E-News from KPMG's EU Tax Centre

[Latest CJEU, EFTA and ECHR](#)

[EU Institutions](#)

[OECD and other International Institutions](#)

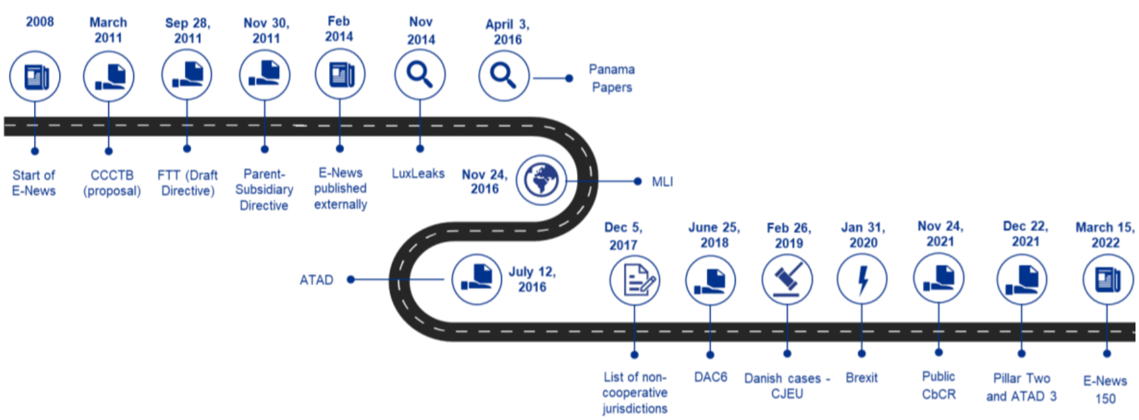
[Local Law and Regulations](#)

[Local Courts](#)

[KPMG Insights](#)

E-News from the EU Tax Centre (Special Edition)

History of E-News



The European tax landscape has radically changed since the EU Tax Centre's first published E-News edition on February 14, 2008. As Europe recovered from the global financial crisis, the focus of legislators turned towards addressing tax avoidance (particularly in light of the LuxLeaks, Panama Papers and Pandora Papers), designing a sustainable recovery for the Union and dealing with consequences of Brexit – the first time a Member State has left the Union.

This has been seen through a range of initiatives, some of which have had a more profound impact than others.

The first edition of E-News commented on the launch of the Common Corporate Tax Base (CCTB), an initiative which has been shelved after a number years of unsuccessful negotiations. In this edition of E-News below, we see the European Parliament criticizing this failure while welcoming the Commission's Business in Europe: Framework for Income Taxation (BEFIT) proposal which is scheduled for release in 2023 and is often referred to as the CCTB 3.0. Similarly, progress has stalled on the proposal for a financial transaction tax (FTT), with only ten countries proceeding with the initiative under the enhanced cooperation procedure. However, the European Commission has noted that it may seek to revive the FTT proposal in the second basket of own resource measures for the EU budget by June 2024 that was covered in E-News.

Greater success has been seen by E-News with respect to the implementation of the Anti-Tax Avoidance Directive and DAC6, both of which have introduced wide-ranging new requirements for taxpayers and tax advisors. E-News also covered the introduction of public County-by-Country Reporting (CbCR), which was achieved via qualified majority voting procedure as it was classified as a non-tax file. The European Parliament has consistently called for qualified majority voting to be used more widely.

E-News is also closely monitoring the developments at the level of the Code of Conduct Group and its work against harmful tax competition within the EU. Updates on the revision of the list of non-cooperative jurisdictions and its application by Member States using defensive measures adopted against listed countries are reported on in the EU and Local Law sections.

In addition, E-News saw a range of OECD initiatives that Member States signed up to, most notably the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) and the fundamental changes to the international tax landscape recently announced as part of the OECD BEPS 2.0 two-pillar solution.

E-News also monitors rulings of the Court of Justice of the European Union (CJEU), which has issued decisions in over 150 cases concerning direct taxation issues since 2014, including landmark decisions such as the Danish cases[1], concerning the application of the EU Parent-Subsidiary and Interest and Royalties Directives and the Sofina case (C-575/17), which opened dividend withholding tax refund opportunities in cases where, in a domestic situation, the dividend would not (yet) be subject to tax as a result of losses.

