KPMG

E-News from KPMG's EU Tax Centre

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Issue 157 – July 5, 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 on German dividend withholding tax refund rules

On June 16, 2022, the Court of Justice of the European Union ('CJEU' or 'Court') rendered its decision in the ACC Silicones case (C-572/20). In line with the opinion previously issued by the Advocate General, the Court concluded that the German evidential requirements for withholding tax reimbursements in relation to dividends received from portfolio investments are contrary to the free movement of capital.

For portfolio investments, the German rules on dividend withholding tax refunds are stricter in cases where the recipient is a EEA company (i.e. not resident in Germany). Among other requirements, such foreign recipients are required to prove, by submitting certificate(s) issued by the foreign tax authorities, that neither the foreign taxpayer nor one of its direct or indirect shareholders is able to offset the German withholding tax, or deduct the tax as an operating cost or a business expense. In contrast, German recipients are allowed to offset the tax in full against German corporate income tax payable, with a reimbursement of any withholding tax in excess of the corporate income tax liability,without further documentary evidence.

The Court noted that when determining if the rules represent a restriction of the free movement of capital, it is necessary to analyze if the relevant tax treaty fully neutralizes differences between the tax treatment applied to resident and non-resident companies. Whilst it is up to the referring court to perform this assessment, the CJEU noted that the relief mechanism set out by the UK / Germany double tax treaty (i.e. credit against the tax payable in the UK), does not guarantee full neutralization in all cases. In this regard, cases could arise, for example, when the UK tax payable on the dividends received is lower than withholding tax levied in Germany.

The Court also observed that the analysis should be completed at the level of the recipient and should not take into account the possible set-off of the German withholding tax against the tax liabilities of the recipient's direct or indirect shareholders. Moreover, based on settled case-law, the ability of a non-resident company to avail of a deduction for WHT that has not been reimbursed does not fully neutralize a difference in treatment between resident and non-resident companies where the resident company is entitled to a reimbursement of the withholding tax suffered. On this basis and subject to the verifications to be carried out by the referring court, the CJEU concluded that the measure under dispute represents a restriction to the free movement of capital.

For more information, please refer to Euro Tax Flash Issue 479.

EU Institutions

COUNCIL OF THE EUROPEAN UNION

ECOFIN report to European Council on tax issues

On June 17, 2022, the final scheduled meeting of the Economic and Financial Affairs Council of the EU (ECOFIN Council) under the French Presidency of the Council took place.

Despite Poland lifting previous reservations, Member States were unable to reach political agreement on the Minimum Tax Directive proposal due to a change in position by Hungary, which decided to veto the proposal despite having agreed to support the initiative at previous ECOFIN meetings.

During the meeting, the ECOFIN Council approved a report to the European Council, which provides an overview of the progress achieved in the Council on a range of tax measures, including, from a direct tax perspective, the status of the Unshell Directive proposal, the launch of the European Commission's Debt-Equity Bias Reduction Allowance (DEBRA) proposal and political negotiations on the adoption of the Minimum Tax Directive.

The ECOFIN Council also approved a report by the Code of Conduct Group on its work performed during the term of the French Presidency (first half of 2022).

For more information, please refer to Euro Tax Flash Issue 478.

Progress report on new own resource measures

On June 10, 2022, the French Presidency of the Council published a progress report on the introduction on new own resources to cover planned expenditure related to the European Union recovery instrument (*Next Generation EU – NGEU*). The Council is targeting introduction of new own resource measures through:

(i) an allocation of 75 percent of revenue generated by the carbon border adjustment mechanism (CBAM),
(ii) an allocation of 25 percent of revenues generated under the EU emissions trading system (EU ETS), and
(iii) a national contribution by Member States to the EU budget based on the share of 15 percent of the taxable profits of multinational enterprises re-allocated to each Member State under Pillar One of the OECD BEPS 2.0 proposals.

The progress report notes that significant work has been undertaken on the development of these own resources and that the Commission provided answers to concrete technical questions raised by Member States including on (i) the macroeconomic assumptions, the underlying data and the methodology adopted by the Commission in its proposal and (ii) justification of the rates chosen for each own resource. The progress report also notes that the Commission will propose additional new own resource measures by 2024 and that these proposals may in fact be presented early. In this regard, the Commission had previously stated that that these additional own new own resources could include a Financial Transactions Tax (see ETF 463 and the Commission's proposal for EU own resources for further details).

