KPMG

E-News from KPMG's EU Tax Centre

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Issue 142 – November 9, 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.

EU Institutions

EUROPEAN PARLIAMENT

EU Public Country-by-Country Reporting Directive approval

On October 28, 2021, the Economic and Monetary Affairs Committee of the European Parliament (EP) approved the proposed Directive on EU public Country-by-Country Reporting Directive. The approval by the EP committee follows the adoption of the proposed Directive by the Council of the EU in September 2021. The next stage is for the Directive to be voted on at an upcoming plenary session of the European Parliament (scheduled for the November 10-11 plenary session) before being published in the Official Journal of the European Union.

For more information, please refer to Euro Tax Flash Issue 456.

European Parliament hearing establishment of European withholding tax framework

On October 27, 2021, the European Parliament subcommittee on tax matters (FISC) presented a draft report and held a public hearing on the establishment of a European withholding tax framework. At the meeting, members of the European Parliament (MEPs) and participants noted the need to improve the current system and discussed with experts the best methods for reforming withholding tax systems in Europe in order to reduce fraud in the area of withholding tax relief. MEPs noted the need to strike a balance between tackling fraudulent practices which lead to non-taxation and inappropriate tax refunds with the need to ensure the reduction of double taxation for enterprises and investments. In this regard, much of the discussion focused on how technology – particularly blockchain technology – could be used in a new withholding tax system. MEPs also highlighted the need for national tax authorities to enhance cooperation in this area going forward.

In particular, the proposals in the draft report included the introduction of:

- A system to ensure all dividend, interest and royalty payments out of the EU are taxed at a minimum effective rate;
- An effective minimum tax rate for dividend payments to EU-based shareholders;
- An effective minimum tax rate for interest and royalties to be included in the EU Interest and Royalties Directive; and
- A harmonized EU procedure for all Member States in respect of withholding tax refunds.

For more information, please refer to the European Parliament press release.

European Parliament subcommittee holds public hearing on LuxLetters investigation

On October 27, 2021, the European Parliament subcommittee on tax matters held a public hearing on the "LuxLetters" investigation project undertaken by a consortium of international journalists. At the hearing, MEPs heard submissions and also raised questions with European Commission representatives, including suggestions that the European Commission should consider an expansion of the scope of the third Directive on Administrative Cooperation (DAC 3) to enhance existing exchange of information requirements, with the aim to capture practices uncovered by LuxLetters.

For more information, please refer to the European Parliament press release.

European Parliament subcommittee discuss global minimum tax rate and EU digital levy

On October 27, 2021, MEPs in the subcommittee on tax matters (FISC) held their fourth meeting with members from the finance committee of the Slovenian national parliament. Key issues discussed focused on the implementation of the recent OECD/G20 agreement on a global minimum effective tax rate and the possible introduction of an EU digital levy. The subcommittee members broadly expressed their satisfaction that a global agreement had been reached, which would establish a minimum effective corporate tax rate of 15%. It was also noted that, while the introduction of an EU digital levy may now prove challenging in light of the international negotiations, other options, such as a tax levied for the use of the EU single market, could be considered as a new resource for the EU budget.

For more information, please refer to the European Parliament press release.

European Parliament resolution in response to the Pandora Papers

On October 21, 2021, the European Parliament adopted a resolution calling for a range of measures to be introduced by the EU authorities in response to the issues exposed in the Pandora Papers investigation. In particular, the resolution urges national EU authorities to launch thorough investigations into any wrongdoing revealed in the Pandora Papers involving their jurisdictions and requests that the European Commission analyze whether changes to the process of determining the EU list of non-cooperative jurisdictions are required.

The resolution also calls for legal action to be taken by the Commission against EU Member States that do not properly enforce existing laws intended to counteract money laundering and tax avoidance. MEPs also requested that Member States and the Commission do more in respect of the identification and sharing of information on persons ultimately profiting from shell company structures.

For more information, please refer to the European Parliament press release.

OECD and other International Institutions

OECD

G20 leaders endorse key components of the OECD two-pillar solution

On October 31, 2021, the G20 leaders issued a declaration following their meeting in Rome, endorsing the key components of the two Pillars - on the reallocation of profits of multinational enterprises and an effective global minimum tax, respectively, as set out in the statement released by the Organization for Economic Co-operation and Development (OECD) /G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on October 8, 2021.

For more details please refer to ETF 458 and ETF 459.

OECD released the 2021 Progress Report on the Platform for Collaboration on Tax

On October 20, 2021, the OECD released the progress report for the work undertaken under the Platform for Collaboration on Tax (PCT) framework. The PCT is a joint initiative of the International Monetary Fund, the OECD, the United Nations and the World Bank, which aims to help countries develop resilient tax systems and better fiscal policies in response to the COVID-19 pandemic. The PCT has been actively working in five areas: medium-term revenue strategies (MTRS), COVID-19, tax and sustainable development goals (SDGs), international taxation, and co-ordination.