Lastly, E-news reports on the EU's State aid investigations, including the European Commission's decisions on the first wave of investigated tax rulings issued by EU Member States between 2010 and 2013, as well as the appeals against these decisions (in front of the General Court of the EU) and subsequent decisions from the CJEU (e.g. in relation to the Belgian excess profit ruling system).

On our own behalf

One hundred and fifty editions of E-News would not have been possible without the dedication and hard work of the EU Tax Centre Core Team and the support of the EU Tax Centre's secondees from KPMG Member Firms in Europe and the United States. Since the first edition of E-News, a total number

[1] Joined cases T Danmark (C-116/16) and Y Denmark (C-117/16), and joined case N Luxembourg 1 (C-115/16), X Denmark (C-118/16) and C Danmark 1 (C-119/16) and Z Denmark case (C-299/16)

of more than 50 secondees have been monitoring tax-related developments at an international and national level and translated them into short and comprehensive summaries to be shared on a regular basis within the KPMG network and, since 2014, also externally.

We fully expect that the pace of legislative change will only accelerate in the coming months and we look forward to the next 150 editions of E-News to come.

Issue 150 – March 17, 2022

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

AG opinion on Gibraltar's corporate income tax exemption regime for interest and royalties

On March 7, 2022, Advocate General (AG) Juliane Kokott of the Court of Justice of the European Union ('CJEU' or 'Court') published her Opinion in the case C-342/20, concerning Gibraltar's former corporate tax exemption regime for interest and royalties.

According to a decision issued by the European Commission on December 19, 2018 (the 'Decision'), Gibraltar's[2] corporate income tax exemption scheme for interest and royalties (applicable between January 1, 2011 and June 30, 2013 and December 31, 2013, respectively) represented a selective tax treatment unduly favoring a set of multinationals, and was in breach of EU State aid rules. The appellant in the case under dispute was not one of the 165 companies investigated by the European Commission and listed in the Decision. It did, however, receive passive income in the form of royalties during the period when the exemption was applicable and the revenue was taxed in the hands of its US shareholder. Based on a change in Gibraltar's tax law, with retroactive effect, the local tax authorities sought to assess corporate income tax on the income and, following discussions with the EU's Directorate-General for Competition they also refused to grant a credit for the tax paid in the US. The company decided to appeal the refusal and the Income Tax Tribunal of Gibraltar referred the case to the CJEU.

The AG did not address the compatibility of the European Commission's State aid Decision with EU law, and instead noted that the key question is the extent to which the Decision impacts the possibility of benefiting from relief in respect to taxes paid abroad. In the AG's view, the content of the Decision related only to non-taxable income. However, in the case under dispute, as a result of the subsequent

---

[2] Gibraltar is a British Overseas Territory to which, before the UK's exit from the European Union, the fundamental freedoms under the TFEU applied. The Withdrawal Agreement concluded between the EU and the UK covered Gibraltar, and as a result the CJEU remained competent for judicial procedures concerning Gibraltar registered at the CJEU before the end of the transition period (i.e. December 31, 2020).

law changes, the royalty income derived by the taxpayer was taxable in Gibraltar. Moreover, a tax credit could be obtained only if tax was actually paid elsewhere – in the present case in the US. Based on these facts, the AG concluded that the Decision does not apply to provisions that allow setting-off taxes paid abroad against the corresponding tax in Gibraltar. The AG also noted that her conclusion would have been different if the possibility to benefit from a tax credit was introduced after the Decision was adopted, as a way to circumvent it and render ineffective its legal consequences. However, this is not the case since the credit regime already existed and was not challenged by the Commission in its Decision.

The AG continued by analyzing if the uniliteral tax credit available in Gibraltar represents unlawful State aid. In this regard, the AG observed that elimination of double taxation is a legitimate objective in both the OECD's and the EU's view, and that Member States are free to decide the most appropriate system and conditions for granting relief. The AG therefore concluded that Gibraltar's tax credit provision does not constitute State aid.

In view of these considerations, the AG proposed that the Court finds that neither the Decision, nor the State aid rules preclude the appellant from benefiting from a tax credit for taxes paid abroad.

