E-News from KPMG's EU Tax Centre

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Issue 143 – November 23, 2021

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

Infringement Procedures and CJEU Referrals

Commission sends letter of formal notice to Spain

As part of the October 2021 infringement package, the European Commission sent a letter of formal notice to Spain requesting that Spain allows for the deduction of directly related expenses from the tax base for withholding taxes on royalty payments. While established case law of the Court of Justice of the European Union (CJEU) permits Member States to charge withholding tax on cross-border royalty payments, Member States are required to allow the deduction of directly related expenses when calculating the withholding tax due.

Spain has two months to respond to the arguments raised by the European Commission, after which the Commission may decide to send a reasoned opinion.

For more information, please refer to the October infringements package released by the European Commission.

Commission closes infringement proceedings against Cyprus and Denmark

On November 12, 2021, the European Commission closed infringement proceedings against Cyprus in respect of a failure by Cyprus to transpose Council Directive (EU) 2018/822 on mandatory disclosure rules (DAC6) into Cypriot domestic law, as previously reported in E-News Issue 114. As noted below, on October 29, 2021, Cyprus published updated DAC6 guidance which clarifies that cross-border arrangements implemented between June 25, 2018 and June 30, 2020 should be reported by November 30, 2021.

On November 12, 2021, the European Commission closed infringement proceedings against Denmark, in respect of a failure by Denmark to transpose in a satisfactory manner the controlled foreign company (CFC) rules required under Article 7 of the EU Anti-Tax Avoidance Directive 2016/1164 (ATAD) into Danish domestic law. Further details of the ATAD infringement proceedings against Denmark were previously reported in E News Issue 104.

The details of the closure of both infringement procedures are available on the European Commission website.

EU Institutions

EUROPEAN PARLIAMENT

European Parliament formally adopts EU public Country-by-Country Reporting Directive

On November 11, 2021, the European Parliament formally adopted the EU public Country-by-Country Reporting directive (the Directive), at second reading. This was the last step in the adoption process. Publication in the Official Journal of the European Union is expected shortly, with the Directive entering into force twenty days after publication - most likely in December 2021. Member States will have 18 months, i.e. until June 2023 to implement the Directive into domestic law, and the rules would become applicable from June 2024, i.e. apply with respect to financial years starting on or after this date.

For more information, please refer to Euro Tax Flash Issue 460.

European Parliament subcommittee debates impact of crypto and blockchain on taxation

On November 9, 2021, the European Parliament subcommittee on tax matters (FISC) held a public hearing on the impact of new technologies – crypto and blockchain – on taxation. In particular, the meeting focused on the growth of crypto assets in recent years and the opportunities created by these assets to facilitate tax avoidance, money laundering and fraud.

The meeting discussed the possibility of taxing crypto assets and whether enhanced regulatory and legal frameworks are required to address these issues. In addition, the meeting also heard submissions on how blockchain technology could enable more direct and trustworthy communication between tax authorities and taxpayers, particularly for cross-border transactions.

For more information, please refer to the European Parliament FISC subcommittee website.

OECD and other International Institutions

OECD

2021 Global Forum's plenary meeting

During a three-day 2021 plenary meeting of the OECD's Global Forum for Transparency and Exchange of Information held between November 17 and 19, 2021, delegates from more than 130 member jurisdictions evaluated the progress made on multilateral co-operation in transparency and exchange of information (EOI) for tax purposes and discussed the future direction of the Global Forum. In terms of recent developments, it was noted that:

- Algeria and Belarus joined the Global Forum in 2021, expanding the number of members from 161 to 163.
- Maldives, Papua New Guinea and Rwanda signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bringing the total participating jurisdictions to 144.
- Jamaica committed to commence the automatic exchange of information (AEOI) in 2022, Moldova, Uganda and Ukraine scheduled to do so by 2023 and Rwanda by 2024.