At the ECOFIN meeting on June 17, 2022, Member States were invited to express their views on the introduction of these new own resources to ensure the repayment of the EU recovery plan and on the timetable for their implementation. A number of Member States acknowledged the work undertaken by the Commission and the French Presidency of the Council and expressed support for the introduction of new own resources. However, the majority of Member States raised a number of concerns, including:

- A need for time and information (including impact assessments for Member States) to fully appreciate the consequences of the new own resource measures.
- A need to examine the Commission's proposal to implement Pillar One before discussing the allocation of Pillar One revenues.
- The potential disproportionate impact of the ETS allocation on Member States with GDP below the EU average.
- The collection of taxes remaining the sole competence of Member States.

For more information, please refer to the ECOFIN meeting website.

EUROPEAN COMMISSION

KPMG responds to European Commission's public consultation on EU withholding tax framework

On June 26, 2022, KPMG member firms in EMA submitted a response to the European Commission's (EC's) public consultation on an initiative to introduce a common EU-wide withholding tax (WHT) system. This follows the submission of a KPMG response to the initial public consultation in October 2021 (see E-News Issue 152 for further details).

In short, KPMG supports the EC's efforts in designing a common EU-wide system for WHT. In particular, KPMG believes that existing challenges, combined with efforts by individual Member States to modernize their WHT regimes, create a fractured EU landscape that is difficult for cross-border investors to navigate. In practice, difficulties in obtaining relief mean that small investors often choose not to apply for favorable rates that are otherwise available to them, while custodians apply thresholds in certain markets, meaning that there are instances where even institutional investors forgo their rights.

KPMG reiterated that a common EU relief at source (RAS) system remains our preferred policy option, implemented through a harmonized set of rules, practices, digitalized processes and documentation. As set out in the response, we remain conscious that implementing a common EU RAS system could face significant challenges, due to tax policy preferences of individual Member States, the difficulty of establishing eligibility for WHT relief in complex cases and/or other procedural reasons including the capacity of Member States' IT infrastructure to operate advanced technological systems. It is, therefore, important that a common refund system, ideally fully digitalized, is also available to complement the RAS process, acting as a backstop for cases where WHT relief at source is not achieved.

In the view of KPMG, policy efforts should focus on the gradual transition to a fully-fledged RAS system along with a more efficient harmonized EU refund system acting as a backstop. The first step of such an approach should ensure digitization and standardization of forms, guidance and coordination of requirements for proving beneficial ownership and consistent timelines. The use of distributable ledger technology could be considered as a possible solution to support this process.

According to the European Commission's public consultation page, more than 1,650 feedback instances were received as part of the consultation process. The Commission is expected to publish its proposal, likely in the form of a Directive, in the course of 2023.

European Commission mega-trends in taxation event and annual report publication

On June 28, 2022, the European Commission's DG TAXUD hosted an event called "Mega-trends and the impact on Taxation". The topics discussed at the event included:

- The impact of labor market shifts and ageing societies on taxation.
- The impact of digitalization and globalization on taxation, which included discussions on the OECD Pillar One proposal, the common taxation of crypto-currencies, the use of data in taxation and the taxation of cross-border workers.
- The impact of climate change and environmental degradation, including a discussion on the Commission's carbon-border adjustment mechanism (CBAM) proposal and agreement at OECD level to establish an Inclusive Forum on carbon mitigation approaches.
- Tax evasion and avoidance, which included discussions on the EU's list of non-cooperative jurisdictions, the progress of the Commission's Unshell Directive proposal, the application of withholding tax on outbound payments from the EU and the modernization of exchange of

information provisions.

Alongside the event, the European Commission also published on June 28, 2022, its Annual Report on Taxation 2022, focusing on the following areas:

- An overview of local R&D tax incentives in the EU.
- A comparison of the application of withholding taxes on flows to non-EU jurisdictions.
- A comparison of the application of notional interest deduction regimes in the EU.
- Examples of local tax incentives for SMEs in the EU.
- An accompanying report on taxation trends in the European Union.

At the mega-trends event, it was also noted that the European Commission expects to host a Tax Symposium on November 28, 2022, which is intended to generate input and ideas on the large-scale changes needed in taxation across the EU to better shape the European Commission's policy priorities for the future.