AG opinion on compatibility of the German cross-border loss relief with EU law

On March 10, 2022, AG Collins of the CJEU gave his opinion in the W case (C-538/20). As reported in E-news issue 124, the case concerns a German taxpayer with a permanent establishment in the UK that incurred losses, which cannot be deducted in Germany as the double treaty concluded between the two countries includes the exemption method to avoid double taxation. The referring court requested clarifications regarding the compatibility with the freedom of establishment of the German rules on the deductibility of losses from foreign permanent establishments located in another Member State.

The AG noted that based on settled case-law foreign permanent establishments taxable only in the state where they are established – and by way of symmetry allowed to deduct losses only in that jurisdiction, are not in objectively comparable situations with permanent establishments set-up in the same state as the head-office. Therefore, in the AG's view, the German tax regime under dispute does not restrict the freedom of establishment.

Based on the above, the AG suggested that the Court finds that a Member State is not precluded to deny the deduction of final losses incurred by a foreign permanent establishment from the taxable profits of its resident head-office, where relevant double tax treaty includes the exemption method to avoid double taxation.

EU Institutions

EUROPEAN COMMISSION

Management Plan published for 2022

On March 7, 2022, the European Commission published the Directorate General (DG) for Taxation and Customs Union management plan for 2022, which sets out the objectives of the Commission in the field of taxation for the remainder of 2022. From a direct taxation perspective, the management plan states that the main outputs for 2022 in terms of new policy initiatives will be as follows:

- Proposal to implement the globally agreed re-allocation of taxing rights (Pillar One of the OECD BEPS 2.0 proposals): targeted for Q4 2022;
- Proposal to publish the effective tax rate (ETR) at which large groups pay corporation tax in each jurisdiction: targeted for Q2 2022;
- Proposal for a debt-equity bias reduction allowance (DEBRA): targeted for Q1 2022;
- Extension of the automatic exchange of information to cover crypto-currencies (DAC8): targeted for Q2 2022;
- Proposal for Withholding Tax Relief procedures: targeted for Q4 2022.

The timelines for the initiatives above have been subject to change since they were first announced in May 2021 as part of the Commission's communication on Business Taxation for the 21st century.

Please refer to Euro Tax Flash Issue 448 and E-News issues 145 and 147 for further details.

COUNCIL OF THE EU

ECOFIN Council fails to reach agreement on a revised proposal for an EU Minimum Tax Directive

On March 15, 2022, the Economic and Financial Affairs Council of the EU (ECOFIN) failed to reach political agreement on the revised proposal for an EU Minimum Tax Directive (compromise text).

The compromise text, which continues to be closely aligned with the Model Rules, builds on the European Commission's December 2021 proposal, but provides for several amendments that refer to the ongoing work of the OECD and rectifies areas of discrepancy between the Model Rules and the initial text. In order to address concerns previously raised by Member States, the compromise text refers to:

- a transposition deadline of December 31, 2023, i.e. Income Inclusion Rule (IIR) to apply for fiscal years beginning on or after December 31, 2023 – previously January 1, 2023, and
- an option for Member States to defer the application of the IIR and the Undertaxed Payment Rule (UTPR), where no more than ten Ultimate Parent Entities (UPEs) of in-scope MNE groups are located in those Member States. The March 12 compromise text mentioned a possible deferral up to December 31, 2025. However, during the ECOFIN meeting a deferral of up to five years was mentioned.

However, four Member States (Estonia, Malta, Poland and Sweden) restated their concerns in respect of the short implementation timeline, the adoption of the rules independent of Pillar One and details of the deferral option for qualifying Member States. The four Member States were therefore not able to express support for the general approach at this stage. Accordingly, further discussions are required and the French Presidency is aiming to reach agreement during the ECOFIN meeting scheduled for April 5, 2022.

For more information, please refer to Euro Tax Flash issue 468.

ECOFIN Council discusses revised proposal for a carbon border adjustment mechanism

During the March 15, 2022 ECOFIN meeting, the Ministers of Finance reached political agreement on a general approach for the revised proposal for an EU carbon border adjustment mechanism (CBAM). As reported in Euro Tax Flash issue 454, the CBAM was initially proposed by the Commission in July 14, 2021 as part of the 'Fit for 55' package and aims at reducing the risk of carbon leakage by encouraging producers in non-EU countries to green their production processes.

