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E-News from the EU Tax Centre

Issue 152 – April 13, 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](#)

[CJEU decision in Finnish investment fund withholding tax case](#)

On April 7, 2022, the Court of Justice of the European Union (CJEU) rendered its [decision](#) in case C-342/20. The case concerns the compatibility with EU law of Finland's rules that exclude from an income tax exemption investment funds not set up in contractual form. In line with the opinion of the AG, the CJEU ruled that the legislation in question is incompatible with the freedom of capital.

For more information, please refer to [Euro Tax Flash Issue 472](#).

General Court decision in Gibraltar State aid case

On April 6, 2022, the General Court of the European Union (General Court) gave its decision in a case concerning the compatibility with EU law of Gibraltar's corporate income tax exemption regime for royalties and of related individual tax rulings (T-508/19).

The General Court partially annulled the State aid decision issued by the Commission, in so far as it relates to individual aid granted to the plaintiff, based on a tax ruling, for the period 2014 onwards. The annulment also covers the order for recovery connected with that measure. On the other hand, the Court upheld the Commission's finding based on which Gibraltar's corporate tax exemption for royalty income applicable until December 31, 2013 constitutes unlawful State aid.

AG opinion on compatibility of EU MDR notification obligation with EU law

On April 5, 2022, Advocate General (AG) Rantos opined in the case of Orde van Vlaamse Balies and Others (the Flemish Bar Council), C-694/20. The AG concluded that the requirement for intermediaries availing of legal professional privilege from the mandatory disclosure provisions under the Directive on Administrative Cooperation (DAC6) to notify other intermediaries (or the relevant taxpayer) of their reporting obligation did not infringe on the right to a fair trial or right to respect private life under Articles 47 and 7 of the Charter of Fundamental Rights of the European Union. However, the AG did conclude that a requirement under Belgian law for the name of the intermediary claiming privilege to be disclosed to the tax authorities was disproportionate and unnecessary to achieve the objective of combating aggressive tax planning.

For more information, please refer to [Euro Tax Flash Issue 472](#).



Infringement Procedures and CJEU Referrals

Commission sends letter of formal notice to Germany

On April 6, 2022, the European Commission sent a letter of formal notice to Germany as part of its [April infringement package](#), requesting that Germany amends its legislation regarding the taxation of dividends and interest paid to charitable organizations.

Under German tax law, dividends and interest paid to charities having their legal seat or the place of management in Germany are either exempt from withholding tax, or withholding tax is refunded. However, dividends and interest paid to comparable charities established in other EU and EEA Member States and third countries are taxed at a rate of 25 percent unless a relevant Double Tax Agreement provides for a reduced rate. The basis for the infringement procedure is that this difference in treatment of domestic and cross-border dividend and interest distributions to charities appears to represent a restriction on the free movement of capital.

The letter of formal notice has not been made publicly available by the European Commission. Germany has two months to respond to the arguments raised by the European Commission, after which

the Commission may decide to send a reasoned opinion.

Reasoned opinion sent to Malta regarding its investor citizenship scheme

On April 6, 2022, the European Commission sent a reasoned opinion to Malta in respect of its investor citizenship scheme.

The Commission's reasoned opinion states that the granting of EU citizenship in return for pre-determined investments or payments (with no genuine link to the Member State) is incompatible with EU law, notably Article 4(3) of the Treaty on European Union (TEU) and Article 20 of the Treaty on the Functioning of the European Union (TFEU).

If Malta does not respond to the reasoned opinion in a satisfactory manner within two months, the Commission could refer Malta to the CJEU.

Reasoned opinion sent to Spain regarding SEPA regulations for tax payments

On April 6, 2022, the European Commission sent a reasoned opinion to Spain requesting that Spanish tax legislation be amended to allow individuals to pay Spanish taxes by direct debit (and in some cases credit transfers) from bank accounts in another EU Member State. Currently, Spanish law states that a payment service provider needs to be authorized by the Spanish tax authorities as a "collaborating entity", with the authorization process proving challenging for many non-Spanish payment service providers.

The Commission states that the difficulty in using non-Spanish EU bank accounts is contrary to the provisions of Regulation (EU) No. 260/2012 (the SEPA Regulation), which underpins the functioning of the EU single market.