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

European Commission consulting on draft implementing regulation for DAC7

On June 14, 2022, the European Commission launched a public consultation in respect of a draft implementation regulation on the standard forms and computerized formats to be used in relation to Council Directive (EU) 2021/514 (DAC7). DAC7 amends Directive 2011/16/EU on administrative cooperation in the field of taxation regarding the exchange of information on the income generated by sellers through digital platforms. The consultation is open until July 12, 2022.

For more information, please refer to the European Commission public consultation website.

EUROPEAN PARLIAMENT

FISC sub-committee exchange of views with Commissioner Gentiloni

On June 27, 2022, the European Parliament's sub-committee on tax matters (FISC) held a public exchange of views with Commissioner for Economy, Mr. Paolo Gentiloni. The meeting discussed a range of different initiatives, including:

- *Progress on the Minimum Tax Directive:* Commissioner Gentiloni stressed that the Commission is fully committed to pressing ahead with the proposed Directive and that each of the two pillars of the OECD BEPS 2.0 solution are equally important to the Commission. In respect of Hungary's veto of the proposal at the June 17 ECOFIN meeting (see ETF 478 for further details), the Commissioner noted the possibility of proceeding with the proposed Directive under the enhanced cooperation mechanism but stated that the European Commission believes that Member States are close to unanimity and the Council should continue to pursue unanimous approval of the proposal as a result.

  It was also noted that, while the European Commission is generally in favor of qualified majority voting in several taxation issues, the rights of smaller countries also need to be protected.

- *Progress on Pillar One of the OECD BEPS 2.0 proposals*: Commissioner Gentiloni advised that unilateral EU action on digital taxation could be introduced if implementation of Pillar One is not achieved.

- *Unshell Directive proposal:* Commissioner Gentiloni stated that the European Commission is quite satisfied with the draft report of the European Parliament on Unshell (see E-News Issue 156 for further details). However, it was noted that work would continue on the proposed text during the Czech Presidency of the Council to reach a compromise solution for all Member States.

- *EU-wide system for WHT relief:* Commissioner Gentiloni advised that an initiative to introduce an EU-wide system for WHT relief is scheduled to be released in 2023 and that the European Commission is currently exploring different policy options to address the issue of inefficient withholding procedures.

- *Windfall Profits Taxes:* Commissioner Gentiloni noted that the Commission is in favor of windfall profits taxes and encourages the introduction of such taxes by Member States. In this regard, it was noted that, in Annex 2 of the RePowerEU, the Commission has formally provided guidance on the application of fiscal measures on infra-marginal profits. However, Commissioner Gentiloni did stress that windfall profit taxes are viewed by the Commission as being a temporary or exceptional measure.

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

FISC sub-committee workshop on the regulation of tax advisors

On June 27, 2022, the FISC sub-committee also received a presentation which provided an overview of the status of the regulation of tax advisors in four EU Member States (Germany, Ireland, Italy and the Netherlands) and the United Kingdom. The presentation – by Prof. Emer Mulligan from the National University of Ireland, Galway, noted that the regulatory landscape differs across the jurisdictions surveyed and that the current regulatory landscape has developed in recent years with the introduction of mandatory disclosure rules (DAC6) and audit reforms.

In terms of recommendations, the review found it difficult to make concrete recommendations due to a lack of data on the impact that increased regulation would have on intermediaries. However, the presentation suggested that possible developments from a regulatory perspective could include (i) the introduction of mandatory professional indemnity insurance, (ii) greater transparency about disciplinary proceedings against advisors that are found to facilitate tax evasion, (iii) enhancement of tax authority powers to deal with malpractice and (iv) the introduction of an EU-wide code of conduct for tax advisors.

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

OECD and other International Institutions

Public comments received on tax certainty aspects of Amount A (Pillar One)

On June 15, 2022, the OECD released comments received on the Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A under Pillar One (for previous coverage, please refer to E-News issue 156). The OECD received a total of 60 responses, including response letters submitted by KPMG International, which highlight the following key issues and recommendations:

- the advance certainty review should be extended beyond revenue sourcing and segmentation issues;
- the advance certainty review should include strict time limits to ensure that certainty can actually be provided on an advance basis;
- the initial transition period should be lengthy, to allow the first round of affected groups and tax administrations sufficient opportunity to develop appropriate allocation mechanisms that are customized to each taxpayer's business;
- the transition concept should not be limited to the initial years following the adoption of Pillar One, but should be applicable for groups that become in scope in later years;
- recommendations to grant MNEs an active role in the certainty process;
- recommendations to ensure confidentiality;
- certainty should be provided for Related Issues even outside of existing treaty networks;
- mandatory and binding dispute prevention should also be available for Related Issues;
- recommendations to incorporate substantive improvements to MAP under the Multilateral Convention.