The Council agreed to a more centralized approach in terms of CBAM governance, as compared to the Commission's initial proposal. This would include a central registry to be set up at EU level to centralize CBAM declarants (importers). A de minimis exemption for consignments with a value of less than EUR 150 is also envisaged with the aim to reduce administrative complexity.

According to the note to the Council by the Permanent Representatives Committee, the Council needs to continue its work on a number of issues related to the CBAM, despite not being part of the proposed regulation. In particular, this concerns the phase-out of free allowances established by the EU Emissions Trading System Directive and limiting potential carbon leakage from exports.

The Council also emphasized the need for an enhanced cooperation with third countries, which could include a climate club to be set up in parallel to the CBAM, focused on carbon pricing policies.

For more information, please refer to the EU Council's press release.

EUROPEAN PARLIAMENT

MEPs approve report on EU Withholding Tax Framework

During the March 10, 2022 plenary session of the European Parliament (EP), the EP's resolution on a European Withholding Tax framework was adopted.

As noted in E-News issue 147, the report was intially approved by the ECON Committee of the European Parliament on January 25, 2022 and calls on the Commission and Member States to establish a harmonized withholding tax framework that ensures that all dividend, interest and royalty payments flowing out of the EU are taxed at a minimum effective tax rate, without suggesting the level at which the rate should be set. In this context, the Council is asked to swiftly resume and conclude the negotiations on proposed amendments to the Interest and Royalties Directive that would make the benefits of the Directive conditional on the interest and royatlty income being taxed in the hands of any third-country recipient. The EP also encourages the inclusion of such a measure in the proposed Directive on the implementation of the OECD Pillar Two proposals.

The report also expresses concerns regarding the lack of an effective minimum tax rate for dividend payments to shareholders in the EU and requests that the Commission analyzes the issue and, if needed, revises the Parent Subsidiary Directive. The report also calls for enhanced cooperation and mutual assistance between tax authorities, financial market supervisory authorities and, where appropriate, law enforcement bodies regarding the detection and prosecution of withholding tax reclaim schemes. The resolution also notes that only one Member State has implemented the OECD TRACE initiative, which empowers authorised intermediaries to reclaim withholding tax claims on portfolio investments, and calls on other Member States to assess the impact of TRACE on the reduction of administrative burden reductions as well as the impact on tax revenues and fraud risks.

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

MEPs approve report on fair and simple taxation supporting the recovery strategy

On March 10, 2022, a resolution calling for a fairer and simpler taxation system was adopted by members of the EP (MEPs).

The resolution makes a number of recommendations to the Commission on how fair and simple taxation could support the recovery strategy. Key recommendations include:

Withholding tax measures

- In line with the EU Withholding Tax Framework motion mentioned above, this resolution also calls for the Commission to assess the benefits of a minimum effective withholding tax rate and recommends that the Commission should relaunch the discussion on the blocked revision of the Interest and Royalties Directive.

Exchange of information

- While the resolution stresses the importance of swift exchange of information between Member States and looks forward to the Commission's proposal to extend the automatic exchange of information to include crypto-assets (DAC8), it is also critical of the fact that information collected under the Directive on Administrative Cooperation has not been shared with the European Parliament.
- The use of artificial intelligence to maximize the effectiveness of the use of data is recommended, as well as the increase of both the quantity and quality of data exchanged with a view to having a more efficient system (while noting that this should not give rise to a disproportionate rise in administrative costs for taxpayers).

Employment taxes and cross-border workers

- More attention should be paid to the large number of mobile workers and recommends that the tax burden should not move from capital gains towards labor taxes.
- The Commission should bring forward a proposal to address new working arrangements which have developed rapidly due to COVID-19 and highlights an urgent need to better define the notion of tax residency for individuals to ensure that the risk of double taxation or double non-taxation between Member States is minimized.

