emission thresholds would also be imposed with respect to existing buildings;
- airlines and private jet operators: with the aim to encourage the use of alternative means of transport, the proposed CO2 measures would impose an incentive tax on flight tickets and private jet flights departing from Switzerland.

For more details please refer to a KPMG TaxNewsFlash.

Ukraine

Resolution to combat money laundering

On May 12, 2021, the Ukrainian Ministry of Finance announced the approval of a resolution to combat money laundering, including measures to ensure transparency of information on ultimate beneficial owners of legal entities.

United Kingdom

Finance Bill 2021 update

On May 24, 2021, additional amendments to the Finance Bill 2021 were tabled, including:

- super-deduction: the super-deduction and SR allowance provisions would be extended to leased background plant or machinery;
- hybrid and other mismatches: an amendment proposes making a prior change to a different section, to ensure that it operates as intended. The prior amendment intended to switch off counteraction in relation to a sub-10 percent participant in a transparent fund operates as intended when determining the percentage holding a partner has in a partnership taking into account the interests of connected persons;
- Stamp Duty Land Tax (SDLT) surcharge for overseas buyers: the surcharge operates as an extra 2 percent added to all residential rates of SDLT and applies to 'non-resident' individuals, unit trusts, partnerships and corporates buying residential property in England and Northern Ireland, as well as to beneficiaries under life-interest and bare trusts and trustees of other types of trust, subject to some limited exceptions. The amendments take corporate trustees of settlements out of the scope of the non-UK

control test and seek to ensure that the attribution of share rights rules in the non-UK control test have the intended effect.

For more details please refer to a KPMG TaxNewsFlash.

Plastic packaging tax

On May 10, 2021, HMRC published a policy paper providing guidance on the new Plastic Packaging Tax, expected to be effective from April 1, 2022 and aims at encouraging the use of recycled rather than new plastic within plastic packaging.

The tax will apply to plastic packaging manufactured in, or imported into, the UK where the plastic used is less than 30 percent recycled. The rate of the tax will be GBP 200 per metric tonne of plastic packaging.

For more details please refer to a HMRC's Policy paper.

KPMG Insights

KPMG's EU Tax perspective webcast - Tuesday 1 June

As governments, businesses and societies start to look towards the 'new reality' of life after COVID-19, the pandemic has undoubtedly changed the business ecosystem. To cushion the economic fall-out from the pandemic, the European Union and individual jurisdictions across Europe are considering introducing additional tax policy measures, alongside increasing regulation, rising tax audit demands and heightened corporate and social responsibility risks.

Against this backdrop, we are delighted to invite you to our "EU Tax perspectives" webcast, during which our panel of KPMG specialists will share their insights on some of the latest developments from across the EU affecting multinational groups operating in Europe. Please access the event page to register.

KPMG Italy webinar on Italian digital services tax - Tuesday 8 June

Although the first digital services tax payment is due on 16 May 2021, there are several aspects that have still not been clarified by the Italian Tax Authority. The Italian KPMG Tax & Legal Team will hold a client webinar to discuss these aspects and to share practical examples and experiences in the field. During the webinar, samples of monthly ledgers and an explanatory report will be shown.

The webinar will be held on Tuesday 8 June at 5:00pm (CET). Please access the event page to register.

2021 KPMG Virtual MESA Tax Summit

As we look to the future with growing optimism, the KPMG Virtual MESA Tax Summit will bring together distinguished regional and international speakers to share their perspectives on emerging tax and business considerations.

Though we are unable to meet in person this year, we are pleased to invite you to what will be a memorable virtual summit. The discussions at the summit will focus on the following:

- the changing tax, regulatory and economic landscape in the new reality
- international transfer pricing developments and impact on the region
- the tax function of the future

The summit will provide you the opportunity to reflect on broader economic, geopolitical and regulatory macrotrends affecting businesses in the region as well as to explore new approaches, technologies and emerging trends to help the tax function adapt and better position for the future.

Visit the event website to view the agenda, speaker line up and to complete your registration.

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.

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Key links

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