For more information, please refer to KPMG's Tax News Flash and the OECD's press release.

OECD 2022 Ministerial Council Meeting

On June 10, 2022, the OECD issued a statement following the 2022 OECD Ministerial Council Meeting held on 9-10 June 2022, providing the following updates on the latest developments at OECD level in tax-related fields:

- launch of the OECD Inclusive Forum on Carbon Mitigation Approaches, which aims at facilitating an evidence-based multilateral exchange of information about the measures to reach net zero emissions;
- adoption of a recommendation for jurisdictions to effectively tackle tax and other financial crimes; and
- adoption of roadmaps for the accession to the OECD Convention for Brazil, Bulgaria, Croatia, Peru, and Romania.

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

Republic of the Congo joins the Global Forum

On June 20, 2022, the OECD announced that the Republic of the Congo has joined the Global Forum on Transparency and Exchange of Information for tax purposes (Global Forum). As a result, the Republic of the Congo commits to combat offshore tax evasion through the implementation of the internationally agreed standards of exchange of information on request (EOIR) and automatic exchange of information (AEOI).

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

Tax Administration 2022 report

On June 23, 2022, the OECD released the Tax Administration 2022 report, which provides a comprehensive view of the state of tax administration performance to assist administrations, governments, taxpayers and other stakeholders in considering how and where improvements can be made in the efficiency and effectiveness of tax administration.

The report finds that the Covid-19 pandemic accelerated the digital transformation of tax administrations. In addition, the report details ongoing trends including:

- the application of e-administration, including the use of online filing of tax returns, online payments and full or partial prefilling of tax returns;
- an increased use of data science, analytical tools and artificial intelligence to facilitate the use of data in all aspects of an administration's work and risk management;
- a growing use of Robotic Process Automation (i.e. machines are used to complete repetitive tasks) for tax administrations to respond to budgetary constraints.

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

Tax transparency in Africa 2022 report

On June 14, 2022, the OECD published the Tax Transparency in Africa 2022 report, informing decision makers and citizens on the region's progress and improvements in respect of raising political awareness and commitment in Africa and developing capacities in African countries in tax transparency and exchange of information (EOI) during 2021 despite the impact of the COVID-19 pandemic.

The report also shows that challenges remain considering the uneven progress in the use of tax transparency and EOI. The report finds that the implementation of the standards is, in general, at an advanced stage when assessing the older members of the Global Forum from the region. By contrast, new members currently still focus on putting in place the basics of the standards.

For more details, please refer to KPMG's Tax News Flash and the OECD's press release.

Local Law and Regulations

Austria

Delayed introduction of carbon taxation

On June 23, 2022, the Austrian Parliament approved the delay of the introduction of a carbon tax (EUR 30 per ton) from July 1, 2022 to October 1, 2022 as part of relief measures against rising inflation and energy prices. For previous coverage, please refer to E-News issue 149.

The relief measures (including the postponement of carbon taxation) are still subject to the approval by the Federal Council.

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

Revised opinion on the application of WHT on cross-border software licensing arrangements

On June 1, 2022, the Austrian Ministry of Finance issued an opinion in respect of withholding tax issues arising from cross-border software licensing arrangements. The opinion provides for a significant shift from the previous prevailing Austrian administrative practice since the licensing of application software shall no longer be considered as “industrial equipment” within the meaning of the Royalties article of relevant double tax treaties (DTT).

The revised opinion of the Austrian Ministry of Finance has significant implications for Austrian entities involved in cross-border software licensing arrangements, as income arising from relevant such arrangements might be classified as “royalties” by the relevant (foreign) DTT partner and in consequence trigger foreign withholding tax. Such withholding tax would, however, no longer be creditable at the level of the Austrian licensor, given the shift in interpretation at the level of the Austrian Ministry of Finance.