Code of Conduct Group reform

- The report also criticizes the outcome of the Economic and Financial Affairs Council (ECOFIN) meeting of the Council of the EU on December 8, 2021, where Finance Ministers of Member States failed to reach agreement on a revised mandate for the Code of Conduct Group on Business Taxation and reiterates its support for the Commission's intention to expand the scope of this mandate. In particular, the report calls for the inclusion of preferential personal income tax regimes to be included with the Code of Conduct Group mandate. For more information on the outcome of the ECOFIN meeting on December 8, 2021, please refer to Euro Tax Flash issue 461.
- The Commission should use the Recovery and Resilience Facility to pursue fiscal reforms and investments leading to a fairer, more sustainable and better digitalized fiscal system.

International corporate tax reform

- The resolution also welcomes the OECD/G20 Inclusive Framework on BEPS (IF) on the allocation of taxing rights and the application of a minimum effective tax rate of 15 percent on the global profits of MNEs and also calls for the collection of regularly updated data on effective corporate tax rates paid by the largest MNEs in the European Union. The resolution also welcomes the Commission's proposal for a directive to neutralize the use of shell entities (see Euro Tax Flash issue 464 for further details).

- Finally, the resolution is critical of the lack of progress that was made on the Commission's in developing a common consolidated corporate tax base (CCCTB) but is supportive of the rationale of the Commission's Business in Europe: Framework for Income Taxation proposal which is expected in 2023. For further detail on the BEFIT proposal, please refer to Euro Tax Flash issue 448.

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

OECD and other International Institutions

OECD

Release of the OECD Commentary to the Model Rules and launch of the public consultation on the GloBE Implementation Framework (Pillar Two)

On March 14, 2022, the IF published the Commentary to the Global Anti-Base Erosion (GloBE) Model Rules, as part of its Two-Pillar solution to address the tax challenges arising from the digitalisation of the economy.

According to the press release, the Commentary is intended to provide in-scope MNE groups and tax administrations with detailed and comprehensive technical guidance on the operation and intended outcomes under the GloBE rules and clarifies the meaning of certain terms. The Commentary is therefore intended to promote a consistent and common interpretation of the GloBE Rules. The Commentary also illustrates the application of the rules to various fact patterns, presented in the form of examples related to Chapters 2-7 of the Model Rules and included in a separate document.

In addition, the OECD announced that, as a next step, it will turn to the development of the Implementation Framework, which is supposed to provide agreed administrative procedures, such as filing obligations and the development of safe-harbours to facilitate coordinated implementation and administration of the GloBE Rules. It is also expected that the Implementation Framework will include guidance to assist tax administrations in determining whether a minimum tax is considered as a qualified Income Inclusion Rule, a qualified Undertaxed Payment Rule or a qualified Domestic Top-up Tax. In this context, the IF launched a public consultation to collect input from stakeholders on the matters they consider need to be addressed as part of the Implementation Framework.

For more information, please refer to the OECD's release and a KPMG TaxNewsFlash.

Public consultation on Draft Model Rules in respect of Amount A building blocks (Pillar One)

On March 8, 2022, the OECD released comments received on the Draft Model Rules for Tax Base Determination in relation to Amount A of the OECD Pillar One solution to reallocate profits of multinational enterprises to market jurisdictions. The OECD received a total of 35 responses, including a response letter submitted by KPMG, which highlights the following key issues:

- Accepting only qualifying financial accounting standards should be revisited if the revenue scoping threshold drops to EUR 10 billion, as envisioned;
- Commentaries for the book-to-tax adjustments should be the subject of a future public consultation;
- Another book-to-tax adjustment should be added to exclude fair value accounting gains/impairments related to assets and liabilities;
- Minority interests should be explicitly excluded;
- A materiality threshold should be considered, particularly for policy disallowed expenses;
- Time limitations imposed on the loss carry-forward mechanism should be lengthened;
- The eligible restatement adjustment "cap" should be eliminated to avoid businesses needing to track carry-forward attributes;
- The exclusion for regulated financial services should be broad to avoid the inherent complexity of determining the Amount A tax base for financial services businesses;
- Transferred losses in an eligible business combination or an eligible division exclusion for the disposition of an ownership interest;
- All aspects of the Amount A tax base should be included in the tax certainty process and any disputes should be dealt with in a mandatory and binding manner.

