# E-News from KPMG's EU Tax Centre

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## E-News from the EU Tax Centre

## Issue 139 – September 24, 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.

## Latest CJEU, EFTA and ECHR

### CJEU decision on the Belgian excess profit ruling system

On September 16, 2021 the Court of Justice of the European Union ("CJEU" or Court") gave its decision in the Belgian "excess profit" tax ruling system case (C-337/19 P).

The CJEU ruled that the Commission was correct to conclude that the Belgian tax rulings represent an aid scheme and the CJEU therefore set aside the judgement of the General Court of February 14, 2019 which annulled the Commission decision. The Court also noted that, given the state of the proceedings, it is now up to the General Court to decide if the excess profit exemptions represent unlawful Stat aid, and if yes, if the recovery of the aid infringes the principles of legality and protection of legitimate expectations. Consequently, the Court ruled that


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the case should be referred back to the General Court.

For more details please refer to ETF 455.

### Advocate General opinion on German inheritance tax rules

On September, 16, 2021, Advocate General (AG) Jean Richard de la Tour of the CJEU gave his opinion in the case of XY v Finanzamt V (Case C-394/20). The case concerns German inheritance tax rules on immovable property.

The plaintiff in the case at hand is an Austrian tax resident, who inherited immovable property located in Germany and sought to deduct from her German inheritance tax liability debts under the succession (i.e. cost of acquiring claims to reserved portions from other heirs). German law distinguishes between unlimited tax liability of the heirs and limited tax liability. The latter occurs in cases where neither the deceased, nor the heir, had their place of residence or habitual residence in Germany. Under German law, a different (reduced) inheritance tax allowance applies for individuals subject to limited tax liability. Moreover, debts arising from reserved portions are not deductible for inheritance tax purposes, whereas similar debt would represent a fully deductible costs for heirs subject to unlimited tax liability.

Firstly, in the specific case of the lower allowance available to non-residents, the AG noted that the different treatment represents a restriction of the free movement of capital. However, in the AG's opinion, the restriction is justified by the principle of territoriality and is proportionate to the objective pursued.

Secondly, the AG analyzed the provisions which disallow the deductibility of debt arising from reserved portions in the case of limited tax liability heirs and concluded that the difference in treatment is contrary to the free movement of capital. The AG also noted that, in his opinion, such provisions could not be justified by the arguments brought Germany, i.e. the need to safeguard the 'cohesion' of the German tax system and the principle of territoriality.

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## EU Institutions

### COUNCIL OF THE EU

### Public Country-by-Country Reporting Directive – update

Based on the provisional agenda published on their webpage, the Competitiveness Council is expected to discuss the Directive amending Directive 2013/34/EU as regards disclosure of income tax information (the “public CbCR Directive” or “the Directive”) on September 29, 2021.

As previously reported, the European Parliament committees endorsed the political agreement on the public CbCR Directive earlier this year – see ETF 451. Once the EU Council adopts the

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Directive, the European Parliament is expected to approve the Council's position in one of the upcoming plenary sessions.

## EUROPEAN PARLIAMENT

### European Parliament adopts resolution on the effectiveness of DAC

On September 16, 2021, the European Parliament adopted a resolution on " Implementation of EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome". The report sets out the Parliament's views on the functioning of the Directive on Administrative Cooperation (DAC) and was previously adopted, on May 27, by the Economic and Monetary Affairs Committee (ECON) – see E-news 134.

As previously reported, the findings are focused on DAC1 to DAC4, as DAC5 and DAC6 have not been in force for a length of time that would allow their impact to be assess. The document identifies issues resulting both from the way the DAC's provisions were implemented, as well as from the current scope of the directive. The report also suggests several actions to improve the efficiency of exchange of information within the EU, including an increased and systematic control exercised by the national authorities over the information received. The Commission is called upon to ensure that the upcoming update of the directive (DAC8) will consider the findings and include provisions to close existing loopholes. The Parliament also urges the European Commission to initiate immediate infringement proceedings against Member States which did not implement the DAC correctly.

For more details please refer to European Parliament's press release or Mr. Sven Giegold's (the rapporteur of this dossier) blog post.

### FISC public hearing on tax transparency

On September 9, 2021, the European Parliament's Subcommittee on Tax Matters (FISC) held a public hearing on tax transparency - in the context of the increased importance of this topic in the EU, and on the wider international tax agenda. Speakers included leading tax transparency experts and representatives of the business environment. The hearing aimed to collect feedback on ways to enhance tax transparency, as well as views on effective approaches and issues that might be encountered.