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

Cyprus

New transfer pricing legislation

On June 30, 2022, the Cypriot Parliament adopted a law concerning transfer pricing documentation requirements. The law and regulations are aligned with the recommendations set forth in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD.

The documentation requirements apply to Cypriot tax resident persons and permanent establishments of non-tax resident entities for certain transactions undertaken with related parties. The aim of the new law and regulations is to ensure compliance with the arm’s length principle.

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

Broadened scope in respect of the special tax rate for certain interest income

On June 8, 2022, law amendments were published in the Official Gazette in Cyprus providing that both individuals and companies can benefit from a reduced rate of 3 percent on interest income received or credited from:

- savings certificates of the Republic of Cyprus;
- development stocks of the Republic of Cyprus;
- corporate bonds listed on recognised stock exchanges;
- bonds or securities listed on a recognized stock exchange issued by a local authority or state organization.

Previously, the special tax rate was only applicable to individuals.

For more details, please refer to a report prepared by KPMG in Cyprus.

Czech Republic

Additional DAC6 clarifications issued

On June 21, 2022, the Czech tax authorities published a set of FAQs providing further clarifications on the reporting rules in respect of cross-border arrangements (DAC6). The FAQs complement the explanatory memorandum to the transposition law of 2020 and include clarifications regarding:

- the treatment of tax transparent entities and its investors;
- the definition of certain terms used in the domestic DAC6 transposition law;
- reporting obligations in relation to in-house arrangements;
- reporting obligations in respect of certain services provided by tax advisors;
- reporting obligation in respect of arrangement already reported in the UK;
- the application of the main benefit test;
- the interpretation of certain hallmarks.

Denmark

Agreement on the introduction of carbon taxation

On June 24, 2022, the Danish government reached agreement with a majority of the members in the Danish Parliament in respect of the Green Tax Reform Bill, which includes the introduction of a minimum carbon tax in Denmark. The taxation of CO2 emissions is aimed to be phased in from 2025 to 2030.

For more details, please refer to our previous coverage in E-News issue 154.

Finland

Report on the application of the TRACE procedure for WHT on dividends payments in 2021

On June 30, 2022, the Finnish tax authorities issued a report detailing statistics and experience in relation to the application of the TRACE procedure to withhold tax at source on dividends.

Based on the TRACE procedure, an authorized intermediary – AI (such as a credit institution or an investment service company), is liable for withholding tax on dividends paid to its customers and for being granted tax treaty benefits. In this context, the AI must verify the country of tax residence of the beneficiary and its entitlement to a reduced withholding tax. The AI is also required to file an annual information return in relation to the dividends to which the intermediary applied the TRACE procedure.

According to the report, a reduced withholding tax was applied to over 50 percent of the dividends paid on nominee-registered shares in 2021 and more than 70 percent of the AIs granted reduced withholding tax rates at the time when dividends were paid.

Germany

Updates in respect of limited tax liability rules for income derived from certain registered rights

On June 28, 2022, the German Ministry of Finance published a report evaluating the current legal situation with regard to the taxation of persons subject to limited tax liability and that derive German income from the assignment of rights entered in a German public record or register (so-called register cases). The report notes that the legal situation in respect of temporary assignments and disposals of registered rights is complex where it concerns non-resident taxpayers. The report further admits that the current situation creates high administrative and compliance burdens, in particular in respect of third-party licenses.

Accordingly, on June 29, 2022, the Ministry of Finance issued guidance prolonging the application of a simplified procedure for non-resident tax liability arising from transfers of rights in cases when the right is merely entered into a German public register. The guidance further prolongs the application of the simplified procedure to relevant income received between June 30, 2022 and July 1, 2023 (for more information on the simplified procedure, please refer to a previous KPMG Tax News Flash).

Nevertheless, the Ministry of Finance acknowledges that the current taxation of register cases is criticized internationally and perceived as a unilateral extraterritorial measure. Consequently, the Ministry aims to align the legislation with global developments in a coordinated manner under consideration of the OECD's plans to reallocate taxing rights (Pillar One) and to introduce a global minimum tax (Pillar Two).