During the plenary meeting, delegates restated the importance of the Capacity Building and Outreach Program ensuring that developing countries fully benefit from the transparency and EOI standards and use this tool for domestic revenue mobilization. It was noted that over 70 jurisdictions benefited from assistance in 2021 and 21,000 tax officials have been trained since 2011. Building on the success of regional initiatives for Africa, Latin America and the Pacific Islands, the Global Forum announced a new regional capacity-building program for Asia (called the "Asia initiative"), to be launched in 2022, to promote transparency and EOI.

In its statement of outcomes, the Global Forum noted that the results of the peer reviews of the effectiveness in practice of the AEOI standard are due to be published in 2022. In addition, delegates agreed to extend the mandate of the Global Forum for three years (January 1, 2023 until December 31, 2025) and mandated the AEOI Peer Review Group (APRG) and the Peer Review Group (PRG) to further develop proposed directions for the Global Forum's future monitoring and review processes. In relation to the exchange of information on request (EOIR), the delegates adopted amendments to the methodology for the EOIR reviews to take into account the specific situation of jurisdictions with no or limited experience of EOIR in practice.

Local Law and Regulations

Austria

Draft bill for the tax reform 2022 published

On November 8, 2021, the Austrian Ministry of Finance published a draft bill on the eco-social tax reform 2022, which includes the following tax measures:

- Reduction in the corporate tax rate to 24 percent (from 25 percent) effective from 2023, with a subsequent reduction to 23 percent effective from 2024.
- Introduction of a carbon tax (EUR 30 per ton) effective from 2022. The carbon tax will increase by EUR 5 per ton per year until 2025, at which point it will be EUR 55 per ton.
- Introduction of a special rate of tax of 27.5 percent for crypto currencies from March 1, 2022. The tax is to be withheld at source for capital gains accruing after December 31, 2022, in cases where a domestic withholding agent is involved.

The draft bill is subject to approval by the parliament and the Federal Council.

For more information, please refer to the TaxNewsFlash on the initial announcement.

Belgium

Belgium publishes circular on the deduction of foreign losses

On November 3, 2021, the Belgian tax authorities published a circular on tax deduction rules in respect of foreign losses applicable from January 1, 2020. The circular provides that, where the profits of a foreign permanent establishment are exempt in Belgium, any losses of the foreign permanent establishment are not deductible for corporate income tax purposes unless they are deemed final and were incurred in the European Economic Area (EEA) on or after January 1, 2020. In addition, the circular clarifies additional technical aspects of the rules including carry-forward mechanisms if final losses cannot be used and anti-abuse provisions providing for a recapture if a company restarts activities within three years of the losses being suffered.

For more information, please refer to a report published by KPMG Belgium.

Belgian government to withdraw the existing expatriate tax concessions

On October 12, 2021, the Belgian government announced that the existing expatriate tax concessions will be withdrawn and replaced by a new, more restrictive, regime. Full details are not yet available and official texts have not been drafted.

For more information, please refer to a report published by KPMG Belgium.

Cyprus

DAC6 guidance published in the Official Gazette

On October 29, 2021, Cyprus published updated guidance in relation to the reporting of cross-border arrangements (DAC6) which provides clarifications on several matters, including:

- Cross-border arrangements implemented between June 25, 2018, and June 30, 2020 are to be reported by November 30, 2021.
- From October 31, 2021, the deadline for reporting new arrangement is within 30 days from the date when the reporting obligation was triggered.

In addition, the updated guidance provides details about the definition and interpretation of terms and hallmarks, the level of due diligence requirements for intermediaries and also clarifies that only information in the knowledge, possession or control of the intermediary should be reported.

Czech Republic

Bill for digital services tax not approved

In the recently ended parliamentary term, the Czech Chamber of Deputies failed to approve a bill which would have introduced a domestic digital services tax. As a result, the bill would need to go through the legislative process again if it is to be enacted, which seems unlikely at present given the moratorium agreed on newly enacted digital services taxes which the OECD BEPS 2.0 proposals are being negotiated.

For more information, please refer to a report prepared by the KPMG member firm in the Czech Republic.