Ms. Dalia Grybauskaité (Co-Chair of the High Level Panel on International Financial Accountability, Transparency and Integrity (FACTI)) presented the panel's activity and reiterated their recommendations – as published in a February 2021 report – aimed at strengthening financial integrity. Mr. Eelco van der Enden (Member of the Board of Directors at Global Reporting Initiative (GRI)) provided an overview of the GRI-207 tax standards and its role within the Environmental, Social & Governance (ESG) tax landscape. Mr. Enden also noted that an increasing number of large multinationals are reporting voluntarily under GRI-207, and accompany their reports with quality assurance statements issued by external accountants.

Mr. Michael Jaeger (General Secretary of Taxpayers Association of Europe) advocated against the EU's public Country-by-Country Reporting initiative. In his view, tax transparency is already

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dealt with by the Organisation for Economic Co-operation and Development (OECD) and stricter rules would negatively impact Member States with low corporate income tax rates.

For more details please refer to the European Parliament's press release, the speakers' statements or watch the replay of the debate.

### FISC – calendar of upcoming public hearings, own-initiative reports and commissioned studies

The FISC Subcommittee published details on their upcoming activity, as of September 13, 2021. Future meetings include:

- September 30: workshop to present a study on "The risks and benefits of technology in the tax area: from modernization of tax systems to increased risks of fraud". A public hearing on the topic was held on May 25, 2021 – see E-news Issue 133;
- October 11: exchange of views with Commissioner Paolo Gentiloni;
- October 11: public hearing on "The Impact of National Tax Reform on the EU Single Market". A FISC own-initiative report will also be prepared on this topic;
- October 27: public hearing on "A European Withholding Tax Framework". A FISC own-initiative report will also be prepared on this topic;
- October 27: exchange of views with the Finance Committee of the Slovenian Parliament. The event is the fourth in a series of meetings between FISC and their Member State counterparts, aimed at enhancing cooperation between the European Parliament and national Parliaments. Previous meetings were held with the Finance committees of the Portuguese, German and French Parliaments;
- October 28: public hearing on "The Luxletters Revelations";
- November 9: exchange of views with Daniele Franco, Italian Minister of Economy and Finance.

In addition, several studies have been requested by the FISC Subcommittee, including *inter alia*:

- "The risks and benefits of technology in the tax area: from modernization of tax systems to increased risks of fraud (crypto and blockchain)". The findings of the study may be relevant in the context of the upcoming proposal to extend the scope of the Directive on Administrative Cooperation to crypto-assets and e-money (DAC8) – see E-news Issue 128;
- "Development of potentially harmful tax practices and harmful competition in the area of personal income tax and wealth tax";
- "Evaluation of the anti-tax avoidance and evasion measures introduced in the recent years (mainly ATAD and DAC)".

For more details please refer to FISC's workload document.

### BUDG discussion on postponed own resources proposal (including digital levy)

On August 31, 2021, the European Parliament's Committee on Budgets (BUDG) exchanged views with the European Commission regarding the delay of the new own resources proposal. Under the Interinstitutional Agreement of December 16, 2020, the European Commission committed to put forward by June 2021 an own resources proposal – which would include the

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digital levy proposal and the framework to make revenues from the carbon border adjustment mechanism (CBAM) and the revised Emissions Trading System (ETS) resources to the EU budget.

The Commission announced earlier this year – see E-news Issue 136 – a delay in the digital levy proposal until the autumn, once further details of the global reform have been ironed out. Consequently, the entire own resources package was postponed.

The Commissioner for Budget, Johannes Hahn, confirmed that the Commissions will release a digital levy proposal after the G20 meeting in October 15-16 “no matter if there is an agreement or not”. the Commissioner also noted that the whole package of three new own resources is needed in order to generate sufficient funds for the repayment of “NextGenerationEU” borrowing.

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

## OECD and other International Institutions

### OECD

#### Summary of the tax database update (2021)

On September 8, 2021, the OECD published a summary of the recent tax database update for 2021. Based on the summary document, from a corporate income tax (CIT) perspective:

- in 2021, the combined CIT rates in OECD countries ranged from 9 percent (Hungary) to over 31 percent (Portugal);
- between 2000 and 2021, statutory CIT rates decreased in all OECD countries (average decrease was 9.5 percent);
- four OECD countries (and EU Member States) – Germany, Latvia, Portugal and the Slovak Republic – have raised their statutory CIT rates since 2010, but their CIT rates are still lower in 2021 than in 2000.

As previously reported, a detailed Corporate Tax Statistics report and related supporting data was released in July this year – see E-news Issue 138.

#### Algeria joins Global Forum on Tax Transparency

On September 1, 2021, Algeria joined the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes, becoming the 163rd member of the Forum.

For more information, please refer to the OECD press release.

#### Togo joins agreement to address the tax challenges arising from the digitalization of the economy

On August 31, 2021, Togo joined the OECD/G20 Inclusive Framework (IF) on BEPS as its 140th

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member. Through its membership, Togo has also committed to endorse the OECD/G20 IF agreement on the two-Pillar solution to reform the international tax rules. Therefore, the global agreement has now been approved by 134 jurisdictions out of the 140 countries that are members of the IF.