Hungary

Amendments to transfer pricing rules

On June 22, 2022, the Hungarian government submitted the 2023 Budget Bill to the Parliament providing for amendment to the Hungarian transfer pricing regulations. Key amendments include:

- new reporting requirements for information in relation to the determination of the arm's length price via the corporate income tax return;
- revised rules on transfer pricing adjustments where prices are applied within and outside the arm's length principle;
- revised rules on the application of the interquartile range where data on comparable products, services or businesses is taken into account that is stored, for example, in a publicly available database or other database verifiable by the tax authority.

Iceland

Extension of temporary increased R&D expense deduction

On June 15, 2022, the Icelandic Parliament approved a law providing for an extension to 2023 of the temporary measure which allows for the deduction of 35 percent (SMEs) / 25 percent (large companies) of qualifying research and development (R&D) expenses. The deduction is capped at ISK 1.1 million (approx. EUR 7,900) in 2022 and ISK 1 million (approx. EUR 7,180) in 2023.

Ireland

Publication of tax treaty policy statement

On June 27, 2022, the Irish Ministry of Finance issued a statement detailing its main priorities in relation to its existing policy of maintaining and enhancing the network of double tax agreement. The statement follows a consultation process held in 2021 (for previous coverage, please refer to E-News issue 136). The main priorities include:

- entering into double tax agreements with all G20 members. Currently, Ireland has concluded double tax agreements with 16 G20 members;
- developing double tax agreements with all current OECD member countries and accession countries as well as EU accession countries;
- renegotiating existing double tax agreements that do not comply with international treaty standards;

- strengthening domestic resource mobilization and tax administration in developing countries through bilateral partnerships.

Poland

Proposed amendments to "Polish Deal" corporate income tax measures

On June 28, 2022, the Polish government published a legislative proposal to amend corporate income tax provisions that were enacted as part of the "Polish Deal" (for previous coverage, please refer to E-News issue 143).

The proposed amendments include:

- a modification and postponement of minimum income tax provisions;
- a repeal of hidden dividend regulations;
- amendments to regulations on controlled foreign companies;
- amendments to provisions on profit shifting taxation;
- amendments to the withholding tax regime.

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

Slovakia

DAC7 transposition law approved

On June 15, 2022, the Slovak Parliament approved a law to transpose the EU Directive on Information Exchange in the Digital Platform Economy (DAC7) into national law. The bill requires digital platform operators to provide the Slovak 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 KPMG in Slovakia.

Sweden

Revised proposal for withholding tax regulations on dividends

On June 7, 2022, the Swedish Ministry of Finance released a proposal for new withholding tax regulations on dividend payments. The proposal would include the following measures:

- Withholding tax would be charged at 30 percent (as under current rules) on dividends from Swedish limited companies, Swedish European (SE) companies, Swedish investment funds and non-profit associations.
- A taxpayer would mean a person who is not subject to unlimited tax liability in Sweden and who is entitled to the dividend at the time of the dividend declaration.
- A system would be created for "approved intermediaries".
- As a general rule, companies, funds, associations or approved intermediaries that pay taxable dividends would be required to withhold the tax and to report the dividend payment in a special tax return no later than four months after the date when the distribution was made.
- The scope of the tax evasion law would be extended to include withholding tax on dividends.

The proposed amendments are intended to enter into force on July 1, 2023 and to be effective from January 1, 2024.

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

Tanzania

Introduction of a digital services tax announced in the 2022/2023 budget speech

On June 14, 2022, Tanzania's Minister of Finance announced the introduction of a digital services tax. The digital services tax would be charged at a rate of 2 percent on the turnover of non-resident service providers.

In addition, in the budget speech for 2022/2023, the Minister announced further income tax measures, including:

- a withholding tax exemption on coupons for corporate and municipal bonds;
- a withholding tax reduction from 15 percent to 10 percent on service fees paid to non-residents in the film industry;
- the introduction of a final withholding tax at the rate of 2 percent on payments made to small-scale miners.

United Kingdom

Draft legislation for energy profits levy on extraordinary oil and gas profits

On June 21, 2022, the UK Government issued draft legislation for a new tax on extraordinary profits of oil and gas companies operating in the UK and the UK Continental Shelf. The levy would be charged at a rate of 25 percent (bringing the headline tax rate for oil and gas companies to 65 percent) and would be applied until December 31, 2025. For previous coverage, please refer to E-News issue 156. The government intends the levy to receive Royal Assent by mid-July.

For more details, please refer to a report prepared by KPMG in the UK.