For more details please refer to the OECD press release.

UN

UN Tax Committee Launches Carbon Tax Handbook

During its 23rd Session, held from October 19 to 22 and October 25 to 28, the UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) launched the new Handbook on Carbon Taxation for Developing Countries (Handbook). The Handbook provides practical guidance on policy and administrative aspect of designing and implementing carbon taxes. It also provides a guide on how to increase the acceptability of carbon taxation and how to deal with potential interactions that a carbon tax may have with other existing laws and policy measures.

In addition, the UN Tax Committee decided to establish a Subcommittee, which will be mandated to consider, report on and propose guidance on environmental and environmentally-related tax issues and opportunities.

Local Law and Regulations

Belgium

Belgium publishes guidance on interest deduction limitation and grandfathering rule

On October 5, 2021, the Belgian tax authorities published guidance with respect to the application of Belgian interest deduction limitation rules that were implemented from January 1, 2019 in line with the EU Anti-Tax Avoidance Directive (ATAD). In respect of loans entered into before June 17, 2016, the guidance notes that interest on such loans is not subject to the interest deduction limitation, provided that no fundamental change is made to the loan thereafter (grandfathering rule). According to the guidance, a fundamental change includes:

- modification concerning the parties to the loan;
- change of the interest rate;
- change of the duration; or
- refinancing of the loan.

On October 18, 2021, the Belgian tax authorities published another circular letter, which extended the application of a simplification measure by clarifying that, until December 31, 2021, a fundamental change should not be deemed to arise if the modification of specific loan payment terms is targeted at supporting borrowers with payment issues resulting from COVID-19.

Belgian legislative proposal to revise tax liability rules

On October 19, 2021, the Belgian government submitted a legislative proposal to the Parliament to amend tax liability rules as follows:

- Company directors would be liable for the payment of wage tax, value added tax (VAT) as well as criminal penalties if the debts were incurred after January 1, 2020. For larger companies, the liability would apply to any existing tax debt;
- For mergers or corporate divisions, the acquiring company would be liable for the tax debts of the acquired company;
- With respect to non-Belgian resident entities without legal personality, but with a legal form comparable to a legal person under Belgian law, the shareholders or partners would be liable for a share of the tax debts determined based on their participation share in the entity;
- Contractors would be liable for tax debts of their subcontractors. This does not apply to contractors engaging in agricultural and horticultural activity.

Czech Republic

Czech Republic publishes a revised list of non-cooperative jurisdictions

On October 15, 2021, the Czech Republic published a revised list of non-cooperative jurisdictions with respect to its controlled foreign company (CFC) rules. According to Czech CFC rules, a non-resident company's income from qualifying assets and activities will be taxed at the level of the Czech controlling entity in cases where the non-resident qualifies as a CFC and (i) is located in one of the listed jurisdictions as at the end of the respective tax period, or (ii) does not have significant economic activity and is subject to a foreign income tax (or similar tax) which is lower than 50 percent of the income tax that would be assessed in the Czech Republic under the applicable Czech tax regulations.

The update reflects the recent updates to the list of non-cooperative jurisdictions adopted by the Council of the European Union (please refer to ETF 435, 442, 457).

Finland

Finland presents a legislative proposal on transfer pricing adjustments

On October 22, 2021, a law proposal revising the Finnish transfer pricing adjustment provision was presented to the Parliament. The proposal provides for transfer pricing adjustment rules in line with the OECD Transfer Pricing Guidelines and Article 9 of the OECD Model Tax Convention.

If adopted, the revised rules would apply from January 1, 2022.

Draft bill implementing ATAD reverse hybrid mismatch provisions

On October 28, 2021, a draft bill for the implementation of anti-reverse hybrid mismatch rules as per the EU Anti-Tax Avoidance Directive (ATAD) 2 was submitted to the Finnish Parliament. The bill includes an exemption for alternative investment funds covered by the Alternative Investment Fund Managers Directive (2011/61).

Germany

German Federal Ministry of Finance issues guidance on interest on back taxes and tax refunds

With its decision dated July 8, 2021, the German Federal Constitutional Court ruled that the interest on back taxes and tax refunds of 6 percent annually (0.5 percent per month) is unconstitutional for interest calculation periods starting as from 2014. The interest rate's unconstitutionality generally applies in both directions: in the case of interest on back taxes, as well as interest on reimbursements, both to the benefit as well as the disadvantage of the taxpayer. The German Federal Constitutional Court has stipulated that the legislator must pass an amendment by 31 July 2022.