If Spain does not respond to the reasoned opinion in a satisfactory manner within two months, the Commission could refer Spain to the CJEU.

For more information, please refer to the Commission's [April 2022 infringement package](#).



EU Institutions

COUNCIL OF THE EU

No agreement reached on minimum tax Directive proposal at ECOFIN meeting

The Economic and Financial Affairs Council of the EU (ECOFIN) did not reach political agreement on the [revised compromise text](#) for an EU Minimum Tax Directive in its April 5, 2022 meeting, due to reservations from Poland.

The revised compromise text (dated March 28, 2022) builds on the March 12 text, and addresses the remaining concerns raised by four Member States during the ECOFIN meeting on March 15, 2022. The

March 28 compromise text extends to six years the maximum deferral period that Member States can opt for. Member States where no more than twelve (previously ten) Ultimate Parent Entities of in-scope groups are located can therefore choose to not apply the Income Inclusion Rule (IIR) and the Undertaxed Payment Rule (UTPR) until December 31, 2029.

Despite the French Presidency's proposal to commit to the successful accomplishment of the OECD's Pillar One solution by way of a joint Council statement, Poland restated its request for a legally binding link on the implementation of both Pillar One and Pillar Two and therefore did not express support for the revised compromise text. Accordingly, the EU Minimum Tax Directive will be added to the agenda for the next ECOFIN meeting on May 24, 2022 and the French Presidency continues to pursue the goal to find consensus among all EU Member States.

For more information please refer to [Euro Tax Flash issue 470](#).

EUROPEAN COMMISSION

KPMG responds to European Commission public consultation on “Unshell” Directive proposal

On April 5, 2022, KPMG¹ member firms in the EU submitted a [response](#) to the European Commission's (EC's) public consultation on the proposed EU Directive on rules to prevent the misuse of shell entities for tax purposes. This follows the submission of a KPMG [response](#) to the initial public consultation held on the proposal in August 2021.

While KPMG believes that the potential misuse of entities lacking economic substance for tax purposes should be given further consideration, we are of the view that the need for EU-wide action should be assessed in the context of the current tax landscape, i.e. following the entry into force and impact of rules such as the EU Anti-Tax Avoidance Directive (ATAD) and the EU Mandatory

Disclosure Rules for Intermediaries and Taxpayers (MDR / DAC6), as well as in light of further expect changes, such as the entry into force of the OECD Global Anti-Base Erosion (GloBE) Model Rules.

For more information please refer to [Euro Tax Flash issue 471](#).

Public consultation on EU withholding tax framework

On April 1, 2022, the European Commission launched a [public consultation](#) (in a questionnaire format) on a proposed Directive that would introduce a common EU-wide system for withholding tax (WHT) on dividend and interest payments. This is the second step in the consultation process, the first was in October 2021. The consultation period runs from April 1, 2022 to June 24, 2022.

The consultation document notes that withholding tax refund procedures for cross-border payments have proved to be lengthy, resource-intensive and costly for both investors and tax administrations due to the difficulties for tax administrations to properly assess the entitlement to reduced withholding tax rates and the lack of digitalized procedures. The aim of the withholding tax initiative is to provide Member States with the information to prevent tax abuse in the field of withholding taxes and, at the same time, accommodate a swift and efficient processing of the requests for a refund and/or a relief at source procedures of the excess taxes withheld.

The information gathered under the public consultation will be used to support the impact assessment of the EC in the context of this initiative. The Commission is expected to adopt its proposal – likely in the form of a Directive, by the fourth quarter of 2022.

EUROPEAN PARLIAMENT

MEPs call for new rules to stop illicit flows of crypto assets

On March 31, 2022, Members of the European Parliament (MEPs) on the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties (LIBE) voted to adopt their position on draft legislation strengthening EU rules against money laundering and terrorist financing. The draft legislation would apply to all transfers of crypto-assets in the European Union and would require information on the source of the asset and its beneficiary to be made available to competent authorities. The aim of the legislation is to trace all crypto-transfers, in turn enabling suspicious transfers to be blocked.

It is expected that the European Parliament will vote on the draft legislation during the plenary session in April.

For more information, please refer to the [press release](#) of the European Parliament.