Local Courts

France

Multinational entity agrees to settle cross-border controversy

On June 16, 2022, it was announced that the President of the Paris Court of Justice validated a "legal agreement in the public interest" (convention judiciaire d'intérêt public – CJIP) between a U.S. headquartered multinational corporate entity and the French financial public prosecutor, with the multinational corporate group and its French group members agreeing to pay over EUR 1.245 billion to settle the litigation. A CJIP is a legal procedure under which companies prosecuted for breach of probity offenses reach an agreement with legal authorities in order to halt prosecution.

The legal agreement concerned an allegation that the multinational entity had transferred fees received from its French franchises to an entity in Luxembourg, allowing the group to reduce its French tax liability. The case was initiated after a preliminary investigation was launched by the French authorities in January 2016.

For more details, please refer to KPMG's Tax News Flash.

Germany

Application of anti-treaty/-directive shopping rule to interest on convertible bond

On November 10, 2021, the German Federal Tax Court (the BFH) issued a decision in a case regarding new German anti-treaty/-directive shopping rules. The case concerned various elements of the application of the rule, such as timing and retroactivity and assessment of substance requirements on a country or entity basis. The decision also touched on the relevance of the CJEU judgment in Deister Holding (C-507/16) and Juhler Holding (C-613/16) that concerned dividends withholding taxation and found the old version of the rule at stake to be contrary to EU law.

The plaintiff in the case before the BFH was a limited company domiciled in Cyprus. In the years in dispute, 2010 and 2011, it received interest on a convertible bond, which was subject to withholding tax in Germany. The company claimed a refund for such withholding tax. Based on the facts, the claimant company did not have any substance in Cyprus, however, an associated company had offices, related equipment and staff based in Cyprus.

The lower German court had initially ruled that, having taken into account the substance of the associated company in Cyprus and issues surrounding the compatibility of the old German anti-treaty/-directive shopping rule with EU law, the refund claimed by the company was permissible.

However, the BFH firstly questioned whether the CJEU judgment concerning the application of the old anti-treaty/-directive shopping rules to dividends could equally apply to a case involving interest on a convertible bond. The BFH also determined that reliance on the economic activity of another group company in the country of domicile of the payment recipient was not sufficient to find that the taxpayer satisfied the substance requirements of either the new or old version of the German anti-treaty/-directive shopping rule.

On this basis, the BFH held that the Cypriot company would be entitled to a refund of German withholding tax imposed on interest it received on a convertible bond only if it could satisfy the substance requirements of either the new or the old version of the German anti-treaty/-directive rule. The BFH therefore referred the case back to the lower court to perform a comprehensive examination of the organizational and economic characteristics of the taxpayer to determine whether the substance requirements of either the old or new version of the rule could be satisfied.

For more details, please refer to a report prepared by KPMG in Germany.

Poland

Deductibility of U.S. withholding tax on dividends against Polish tax

On May 19, 2022, the Regional Administrative Court in Gliwice held that a taxpayer may deduct tax paid in the U.S. from the tax due in Poland up to the amount of the Polish tax (19 percent) in situations where a brokerage office does not provide dividend-paying entities with documents confirming the tax residence of the investors, which results in a requirement for these entities to apply US withholding tax a rate of 30 percent instead of the reduced rate of 15 percent. In this regard, the court overruled the decision of the Polish tax authorities which had determined that the Poland – U.S. double tax treaty only allowed taxpayers to take credit of 15 percent for U.S. withholding tax on dividends against their Polish tax liabilities.

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

KPMG Insights

EU Financial Services Tax perspectives

As countries across the EU and Europe continue to introduce new legislation and adopt tax reforms in support of economic growth and investment, multinationals operating across the region should continue to adapt to the ever-changing tax landscape. Coupled with the shift to digital and the persistent desire to improve efficiencies, banks, insurers and asset managers are radically transforming their business models to respond to these changes, giving rise to both challenges and opportunities.

So what is on the horizon? Will the tax landscape become even more volatile in the future, and what does this mean for financial services institutions?