In addition, KPMG encourages the Task Force on the Digital Economy to carefully review all the adjustments agreed as part of the Pillar Two GloBE Rules and consider arriving at a single tax base determination, to the greatest extent possible, that can be consistently applied across both Pillars.

For more details, please refer to a KPMG TaxNewsFlash and the OECD's release.

Updated transfer pricing country profiles 2021/2022

On February 28, 2022, OECD announced the publication of a new batch of updated transfer pricing country profiles that provide information on local transfer pricing legislation and practices including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intra-group services, cost contribution agreements, transfer pricing documentation, administrative approaches to avoiding and resolving disputes, safe harbours, and other implementation measures.

As part of the new release, the OECD published for the first time country profiles of Honduras, Iceland, Jamaica, Papua New Guinea, Senegal and Ukraine, which increased the total number of OECD country profiles to 91.

For more details, please refer to a KPMG TaxNewsFlash.

Bahrain and Romania deposit MLI ratification instrument

On February 28, 2022, Bahrain and Romania deposited their instruments of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). For these two jurisdictions, the MLI will enter into force on June 1, 2022.

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

Local Law and Regulations

Estonia

Amendments to transfer pricing regulations

With effect from January 1, 2022, Estonian transfer pricing regulations were amended and harmonized with the general principles of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in 2017.

Based on the new regulations, the transfer pricing documentation must include a master file that contains the data on a consolidated group, a taxpayer's file on a local Estonian company and a country-by-country report. In addition, the new regulations provide detailed information about the content and documents that need to be added to the documentation components. The new regulations also specify the application of transfer pricing methods and requirements for a comparability analysis.

For more details, please refer to a report prepared by the KPMG member firm in Estonia.

Greece

Guidance on the application of CFC rules

On February 23, 2022, the Greek tax authorities published a Circular clarifying the application of the Greek controlled foreign company (CFC) rules as introduced by legislation on January 1, 2019 implementing the EU Anti-Tax Avoidance Directive (ATAD).

The Circular provides clarifications in respect of the scope, definitions and application of the CFC rules. In addition, the Circular notes that the Greek CFC rules do not apply to shipping companies that are subject to the Greek tonnage tax regime and to companies with funds either stemming from shipping activities or shipping investment funds. The Circular also provides that the exemption for substantial economic activity is only applicable to CFCs or permanent establishments that are located in an EU/EEA jurisdiction (i.e. not a third-country jurisdiction). In this context, the Circular further notes that the burden of proof is with the Greek tax authorities, i.e. to prove that a CFC does not carry on substantial economic activity.

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

Ireland

Updated guidance on defensive measures for non-cooperative jurisdictions

On February 21, 2022, Irish Revenue published updated guidance on defensive measures against jurisdictions included on the EU list of non-cooperative jurisdictions. As part of Finance Act 2021, Ireland introduced defensive measures to its Controlled Foreign Company (CFC) legislation to limit the availability of the effective tax rate exemption, the low profit margin exemption, and the low accounting profit exemption where an Irish resident company has a CFC resident in a jurisdiction which is listed as a non-cooperative jurisdiction.

In addition, the guidance has been updated to highlight that additional reporting requirements have been added to the Irish corporation tax return requiring taxpayers to disclose transactions involving the payment of interest, royalties and dividends to listed jurisdictions.

Updated CRS filing guidelines published

On February 16, 2022, the Irish Revenue issued updated Common Reporting Standard (CRS) filing guidelines, providing additional guidance for financial institutions on filing a correction return in accordance with OECD schema guidelines.

For more information, please refer to a report by KPMG member firm in Ireland.

Luxembourg

EU securitization vehicles in scope of Luxembourg interest limitation rules as from 2023

On March 9, 2022, the Luxembourg Ministry of Finance issued a new bill to amend the scope of the Luxembourg interest limitation rules in response to an infringement procedure launched by the European Commission with respect to the exemption currently granted to securitization vehicles ("SVs") (for more information on the infringement procedure, please refer to E-News issue 144).

As a result of the bill, these vehicles would become fully subject to the Luxembourg interest limitation rules, capping the deduction of net interest expenses (i.e., the amount of interest expense exceeding the interest income) up to the higher of 30 percent of tax EBITDA or EUR 3 million. This may, therefore, limit the capacity of those SVs to deduct interest expenses against revenue other than interest income or its equivalent.