Study on harmful practices and competition in the areas of personal income and wealth taxation

On April 1, 2022, the European Parliament published an [analysis](#) requested by the sub-committee on tax matters (FISC) which focuses on harmful practices and competition in the area of personal income and wealth taxation.

The key finding of the study is that taxpayers are becoming increasingly mobile and that traditional tax bases are becoming more sensitive to taxation, which has led to increased pressure on countries to reduce the burden of personal taxation as well as wealth-related taxes. The study notes that this has led to increased competition in these areas between jurisdictions to attract mobile taxpayers, most notably through:

- Reductions in the marginal personal taxation rates, which the study finds have been declining steadily over the previous 25 years; and
- Increased levels of preferential tax arrangements for high-net worth individuals, which the study finds have been increasing across the European Union.

The study highlights that, while these measures have been successful in attracting influxes of high-net worth individuals, when viewed in the round, unilateral and uncoordinated measures can be considered to be harmful as they give rise to negative consequences for other jurisdictions and are therefore not socially optimal policies by design.

FISC hearing to discuss the Dutch tax system

On March 28, 2022, MEPs from the European Parliament's subcommittee on tax matters (FISC) discussed with experts the national tax reforms implemented in the Netherlands to combat aggressive

tax schemes.

Five experts presented their experiences and views on what the Netherlands “is changing to better fight tax evasion and avoidance and aggressive tax planning”, while highlighting areas where further work may be needed. In this regard, issues discussed included regulation of financial intermediaries, the Dutch patent box regime and further reform of the Dutch withholding tax regime.

MEPs also requested additional information regarding specific changes made to the Dutch tax system and how the effect of these changes could best be measured in the coming months and years. Additional queries covered the manner in which the Netherlands was likely to implement the new tax international agreements and upcoming EU legislation.

For more information, please refer to the [press release](#) of the European Parliament.

MEPs discuss exchange of tax information with “Pandora Papers” jurisdictions

On March 28, 2022, a second hearing of the FISC sub-committee discussed mechanisms to improve the amount and transparency of information obtained from certain non-EU jurisdictions. Mechanisms discussed included a central registry for ownership information of all types of trusts, improving transparency regarding beneficial owners, and requiring EU Member States to annually publish their Common Reporting Standard statistics.

MEPs also wished to understand potential reasons why it may be attractive to establish operations in the Crown Dependencies and also sought recommendations on how to further regulate trusts and shell companies and how the automatic exchange of information could be used for anti-money laundering purposes.

For more information, please refer to the [press release](#) of the European Parliament.



OECD and other International Institutions

OECD

Public consultation on the GloBE Implementation Framework (Pillar Two)

On April 25, 2022, the OECD will hold a public consultation meeting on the Implementation Framework of the global minimum tax, to discuss the input provided during the formal consultation process and to consider mechanisms to be put in place to ensure that tax administrations and MNEs can implement and apply the GloBE Rules in a consistent and coordinated manner.

For more details please refer to the OECD's [press release](#).

Public consultation on Model Rules on Scope (Pillar One – Amount A)

On April 4, 2022, the OECD/G20 Inclusive Framework on BEPS released for public comments [Draft Model Rules](#) on Scope in relation to Amount A of the OECD Pillar One. Amount A requires the development of sourcing rules and a revenue-based allocation key which will result in a percentage of the profits of an MNE group being allocated to market jurisdictions where certain turnover and profit before tax margin thresholds are met.

Based on the draft scope rules, the Amount A shall apply only to large and highly profitable groups. A group will be in scope of Amount A where it meets the following threshold tests:

- the group's total revenues must exceed an absolute amount of EUR 20 billion (or equivalent) in a period and,
- the group's relative profitability as measured against its total revenues must exceed 10% in at least two of the four prior periods ("the prior period test") and on average across those four prior periods and the current period ("the average test").

In line with the Pillar Two GloBE rules, the group entities as well as the group's revenue and profitability would be determined based on the information included in the consolidated financial statements prepared at the level of the Ultimate Parent Entity of a group. Similar to the GloBE rules, certain types of entities are excluded from the scope of Amount A. The Model Rules on Scope also include an anti-abuse provision to prevent a group that is held under certain types of entities from being artificially fragmented into numerous groups in order to circumvent the rules.