The new guidance issued by the Ministry of Finance on September 17, 2021 provides that:

- The current regulations (i.e. interest rate of 6 percent annually (0.5 percent per month)) remains applicable for interest calculation periods up through 2018, with the regulations no longer applicable from 2019 onwards;
- With regards to an initial assessment of interest—"new" interest on back taxes and tax refunds may no longer be charged at a rate of 0.5 percent per month. The interest rate is to be set as soon as the new interest rate rule is in effect (with the retroactive amendment of the law).

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

Ireland

Ireland updates DAC6 filing guidelines

On October 11, 2021, the Irish tax authorities published updated guidance on the filing process for EU mandatory disclosure of reportable cross-border arrangements. The updated guidance has been prepared to align with the new reporting schema and includes updated screenshots of the filing process.

For more information, please refer to the Irish tax authority e-Brief No. 184/21.

Italy

Italy launches public consultation on hybrid mismatch rules

The Italian tax authorities have launched a public consultation in respect to the draft guidance on Italian rules addressing hybrid mismatches, including reverse hybrid and tax residence mismatches, in line with the ATAD.

The deadline for submitting feedback is November 19, 2021.

Italy postpones introduction of plastic tax and sugar tax to January 1, 2023

On October 28, 2021, the 2022 Draft Budget was approved by the Italian Council of Ministers and postpones the introduction of the new plastic tax and sugar tax to January 1, 2023. Both taxes were initially due to become effective as from 2020. In addition, the Draft Budget provides for an extension of certain tax credits and tax incentives.

Malta

Tax measures proposed in the 2022 budget bill

The Maltese government published budget measures for the financial year 2022, including:

- Interest rate on unpaid income tax to rise to 7.2 percent ;
- No capital gain tax and no stamp duty on the first EUR 750,000 on transfers of property situated in an Urban Conservation Area or traditional Maltese buildings built more than 20 years ago which have been vacant for the past seven years;
- For the year 2021 (year of assessment 2022) excess capital allowances as a result of losses suffered due to the Covid19-pandemic may be surrendered to other group companies to be utilized (temporary measure).

For more information on 2022 budget measures please refer to a summary prepared by KPMG in Malta.

Poland

Poland to introduce digital service tax if the OECD's two Pillars fail to be implemented simultaneously

In the light of the OECD/IF’s agreement on the two-Pillar solution, Poland has put the introduction of a domestic digital services tax (DST) on hold. However, Poland's Ministry of Finance will revisit the introduction of the DST in case the two Pillars will not be implemented simultaneously.

On July 7, 2021, a draft bill was sent for a first reading in Poland's lower chamber of parliament on a DST at a rate of 7 percent on digital sector enterprises, regardless of their place of establishment, with a significant digital presence in the territory of Poland. For this purpose, a digital sector enterprise would have a significant digital presence in the territory of Poland if the enterprise makes transactions with users located in Poland, its annual revenue from this account exceeds EUR 4 million and its annual global revenue exceeds EUR 750 million.

Slovakia

Introduction of paperless communication system with the Slovak tax authorities

While the majority of taxpayers in Slovakia have been required to file tax returns in electronic form since 2018, the Slovak tax authorities have still been sending official documents in paper form. However, from January 1, 2022, the Slovakian e-Government Act provides that the communication between the tax authorities and taxpayers will be amended, with the introduction of electronic mailboxes and the transmittal of official documents electronically.

For more information, please refer to a report by KPMG in Slovakia.

Spain

Spain intends to introduce a minimum corporate income tax of 15 percent in 2022

As part of its 2022 budget proposal, the Spanish government intends to set a minimum corporate income tax rate, which is meant to be in line with the minimum rate of Pillar Two of the OECD's, as follows:

- 15 percent for companies subject to the general tax rate of 25 percent;
- 18 percent for companies subject to the increased 30 percent general tax rate (financial companies and companies involved in hydrocarbon exploration and production); and
- 10 percent for newly created companies taxed at a reduced corporate income rate of 15 percent.

The minimum tax will apply to all consolidated groups of companies and to stand-alone companies whose annual net turnover has been at least EUR 20 million within the 12 months prior to the start date of the fiscal year. Exclusion is provided for companies which are subject to a zero or reduced tax rate, such as NGOs, open-ended variable capital investment companies (SICAVs), investment funds, real estate investment companies, etc.

Additional measures proposed in the 2022 Budget Bill

The 2022 Budget Bill also provides for other new corporate income tax measures including:

- Reduction of the tax credit applicable to rental of dwellings from 85 percent to 40 percent;
- Establishment of a legal interest rate at 3 percent and a late payment interest rate at 3.75 percent.