The new bill shall be effective from financial years starting on or after January 1, 2023. As a next step, the bill needs to follow the usual legislative process.

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

Sweden

New reporting requirements for certain foreign companies

On January 1, 2021, new reporting requirements were introduced in Sweden for foreign companies that do not file an income tax return and that satisfy one of three criteria:

- the foreign company is registered for Swedish F-tax (Swedish corporate taxation);
- the foreign company is required to deduct preliminary tax from compensation for work in Sweden; or
- the foreign company is required to provide the equipment necessary to keep an electronic staff register on a building or construction site.

Companies in-scope of the new reporting requirements must submit the following "specific information" on an annual basis (starting for financial years beginning after December 31, 2020):

- information regarding the company’s operations in Sweden;
- the time period over which the operations or transactions have been conducted; and
- any other information that the Swedish tax agency requires to assess tax liability under the Swedish income tax law

For more details, please refer to a report prepared by the KPMG member firm in Sweden.

Switzerland

Switzerland launches public consultation on Pillar Two implementation proposal

On March 11, 2022, the Swiss Government launched a public consultation on a proposal to translate the Pillar Two Model Rules (as proposed as part of the OECD/G20 Inclusive Framework's solution to the tax challenges arising from digitalisation of the economy) into Swiss domestic legislation by January 1, 2024 (for previous coverage, please refer to E-News issue 146)

According to the explanatory document, the legal implementation of the minimum taxation rules requires, as a first step, a constitutional amendment, which will allow the legislator to introduce both pillars of the OECD/G20 BEPS 2.0 project and, if necessary, to deviate from existing constitutional principles. In addition, the constitutional amendment will provide for a decree that sets transitional rules including enablement of the Government to issue a temporary ordinance, which will be replaced by a permanent law following ordinary legislative procedures and once all remaining issues regarding the application of the Model Rules have been clarified on global level.

The explanatory document further notes that the temporary ordinance is currently drafted by the Federal Council (Bundesrat) and is scheduled for release by August 2022. In this context, the explanatory document provides for the following key aspects of the to-be-developed ordinance:

- The temporary ordinance will ensure a minimum level of taxation at a rate of 15 percent in respect of MNE groups by applying the GloBE Rules in line with the Model Rules and the accompanying Commentary;
- The rules will not provide for any changes in respect of all other businesses, in particular small and medium enterprises or purely domestic groups;
- The decree will make use of the option provided in the Model Rules and Commentary of applying a Qualified Domestic Minimum Top-up Tax to low-taxed Constituent Entities located in Switzerland;
- The top-up taxes are to be collected by the cantons, in which the respective taxable Ultimate Parent Entity or Constituent Entity is located;
- The UTPR shall be introduced in form of a new charge on Constituent Entities located in Switzerland based on the UTPR top-up tax allocated to Switzerland;
- The local filing requirements shall take into account the GloBE Implementation Framework, which is currently developed by the OECD.

The cantons and interested stakeholder are invited to submit comments on the proposal by April 20, 2022.

For more information, please refer to the press release of the Swiss Government

Switzerland and Liechtenstein terminate agreement on Covid-19 related tax measures for cross-border workers

On March 2, 2022, the Swiss Federal Tax Administration published a release informing that Switzerland and Liechtenstein agreed to terminate their agreement in respect of the taxation of cross-border workers during the COVID-19 pandemic with effect from March 31, 2022.

Based on the agreement, working days worked from home because of measures to combat the coronavirus pandemic were considered to be spent in the contracting state in which cross-border commuters would normally have carried out their work.

Ukraine

Tax measures during the period of martial law adopted

On March 3, 2022 the Ukrainian Parliament adopted legislative acts for the period of the martial law that was implemented on February 24, 2022, due to the Russian invasion of Ukraine. The legislative acts provide for the following key tax measures:

- Suspension of tax filing and reporting deadlines for the duration of the martial law;
- Exemption from administrative fines and criminal proceedings in respect of late filing or failures to comply with tax reporting requirements provided that the obligations are met within 90 days after the termination of the martial law;
- Suspension of tax audits for the duration of the martial law.