The OECD's press release stresses that the draft rules do not reflect consensus from the Inclusive Framework on BEPS regarding the substance of the document and that the OECD working group is currently exploring a number of open questions in respect of the design of Model Rules on Scope.

Comments are requested by April 20, 2022.

For additional information please refer to KPMG's [Tax News Flash](#) and the OECD's [press release](#).

OECD releases IT-format to support exchange of tax information on digital platform sellers

On March 29, 2022, the OECD released a [standardized IT-format](#) to support the electronic reporting and automatic exchange of information collected under the OECD's Model Reporting Rules for Digital Platforms.

The Model Rules require digital platform operators to report on the income generated by selling goods or offering accommodation, transport and personal services through platforms. The standardized IT-format is intended to minimize compliance burdens on digital platform operators and facilitate the IT-based exchanges both under the OECD's Model Reporting Rules for Digital Platforms and the EU Directive 2021/514 of March 22, 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7).

For more details, please refer to KPMG's [Tax News Flash](#) and the OECD's [press release](#).

Thailand ratifies BEPS MLI

On March 31, 2022, Thailand deposited its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI will enter into force on July 1, 2022 for Thailand.

For more details, please refer to the OECD's [press release](#).

United Nations

Meeting of the UN Committee of Experts on International Cooperation in Tax Matters

On April 4 to 7 and April 11 to 12, 2022, the UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) held its twenty-fourth meeting. Key discussions concerned:

- update to the UN Model Taxation Convention between developed and developing countries;
- UN Manual on negotiation of bilateral tax treaties;
- taxation of the digitalized and globalized economy;
- transfer pricing;
- environmental taxation.
- dispute avoidance and resolution; and
- digitalization and improvement of tax administration.

For more information please refer to the dedicated [web page](#) of the UN Tax Committee and the report on the twenty-fourth session.



Local Law and Regulations

Germany

Draft law amending interest on back taxes and tax refunds

On March 30, 2022, the German Government approved the draft legislation that provides for the amendments to interest on back taxes and tax refunds. The draft law provides for a retroactive reduction of the interest rate for interest on back taxes and refunds to 0.15 percent per month (1.8 percent per year) for interest periods from January 1, 2019. The new interest rate is based on the German central bank's current base rate (-0.88 percent p.a.) with a mark-up of approx. 2.7 percentage points. This interest rate is to be evaluated for appropriateness every three years taking into account movements in the base rate.

The German Federal Constitutional Court had previously ruled (July 8, 2021) 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 (for previous coverage see [E-News issue 142](#)).

The draft bill is still subject to approval by both the lower house of the parliament (Bundestag) and the Federal Council (Bundesrat). For more details, please refer to a [report](#) prepared by the KPMG member firm in Germany.

Extension of Covid-19-related agreement on the taxation of cross-border workers

On April 4, 2022, the German Ministry of Finance announced that Germany extended its [agreement](#) with Austria, its [agreement](#) with the Netherlands and its [agreement](#) with France on the special tax agreement in respect of cross-border workers during the COVID-19 pandemic until June 30, 2022. Based on the agreements, working days worked from home because of measures to combat the coronavirus pandemic are considered to be spent in the contracting state in which cross-border commuters would normally have carried out their work.

It was further noted that the agreements will not be extended beyond that date given that Covid-19 related restrictions have been largely lifted.

Ireland

Updated DAC6 guidance issued

On March 1, 2022, Irish Revenue published updated [guidance](#) providing further clarifications on the reporting rules in respect of cross-border arrangements (DAC6). Key updates include:

- further clarifications on when it is "reasonable" to "expect" to derive a tax advantage as a main benefit of a cross-border arrangement;
- further guidance on the meaning of "knows or could be reasonably expected to know" in relation to the potential reporting obligation of a secondary intermediary;
- further details on the information to be disclosed as part of a DAC6 filing, including:
 - the description of the cross-border arrangement;
 - the national provisions that form the basis of the cross-border arrangement; and
 - Member State(s) likely to be affected by a cross-border arrangement.

For more information, please refer to the [press release](#) of the Irish Revenue.