Finland

Public tax information relating to the 2020 tax assessment

On November 10, 2021, the Finnish tax authorities published guidelines in respect of the tax information that will be publicly available in Finland for the 2020 tax year.

In general, tax information can be obtained from a local tax office in respect of individuals for the tax years 2009-2020 and for legal entities for the tax years 2010-2020. The available information includes:

- name of the taxpayer;
- municipality in which the taxpayer is registered;
- taxable income;
- taxes to be paid;
- taxes withheld and paid during the tax year; and
- amount of taxes still to be paid or excess tax to be refunded.

France

New tax treaty signed between France and Belgium

On November 9, 2021, a new tax treaty was signed between Belgium and France which, once in force and effective, will replace the current Belgium-France tax treaty (1964) as amended by the 1971, 1999, 2008 and 2009 protocols.

According to a press release (available only in French), the new treaty has been aligned with the OECD Model Tax Convention and BEPS standards and includes updates on:

- cross-border worker taxation;
- definition of residence;
- permanent establishments rules;
- capital gains rules; and
- anti-abuse mechanisms.

Germany

German Federal Ministry of Finance issued guidance on option for corporate taxation

As reported previously – see E-News 132, a bill for the modernization of the German corporate tax law entered into force on July 1, 2021 and included the option for commercial partnerships to be taxed as corporations.

On November 10, 2021, the German Ministry of Finance issued official guidance which provided information regarding the scope, application requirements, taxation of the deemed change of the legal form, ongoing taxation of the partnership and its partners, and the termination requirements and related consequences.

The option of corporate taxation can be exercised for the first time for fiscal years beginning after December 31, 2021. If the option is to be exercised for fiscal years commencing on January 1, 2022, an application must be made to the relevant tax authority office by November 30, 2021.

Ireland

Ireland launches public consultation on new taxation measures for outbound payments

On November 5, 2021, the Irish Department of Finance released a public consultation in respect of 'New Taxation Measures to apply to Outbound Payments'. The deadline for submissions is December 20, 2021.

The Consultation deals with the potential introduction of measures to prevent double non-taxation in relation to outbound payments of interest, royalties and dividends which would apply to no-tax/zero-tax jurisdictions, and those jurisdictions on the EU list of non-cooperative jurisdictions. In relation to interest and royalties, the consultation asks whether a denial of deduction or the imposition of a withholding tax would be the more effective approach.

For more information, please refer to the consultation.

Malta

DAC6 - annual notification form for non-disclosing intermediaries published

On November 11, 2021, the notification form for non-disclosing intermediaries was published. According to DAC6 reporting rules in Malta, intermediaries that do not report a disclosable arrangement due to legal professional privilege are required to file simplified annual notifications in relation to the reportable cross-border arrangements they have been involved in. The Maltese Commissioner for Revenue announced that the deadline for filing the annual notification is the end of February of every year. Consequently, for reportable cross-border arrangements where the trigger point for reporting occurred in the period up to December 31, 2021, the deadline for completing the notification form is February 28, 2022.

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

Netherlands

Netherlands adopts measures in relation to hybrid and transfer pricing mismatches

On November 11, 2021, the Lower House of the Dutch Parliament adopted elements of the 2022 "Tax Plan" package, including the following additional tax measures, to address:

- the overlap between the legal methodology of levying corporate income tax at the level of an open limited partnership (open CV) and the hybrid mismatch measures (as per the EU Anti-Tax Avoidance Directive - ATAD2) implemented as of January 1, 2020.
- mismatches in the application of the rules regarding the arm's length principle between associated entities or related parties resulting in double non-taxation (the "informal capital structures" or "deemed dividend structures").

As previously noted, the 2022 "Tax Plan" package also includes provisions to increase the top corporate income tax rate to 25.8 percent (from 25 percent) and introduce tighter limitations on the deductibility of interest for Dutch corporate income tax purposes. As a next step, the bill has been submitted to the Upper House of the Dutch Parliament, where it is expected to be voted on in mid-December 2021.