## Local Law and Regulations

### Bahrain

Possible introduction of corporate income tax

It has been reported by a news media outlet that Bahrain Parliament's Financial and Economic Affairs Committee (PFEAC) is considering a law that would impose a CIT on commercial establishments and companies in Bahrain.

For more details please refer to a KPMG TaxNewsFlash.

### Denmark

Proposal to make the 130 percent R&D deduction permanent

On September 7, 2021, the Danish Ministry of Finance announced a tax package aimed to support job creation and a greener Demark. *Inter alia*, the package includes a proposal to make the 130 percent deduction applicable for research and development expenses (R&D) permanent. Under current rules, the R&D deduction would cease to apply on December 31, 2022.

Binding opinion on permanent establishment impact of teleworkers

On August 25, 2021, the Danish tax authorities issued a binding opinion on the permanent establishment impact of remote employees working on a permanent basis in Denmark, from home, for a non-resident company. The authorities concluded that individuals do not trigger a permanent establishment exposure for their employer. The opinion was based on the fact that the employer did not require that the individuals work from their home, but instead the individuals voluntarily elected to use their home office. The opinion is consistent with a similar binding answer issued by the Danish tax authorities in April – see E-news Issue 131.

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## Greece

### Greece publishes updated list of jurisdictions with preferential tax regimes

On August 18, 2021, the Greek Public Revenue Authority published the list of jurisdictions with preferential tax regime for the 2020 tax year. Jurisdictions with preferential tax regime are defined in Greece according to the following criteria:

- jurisdictions with zero tax rate; or
- jurisdictions taxing profits, income or capital at a rate which is equal to or less than 60 percent of the CIT rate applicable in Greece.

Under Greek law, payments to individuals or companies located in a country on the list are non-deductible expenses for Greek entities, unless the taxpayer proves that these expenses relate to actual and usual transactions that do not result in tax avoidance.

The following countries have been added to the list: Timor-Leste, Kyrgyzstan, Mongolia, Barbados, Saba, Turkmenistan, and the following countries were removed from the list: Hashemite Kingdom of Jordan, Montserrat, Nauru, Uzbekistan.

## Estonia

### Statement on the OECD Inclusive Framework Agreement

On September 7, 2021, the Estonian government issued a press release confirming support of Pillar One of the OECD/G20 IF agreement. The statement reiterates Estonia's position that Pillar Two is not currently taking into account the country's distribution tax system, under which CIT is not levied when profit is earned, but rather when it is distributed.

The government confirms that they will continue to constructively engage in further discussions and expect that the OECD will agree to accommodate their current tax system.

## Italy

### Ruling on the applicability of dividend withholding tax exemption under the EU – Swiss agreement

The Italian Revenue Agency published a ruling on the interpretation of Article 9 of the 2004 agreement between the European Union and Switzerland. The agreement provides a withholding tax exemption on dividends if certain conditions are met. The ruling was issued with respect to an Italian company, wholly owned by a Swiss parent since August 1, 2020 and which distributed dividends before the two-year holding condition was met.

Based on a circular issued by the Italian Revenue Agency in 2001, the tax authorities took the position that a statement from the taxpayer declaring that the minimum holding period would be met subsequently is not sufficient for applying the dividend tax exemption.

The ruling reiterates that based on settled CJEU case-law (joined cases C-283/94, C-291/94 and

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C-292/94 – Denkavit) Member States are precluded from granting the withholding tax exemption contingent upon meeting the minimum holding period condition at the time of distribution. However, it is up to each individual state to establish their own procedure to ensure compliance with this requirement – and Italy decided not to accept statements due to difficulties encountered in practice with monitoring compliance.

Nevertheless, in the particular case of the taxpayer requesting the ruling, that joined a cooperative compliance program in 2015, the withholding tax exemption can be applied before the minimum holding period is met.

## Poland

### "Polish Deal" – minimum tax to be proposed as part of the proposal package

On September 8, 2021, the Polish Ministry of Finance announced the final revision of the so-called "Polish Deal", a package of amendments to the corporate income tax and individual income tax laws – see E-news Issue 136. The draft bill has been sent to the Lower House of the Polish Parliament. The tax changes are expected to be effective on January 1, 2022.

A key change, from the initial package subject to public consultation, is a proposal to introduce a minimum tax, referred to by the Polish Ministry of Finance as the "large corporate tax". The tax would be imposed on certain taxpayers (resident or non-residents conducting business through a local permanent establishment), which:

- incur losses (other than from capital income);
- have a profitability ratio from their business activity below or equal to 1 percent (capital income is not considered for the purpose of computing the ratio and certain costs are excluded, hence increase the ratio).