It was previously announced that the Ukrainian Ministry of Finance and the tax authorities will continue their work during the period of the martial law and that all taxes and fees must be paid in accordance with the domestic tax legislation. The Ukrainian Parliament has also urged taxpayers to make advance tax payments, if possible, to financially support the armed forces.

United Kingdom

Finance Bill 2022 published

On February 24, 2022, the Finance Bill 2022 was published in the Official Gazette. As previously covered in E-News issue 138, key tax measures include the introduction of the new qualifying asset holding companies regime and the introduction of a new notification requirement for uncertain tax treatments.

The tax measures provided for in the Finance Bill will mainly become effective as from April 2022. For more information, please refer to a report on the draft legislation and report on the final amendments to the Finance Bill prepared by the KPMG member firm in the UK.

Consultation for online sales tax launched

On February 25, 2022, the UK Government released a consultation on a proposal for an Online Sales Tax (OST) in order to rebalance the taxation of online and in-store retailers. It is noted that this consultation aims at helping the government to assess the case for and against implementing such a tax. If implemented, an OST would be used to reduce business rates for retailers with properties in the UK and fund the block grants of the devolved administrations in the usual way.

The consultation document also notes that the OST is different from a Digital Services Tax. In this context, the consultation document makes reference to the UK Government's agreement, along with other countries with similar measures, to transition away from its Digital Services Tax to a new global tax system once OECD Pillar One solution to reallocate profits of multinational enterprises to market jurisdictions is in place (for previous coverage, please see E-News issue 141).

The consultation will end on May 20, 2022. For more information, please refer to a report prepared by the KPMG member firm in the UK.

Local Courts

Poland

Supreme Court clarifies limit on tax-deductible debt financing costs

On March 3, 2022, the Polish Supreme Administrative Court confirmed that based on the domestic tax law applicable until December 31, 2021, in cases where financing costs exceeding 30 percent of EBITDA are lower than PLN 3 million (approx. EUR 626,000) in a tax year, companies are allowed to treat the entire amount as deductible for corporate income tax purposes. If financing costs exceed the PLN 3 million threshold, the 30 percent of EBITDA limit should be computed only by reference to the amounts exceeding PLN 3 million.

For more details please refer to a KPMG TaxNewsFlash.

KPMG Insights

The next chapter for BEPS Pillar 2 and the possible implications for multinationals

As part of the Future of Tax & Legal webcast series, KPMG International will hold a session on April 6, 2022, focusing on the next chapter for BEPS Pillar 2 and the possible implications for multinationals. With the OECD detailed Commentary released on March 14, 2022, this webcast should be a chance to consider a more detailed analysis of what these developments mean for multinational organizations and explore key considerations and actions for tax leaders.

Please access the event page to register.

EU Financial Services Tax perspectives

As part of the Future of Tax & Legal webcast series, KPMG International will hold a session on March 30, 2022, focusing on the question whether the European tax landscape will become even more volatile in the future. In this context, a panel of KPMG firms' tax specialists from across Europe will share their insights on some of the latest developments impacting asset managers, banks and insurers with a focus on:

- EU Commissions Shell Entities Directive proposals;
- BEPS 2.0 a closer look at the ambitious timetable set out by the OECD, the potential cost to business and compliance challenges in managing reporting obligations; and
- European withholding tax developments.

Please access the event page to register.

Restructuring – Tax and Legal Considerations

As part of the Future of Tax & Legal webcast series, KPMG International held a session focusing on the tax and legal aspects of restructuring financially troubled companies on January 25, 2022. The topics covered addressed tax and legal issues relevant to debtor companies, creditors and acquirors of financially distressed assets including debt modification, bankruptcy, stressed asset dispositions and internal reorganization. A replay of the webcast is available here.

Raluca Enache
Director
KPMG's EU
Tax Centre

Ana Puscas
Manager
KPMG's EU
Tax Centre

Cormac Golden
Associate Director
KPMG's EU
Tax Centre

Marco Dietrich
Manager
KPMG's EU
Tax Centre

Key links

- Visit our website for earlier editions

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

© 2022 Copyright owned by one or more of the KPMG International entities. KPMG International entities provide no services to clients. All rights reserved.