For more information, please refer to E-News issue 141 and a report prepared by the KPMG member firm in the Netherlands.

Netherlands implements beneficial ownership register

On November 5, 2021, the Lower House of the Dutch Parliament adopted legislation to implement beneficial ownership registration requirements for trusts and similar legal arrangements in line with Article 31 of the Fifth Anti-Money Laundering Directive.

The legislation provides for a register that covers all trusts and similar legal arrangements to the extent that the trustees reside or are established in the Netherlands. The register will also apply for trustees residing or established outside the EU where the trustee enters into a business relationship in the Netherlands or acquires real estate in the Netherlands on behalf of the trust. Penalties for non-compliance of up to EUR 21,750 are provided for in the bill.

As a next step, the bill will be submitted to the Upper House of the Dutch Parliament for approval.

Norway

Tax measures proposed in the 2022 budget bill

On November 8, 2021, the Norwegian government presented its amended 2022 Budget Bill, which includes the following tax measures:

- The introduction of a deduction for contributions made to foreign subsidiaries by Norwegian parent companies where several requirements are met (e.g. the subsidiary must be engaged in real economic activity in another EEA State).

- An increase of the wealth tax rate to 0.95 percent (currently 0.85 percent), an increase of the tax-free basic allowance for net wealth from NOK 1.5 million (approx. EUR 151,000) to NOK 1.6 million (approx. EUR 161,000) and an increase of the wealth tax valuation base for shares, primary dwellings and holiday homes.
- An increase of the carbon tax on the non-quota sector, where the price per metric ton will increase by 28 percent from 2021 to 2022.

As a next step, the budget proposal needs to be approved by the Norwegian Parliament before end of December.

Withholding tax on interest, royalty and lease payments

From July 1, 2021, Norway imposes a 15 percent withholding tax (WHT) on payments of interest, royalty payments for intellectual property and certain lease payments (effective from October 1, 2021) to related entities that are resident in “low-tax” jurisdictions. For the purposes of the Norwegian WHT, an entity is considered to be resident in a low-tax jurisdiction if the effective tax rate it is subject to is less than two-thirds of what it would have been if the entity was tax resident in Norway. However, the WHT tax rate may be reduced, or a full exemption granted, in cases where the recipient is established and conducts real economic activity in an EU/ EEA Member State or if the WHT can be relieved under an applicable double tax treaty.

Poland

”Polish Deal" tax reform package enacted

On November 15, 2021, the tax bill implementing the so-called “Polish Deal” tax package was signed by the Polish President after being passed by the Polish Parliament on October 29, 2021.

As previously reported – see E-News 141, the bill includes significant corporate income tax changes which generally have an effective date of January 1, 2022. These include a new “Polish holding company” regime, a minimum corporate income tax, provisions limiting the shifting of the profits to related entities in “low-tax” jurisdictions, anti-abuse provisions targeting hidden dividends, innovation reliefs, and a reform of the Polish transfer pricing rules.

For more information, please refer to a report prepared by KPMG Poland.

Slovenia

New tax measures addressing non-cooperative jurisdictions and reverse hybrid mismatches

On October 20, 2021, Slovenia adopted amendments to the domestic Corporate Income Tax Act, including:

- Introduction of an anti-hybrid mismatch rule for reverse hybrids in accordance with the EU ATAD;
- Extension of the national list of non-cooperative tax jurisdictions to cover not only non-EU countries in which the average nominal corporate tax rate is lower than 12.5 percent (as was previously the case), but also countries that are listed on the EU list of non-cooperative jurisdictions.
- Introduction of a defensive measure providing that Controlled Foreign Company (CFC) rules apply where a CFC is located in a non-cooperative jurisdiction regardless of whether the CFC carries on an economic activity for which it has personnel, equipment, assets, and premises available or generates less than one-third of its total income from passive activities.

- Introduction of a new tax incentive for digital and green transition investments, providing the possibility to deduct 40 percent of the cost related to such investments per year.