Certain exemptions are being considered, including for *companies whose shareholders are only natural persons, that do not own shares in other entities and companies operating in* certain sectors (financial sector, international sea and air shipping, energy and mining)

The tax rate would be 10 percent of the taxable base, that is, the sum of:

1. Four percent of the value of revenues from sources other than capital gains, plus
2. Debt financing costs exceeding 30 percent of specific tax EBITDA (including capital income) incurred for the benefit of related entities, plus
3. The value of deferred income tax resulting from the disclosure of non-amortized intangible assets in tax settlements, to the extent it increases gross profit or decreases gross loss, and
4. The value of costs of purchase of particular services or intangible rights incurred for the benefit of related entities (or entities from countries or territories pursuing harmful tax competition), in the part specified in the legislation.

For more details please refer to a tax alert prepared by KPMG in Poland.

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### United Kingdom

Updated guidance on claiming extended loss carryback

On August 24, 2021, the HMRC updated the policy paper providing guidance on the extended loss carryback. Among others, the document provides clarifications on the temporary extension of periods to which trade losses may be carried back based on the Finance Act 2021.

Thus, losses incurred during 2020 - 2021 and 2021 - 2022 may be carried back for up to three years instead of one year – which is the general loss carry back rule. Losses incurred during these years are to be firstly set off against profits of the most recent year. Furthermore, losses carried back to second and third prior years are capped at GBP 2 million (approx. EUR 2.3 million) - no cap applies for losses carried back one year.

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## KPMG Insights

### Regional perspectives on Pillar 1 and Pillar 2 developments webcast – replay now available

The replay from KPMG's "Regional perspectives on Pillar 1 and Pillar 2 developments" September 14 webcast is now available on KPMG's Future of Tax & Legal webcast series page. In this session, KPMG specialists shared views from the Asia Pacific, Africa and Latin America regions as to the latest developments around Pillar 1 and 2, how they are playing out in these jurisdictions and what multinational tax leaders need to consider now.

### Insights into new rules for Digital Platform Operators webcast – Wednesday, October 6

This webcast will provide insights into the new rules under the EU Directive on Administrative Cooperation in the field of taxation ('DAC7'), the OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy, and the potential impact these rules may have on Digital Platform Operators.

The webcast will also provide insights into the companies qualifying as Digital Platform Operators; on the basis of the EU Directive and the OECD Model Rules many companies are expected to qualify as Digital Platform Operators and would need to consider the new rules.

Please access the event page to register.

### Defensive measures in the EU against non-cooperative jurisdictions for tax purposes

Following the publication in November 2019 by the EU Code of Conduct Group (CoCG) of guidance on defensive measures against jurisdictions deemed un-cooperative (in the tax area)

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by the EU, Member States committed to implementing and applying from January 1, 2021, at least one from a suite of legislative defensive measures suggested by the CoCG.

The "*Summary of defensive measures against non-cooperative jurisdictions for tax purposes report*" provides a high level overview of defensive tax and administrative measures adopted by a selection of EU/EEA jurisdictions, plus the UK, against countries included on the EU list of non-cooperative jurisdictions for tax purposes as well as on equivalent national lists.

For further details please refer to the dedicated KPMG page and the related slip sheet.

### European Commission agenda for business taxation in the EU – BEPS 2.0 and beyond

KPMG's EU Tax Centre prepared an overview of the European Commissions' Communication on "Business Taxation for the 21st Century" (the Communication). The document summarizes the Commission's views on the EU's tax policy agenda and their plans for the implementation of the rules to be agreed upon at international level under the OECD's BEPS 2.0 project.

For further details please refer to the related slip sheet.

### Country-by-country reporting

Tax transparency is here to stay. A combination of public pressure and political willpower at both the G20/OECD and European Union (EU) levels has resulted in a paradigm shift in the global tax landscape.

Non-public country-by-country reporting is certainly helping tax authorities gain a better understanding of the overall tax picture of an MNE business and structure, and help ensure better coordination between authorities to prevent double non-taxation. Further on public country-by-country reporting brings additional considerations and concerns to be weighed against the perceived benefits.

For the latest information on the EU's initiatives on public and non-public country-by-country reporting please refer to the dedicated KPMG page.

### 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

### KPMG Insights on the EU Green Deal

The KPMG Virtual Center of Excellence (VCOE) for Excise and Environmental Taxes and KPMG member firm professionals developed a set of materials on the EU Green Deal. For further details please refer to the dedicated KPMG umbrella page, or to one of the targeted sub-pages:

- Carbon Border Adjustment Mechanism (CBAM): overview of the July 14 CBAM regulation proposal, one-page summary of the proposal and insights on how the

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draft regulation fits in the wider WTO and global framework;
- Energy Taxation Directive (ETS): overview of the proposal to revised the ETS;
- EU's plastics tax: dedicated webpage.

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## Key links

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