Luxembourg

Guidance issued on the "group escape" in respect of the interest limitation rules

On March 25, 2022, the Luxembourg tax authorities published [guidance](#) clarifying the application of the so-called "group escape" clause as part of the interest expense deduction limitation rules under the EU Anti-Tax Avoidance Directive (ATAD), which broadly allows a taxpayer to deduct borrowing costs in excess of 30 percent of EBITDA if the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group in which it is a member.

The guidance provides clarifications in respect of:

- the cumulative conditions that need to be met in order to apply the group escape clause;
- the information to be provided along with the request to apply the group escape clause;

- accepted accounting standards;
- the consequences when applying the group escape clause.

Netherlands

Draft bill to transpose DAC7

On March 23, 2022, the Deputy Minister of Finance presented a [bill](#) to transpose the EU Directive on Information Exchange in the Digital Platform Economy (DAC7) to the Lower House of the Dutch Parliament. The bill would require digital platform operators to provide the Dutch tax authorities with information about certain users (“sellers”) on their platform.

The measures would be effective for financial years as of January 1, 2023, with a first reporting deadline of January 31, 2024.

For more information please refer to a [report](#) prepared by the KPMG member firm in the Netherlands.

Turkey

Increase of corporate tax rate for financial sector

On March 25, 2022, a draft bill was submitted to the Turkish Parliament that would provide for an increase in the corporate income tax rate to 25 percent (currently 20 percent) in respect of financial sector companies, including banks, financial leasing companies, asset management firms, and insurance companies. Turkey's standard corporate income tax rate is 22 percent, however, this rate was temporarily increased to 25 percent in 2021 and 23 percent in 2022.

Subject to the Turkish Parliament's approval, the 25 percent tax rate for financial sector companies would be effective from 2022.

United Kingdom

Guidance on reporting requirements in respect of uncertain tax treatments

On April 1, 2022, HMRC published additional [guidance](#) to assist taxpayers in assessing whether they are required to notify an uncertain tax treatment (UTT) under the new reporting requirements for qualifying large companies and partnerships.

For more details on the reporting requirement in respect of UTT, please refer to our previous coverage in [E-News issue 147](#).



Local Courts

France

Administrative guidance regarding digital services tax found to be invalid

On March 31, 2022, the French supreme administrative court (the Court) issued a [decision](#) in a case involving the French digital services tax.

The Court found that French administrative guidance denying an exemption for the supply of digital content to multi-player online games was contrary to the digital services tax law. In the Court's view, the wording of the guidance could be interpreted as capturing within the scope of the tax a sector of activity that had been expressly excluded from the scope by the relevant law. As a result, the Court deemed the related guidance as invalid.

For more information please refer to a [KPMG Tax News Flash](#).

Germany

Attribution of profits of permanent establishment without personnel

On November 24, 2021, the German Federal Tax Court (BFH) upheld a decision issued by a lower court in a case concerning the attribution of profits to a domestic permanent establishment with no employees.

The plaintiff is a German limited partnership, with a Danish partner, operating a wind farm in Germany. The plaintiff did not employ any personnel and the business management and technical support functions were undertaken by two German service companies. Germany introduced the OECD's approach for attribution of profits to permanent establishments starting January 1, 2013. Based on this approach, the significant people function is relevant to the attribution of assets.

Following a tax audit, the local tax authorities noted the absence of local staff and argued that starting 2013 – the date when the OECD's approach became effective in Germany, the partnership's assets were no longer attributable to the German wind farm. Consequently, they considered that exit tax was due in Germany and assessed additional tax liabilities.

In its decision, the BHT upheld the lower court's decision to suspend the enforcement of the tax assessment issued by the tax authorities. Both courts expressed doubts concerning the legality of the assessment on the grounds that the people function might not be relevant in cases where the permanent establishment has no personnel. Alternatively, if the people function was found to be relevant, the courts noted that the presence of external personnel might be relevant when allocating assets.

These doubts were deemed sufficient by the two courts to suspend enforcement. However, the lower court still needs to issue a ruling on the main proceedings.

For more information, please refer to a [report](#) prepared by the KPMG member firm in Germany.



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 held sessions on April 6 and April 7, 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 provides a more detailed analysis of what these developments mean for multinational organizations and explores key considerations and actions for tax leaders.

A replay of the webcast is available [here](#).

EU Financial Services Tax perspectives

As part of the Future of Tax & Legal webcast series, KPMG International held 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 shared 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.

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

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