The 2022 Budget Bill was approved during the Cabinet's meeting held on October 7, 2021 and submitted to the Spanish Parliament on October 15, 2021.

Sweden

Introduction of a risk tax for certain credit institutions

On October 28, 2021, a bill was submitted before the Swedish Parliament which, if ratified, would impose a "risk tax" on certain credit institutions. Under the proposed bill, the tax would arise where, at the beginning of a financial year, the simplified indebtedness (excluding intra-group indebtedness and provisions) is greater than SEK 150 billion (approx. EUR 15 billion). The tax rate proposed would be 0.05 percent of the tax base in 2022 and 0.06 percent in 2023.

For more information, please refer to TaxNewsFlash.

The Netherlands

Netherlands enacts conditional withholding tax on dividends effective from 2024

On November 2, 2021, the Netherlands officially introduced a conditional withholding tax on dividends paid to low tax jurisdictions effective starting January 1, 2024. The conditional withholding tax will apply on dividend payments to jurisdictions with a corporate tax rate below 9% and jurisdictions listed on the EU list of non-cooperative jurisdictions.

As a next step, the bill introducing the conditional WHT will be signed by the King and gazetted.

The United Kingdom

UK Budget speech announced

On October 27, 2021, the UK Chancellor presented the UK Autumn Budget before the UK Parliament. Key measures announced in the budget speech included reforms of R&D tax relief and a reduction in the UK's banking surcharge from 8 percent to 3 percent with both measures to become effective from April 2023.

For more information, please refer to the following TaxNewsFlash and to KPMG in the UK's dedicated budget webpage.

Local Courts

Germany

Court decision regarding "excessive" interest on a shareholder loan

On October 2021, the German Federal Fiscal Court published a judgement in a case (I R 62/71) concerning the reclassification of a potentially non-arm's length interest as a hidden profit distribution. The plaintiff (A-GmBH) contracted three loans to finance an acquisition, including a bank loan (senior loan, secured by collateral, 5 percent interest rate) and a shareholder loan (unsecured, subordinated, 8 percent interest rate). The tax authorities assessed that the interest on the shareholder loan did not comply with the arm's length principle, by using the bank loan as benchmark, and reclassified the excessive interest as a hidden profit distribution. The Cologne Lower Tax Court upheld the tax authorities' approach and noted that a subordinate status of a shareholder loan or non-provision of collateral does not justify a risk mark-up when determining the interest of the shareholder loan.

In its October ruling, the Federal Fiscal Court noted that the subordination of a shareholder loan is required by the German insolvency law, but considered that this legal requirement should not play a role when determining the interest rate. Instead, this difference in rank, as well as the difference in collaterals, could be priced into the interest rate. As a result, it set aside the lower court's decision and referred the matter back to the Cologne Lower Tax Court.

KPMG Insights

EU tax perspectives webcast – Wednesday, December 8

The international tax landscape is changing and the European Union is not only responding to international developments and adapting to the new reality, but also committed to a challenging timeline for additional tax policy measures.

Against this backdrop, we are delighted to invite you to our "EU tax perspectives" webcast, during which the panel of KPMG professionals 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.

The KPMG Great Tax Climate Debate webcast – Thursday, November 18

The KPMG Great Tax Climate Debate will bring together leading thinkers who will debate the role tax can play in the climate agenda in a substantive yet entertaining discussion of the issues and tackle tough questions, such as:

- How can tax policy help from a practical perspective? Who bears the cost?
- Can the right tax policies drive sufficient behavioral change?
- What sectors are facing the most pressure? Where might compromise be needed?

If you'd like to invite your clients to this event, please use the attached email template. Of course, you and your teams are also welcome to register for this event.

KPMG in Poland Webinar: "Polish Deal and the tax changes it brings"

On November 17 and 18, KPMG experts will discuss the key changes to the Polish tax system to be introduced from January 1, 2022. The planned amendments cover exceptionally broad area of tax matters and will affect both domestic taxpayers as well as multinational groups conducting business in Poland. You and your clients can register here (The event will be broadcasted in Polish and English).

BEPS 2.0: Impact of the proposals for the Middle East

The OECD BEPS 2.0 project proposed a two-pillar approach to international tax reform, with Pillar Two focusing on the introduction of a Global Minimum Tax rate of 15 percent. KPMG Lower Gulf has prepared a summary of the new global minimum tax of 15 percent will affect groups with a consolidated turnover in excess of EUR 750 million in the Middle East. For more information, please refer to the KPMG Lower Gulf dedicated webpage.

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) 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 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.

Raluca Enache
Director, KPMG's EU Tax Centre

Key links

- Visit our website for earlier editions

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

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