On June 29, 2022, KPMG held a webcast where a closer look was taken at some of the latest proposals that have risen to the top of the European tax agenda. The panel of KPMG tax specialists shared their insights on some of the latest developments impacting the financial services industry including:

- EU update — BEPS Pillar 2 draft directive, European withholding tax — response to latest consultation, ATAD 3 update, DEBRA and much more
- Tax controversy — Approaches being taken by different tax authorities across Europe
- Crypto currency — The developing picture of tax treatment and tax information reporting for crypto transactions across Europe

Please access the event page for a replay of the webcast.

KPMG and Microsoft collaborate to help C-suites predict tax outcomes

The future of tax is at a tipping point as organizations work to keep pace with a rapidly changing business landscape, shifts in tax policy, heightened compliance and reporting requirements, workforce challenges, and the untapped potential of data. As part of their multi-billion-dollar global alliance, KPMG and Microsoft are making significant investments to deliver advanced cloud-based tax technologies that are designed to help companies transform and lead amid continued market disruption.

KPMG and Microsoft are helping companies to enable their operations to be future-ready through AI, machine learning, automation, and data & analytics applications on the KPMG proprietary Digital Gateway platform, enabled by the Microsoft Azure cloud. The collaboration is resulting in a wealth of new technology capabilities for tax and finance leaders in more than 140 jurisdictions globally through the KPMG Tax Reimagined service offering.

For more information, please refer to the KPMG in the US press release.

Understanding the realities of global tax transparency

Increasingly companies are moving away from having an approach which is mostly focused on creating shareholder value when it comes to conducting their business. The increase of shareholder returns used to be the dominant decision-making factor, whereas the effect of a business on the environment and society was not always considered an equally important factor. Today and even more in the (near) future, for companies to succeed overtime, they need to balance the interests of their stakeholders. In order to meet the sustainability requirements stakeholders may have, companies may need to prioritize the Environmental, Social and Governance (ESG) aspects of running a business.

Various stakeholder groups (e.g., investors, governments, civil society, employees, NGOs and corporate rating agencies) consider tax as an important part of ESG. Having a sustainable approach to tax and being transparent about the company's tax position are considered key for determining whether a company's tax position is in line with ESG standards.

Although many companies acknowledge this, it is still not always clear what tax transparency is about. This Q&A-article aims to give some background and more clarity on tax transparency in general and on the increasing attention towards this topic.

Repowering Europe - transforming Europe into a more sustainable, self-sufficient energy economy

Europe has been a front-runner in climate protection and a driver of the global environmental agenda, with the region aiming to become the first climate-neutral continent by 2050. It continues to develop a solid policy system to meet this target through its flagship European Green Deal, its July 2021 legislation package 'Fit for 55' and its recently introduced REPowerEU.

In response to the ongoing energy price crisis, which has been exacerbated (and brought to the fore) by the situation in Ukraine, the EU published the REPowerEU plan on March 22, 2022. Dubbed the 'REPowerEU strategy' the proposal is geared towards making Europe independent from Russian fossil fuels and accelerating the green energy transition. Both investors and developers have had a strong positive reaction to the proposal for joint European action for more affordable, secure and sustainable energy that is not tied to Russia.

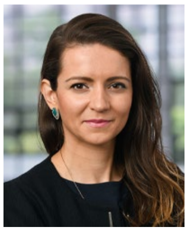
For more information, please refer to KPMG's "Repowering Europe" report.

The path to tax transparency in the Nordics

Transparent communication has never been more important in the world of tax. A decisive factor in maintaining and improving a reputation as a company solely depends on transparent communication with stakeholders. In recent years, tax has gone from being a specialised and technical topic to being recognised as a key lever of sustainability efforts, while companies' tax behaviour often is scrutinised.

In a joint study, KPMG in Denmark, Finland, Iceland, Norway and Sweden have conducted an analysis of 100+ companies found in each country's national market index giving great insights into the current state of tax transparency in the Nordics and for each country individually. In the report, it is shown that one can expect a majority of large MNEs to publish tax disclosures on an annual basis, with both a qualitative and a quantitative component even before the EU Public CbCR Directive enters into force.

For more information, please refer to the KPMG tax transparency and GRI 207 benchmark report.



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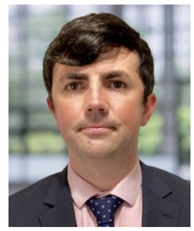

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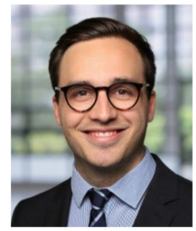

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