The new law will enter into force on January 1, 2022.

Switzerland

New tax rules for financial institutions in Zurich

On September 30, 2021, the Zurich cantonal tax authority (ZCTA) issued a new circular regarding the taxation of financial institutions under consideration of recent regulatory amendments. The Circular applies to banks and professional securities dealers and provides that:

- Tax deductions for value adjustments linked to the default risks of debtors will depend on the regulatory status of the bank.
- The rates for lump-sum provisions are lower than in the previous circular.
- A lower participation deduction relief is applicable on dividends generated by shares held for trading purposes.

The circular replaces previous guidance from 2015 and has a retroactive effective date of January 1, 2021 (for financial years ending in 2021), with a grandfathering period.

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

Turkey

Tax reform package approved and gazetted

On October 26, 2021, a bill amending the tax procedure law and certain other tax laws was published in the Turkish Official Gazette. The bill provides for an increase from 50 percent to 75 percent of the notional interest deduction rate for capital increases for cash contributions from abroad. In addition, new rules were introduced in respect of requesting and finalizing Mutual Assistance Procedures (MAP), including three-year application deadlines if not specified otherwise in a tax treaty.

The measures contained in the bill will generally apply from January 1, 2022. However, the increase in the notional interest deduction rate is applicable for capital increases from October 26, 2021 onwards.

Local Courts

France

Court decision on beneficial ownership

On October 5, 2021, the Bordeaux Administrative Court of Appeal (Cour administrative d'appel de Bordeaux) published a judgement in a case (no. 20BX03606) concerning the denial of treaty benefits on beneficial ownership grounds. The plaintiff (a French SAS) contracted distribution rights based on a sub-license agreement granted by a Dutch BV. In turn, the Dutch BV received the licensing rights under a master agreement concluded with its parent company – a British Virgin Islands (BVI) entity which subsequently transferred its headquarters to Panama – that was the legal owner of the licensed trademark rights. The French tax authorities assessed that the royalty payments paid by the French SAS to the Dutch BV could not benefit from relief under the relevant double tax treaty, on the basis that the recipient (the Dutch BV) was not the beneficial owner of the royalties.

In its ruling, the French court noted that the Dutch BV had a limited right to use and dispose of the royalty income. Specifically, under the master agreement, the Dutch BV was required to remit to its parent company over 90 percent of the amounts received, within a short timeframe. As a result, the court upheld the assessment of the French tax authorities.

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 path ahead for BEPS Pillar 1 and 2 implementation – Tuesday, December 7

Tax leaders around the world will soon have the opportunity for more detail and clarity around Pillar 1 and Pillar 2 implementation developments, with an extensive release expected from the Organization for Economic Co-operation and Development's on their Inclusive Framework expected at the end of November.

As part of the Future of Tax & Legal webcast series, KPMG International will host a session on Tuesday, December 7, 20201 focusing on "The path ahead for BEPS Pillar 1 and 2 implementation". Join the webcast for a deep dive that will explore the report in-depth and unpack key considerations for multinationals. Please access the event page to register.

The KPMG Great Tax Climate Debate webcast playback

On Thursday, November 18, 2021, KPMG hosted "The KPMG Great Tax Climate Debate" which brought together leading thinkers to 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?

A replay of the webcast is available here.

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.

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.

Navigating Tax Transparency

With environmental, social and governance (ESG) rising on leadership agendas globally, tax practices and governance are becoming critical ESG measures, with tax transparency often being used as a key metric for demonstrating a responsible attitude towards tax. KPMG Tax Impact Reporting has prepared a range of supports and leading technology solutions to assist tax departments to accurately compile information on a company's tax footprint and manage compliance with tax transparency standards and changes.

For more information, please refer to the dedicated KPMG webpage.

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 KPMG's EU Green Deal Policy Guide which has been developed to summarize the key takeaways from each of the reforms in the European Commission's 'Fit for 55' package of carbon reform measures.

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Key links

- Visit our website for earlier editions

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