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E-News from the EU Tax Centre

Issue 161 – September 16, 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.

In today's edition:

Latest CJEU, EFTA and ECHR

CJEU

AG considers that the UK group transfer rules are not contrary to EU law

On September 7, 2022, Advocate General (AG) Athanasios Rantos of the Court of Justice of the European Union (CJEU or the Court) rendered his opinion in case C-707/20. The case concerns the compatibility with EU law of UK[1] rules on group transfers.

The AG recommends that, in the case of assets transferred from a UK company to a company resident in a third country, the Court finds that the disputed rules do not infringe the freedom of establishment of a parent resident in another Member State.

In the case of transfers of assets from a UK parent to a company resident in another Member State, a restriction on the freedom of establishment is found, but could be justified in principle by the need to maintain a balanced allocation of taxing powers. In the AG's view, immediate taxation of the transfers was a proportionate measure and the UK was not required to allow for the possibility of tax deferrals for realized capital gains.

For more details, please refer to Euro Tax Flash Issue 182.

Infringement Procedures and CJEU Referrals

Referrals

Hungarian request for a preliminary ruling on local rules applicable to domestic reorganizations

On May 12, 2022, the Budapest Regional Court (the Court) requested the Court of Justice of the European Union (CJEU) to rule on whether local rules applicable to domestic reorganizations should be interpreted consistently with the provisions of the Merger Directive (C-318/22).

The referred question relates to the tax treatment of income arising as a result of a partial division. Under Hungarian tax law, partial divisions are tax neutral provided that, among others, the transactions result in a reduction of the shared capital.

The Court acknowledged that the Hungarian tax law provisions covering purely domestic reorganizations are almost identical to the rules provided by the Merger Directive – which covers cross-border reorganizations, and asked the CJEU for guidance on whether the measures under dispute need to be interpreted in a manner consistent with the Merger Directive. In case of a positive response, the Court asked the CJEU to interpret whether the rules under dispute are compliant with Article 8, para. 2 of the Merger Directive.

[1] The CJEU remains competent for judicial procedures concerning the UK where registered before the end of the transition period (i.e. December 31, 2020).

EU Institutions

Council of the EU

Joint statement by five EU Member States committing to implement GloBE Model Rules under OECD Pillar Two

On September 9, 2022, France, Germany, Italy, Spain and the Netherlands issued a joint statement to express their full commitment to implement the GloBE rules, which provide for a global minimum tax (Pillar Two). According to the release, the five countries are fully determined to introduce rules on global minimum effective taxation in 2023 and by any possible legal means. The statement builds on the German government's announcement of September 3, 2022 on plans to start with the implementation process at national level in order to partially finance a new package of measures to provide relief from rising inflation and energy prices.

In addition, the joint statement notes that the five countries are also fully committed to completing the work on Amount A of the OECD Pillar One solution to reallocate profits of multinational enterprises to market jurisdictions, with the objective of signing a Multilateral Convention by mid-2023.

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

ECOFIN Ministers discuss the issue of harmonization of direct taxes in the EU

During an informal meeting On September 10, 2022, Ministers of the Economic and Financial Affairs Council (ECOFIN) discussed the efficiency of EU-wide measures to harmonize direct taxation in the EU.

According to a Council press release, the Czech Presidency of the Council of the EU opened a debate on whether the use of soft law in the field of direct taxation, e.g. sharing best practice, would be a more effective to compared to introducing directives. In this context, the Czech Presidency expressed its concern that directives would not sufficiently address specificities of individual Member States and that administrative costs for taxpayers and Member States might outweigh the benefits of harmonization through a directive.

For more details, please refer to the dedicated website of the Czech Presidency.

European Commission

Proposal for solidarity contribution on surplus profits in the fossil sector released

On September 14, 2022, the European Commission issued a proposal for a Council regulation on an emergency intervention to address high energy prices. The proposal provides for two complementary instruments in the form of a cap on revenues of electricity producers and a solidarity contribution on surplus profits in the fossil sector compared to prior years.

The solidarity contribution is proposed as an exceptional measure to tax unexpected profits of the energy sector made due to the energy crisis, in order to finance relief measures for households and companies and to invest in renewable energy sources. The contribution would be levied by Member States at a rate of at least 33 percent on profits generated in 2022, which are above a 20 percent increase on the average profits generated between 2019 and 2021.

For more details, please refer to Euro Tax Flash Issue 483 and the European Commission's press release.

European Parliament

Draft report requests amendments to the proposal to establish the next generation of own resources

On August 26, 2022, the European Parliament Committee on Economic and Monetary Affairs (ECON) published a draft opinion on the European Commission's proposal to establish the next generation of own resources for the EU budget (for more details, please refer to Euro Tax Flash Issue 463). In the draft opinion, ECON members propose the introduction of an EU digital levy as an own resource measure if Pillar One does not become reality at international level and a Multilateral Convention implementing Pillar One is not signed by a critical mass of countries by December 31, 2025.

As a next step, approval of the draft opinion by the ECON is needed, before the opinion is formally voted on by the plenary of the European Parliament.

OECD and other International Institutions

OECD

Public consultation meeting on progress report on Amount A (Pillar One)

On September 12, 2022, the OECD held a public consultation meeting on the progress report on Amount A of the Pillar One solution to reallocate profits of multinational enterprises to market jurisdictions (for previous coverage, please refer to E-News Issue 158).

The meeting provided updates regarding the current state of play of the Amount A building blocks and focused on the key issues raised in the 72 public responses that were released by the OECD on August 25, 2022, which included a response letter submitted by KPMG International.

In particular, the discussion focused on issues in relation to the design and application of the proposed marketing and distribution profit safe harbor and the mechanism to eliminate double taxation. One area of concern related to the envisioned crediting of withholding taxes against Amount A to avoid double taxation, which was supported by business representatives, while developing countries highlighted that those rules might require an inappropriate allocation of Amount A taxing rights. According to developing countries' stakeholders, this is considered a deal breaker and may result in the application of unilateral measures, if no compromise solution can be reached.

Other areas of concern brought forward by business representatives related to the complexity of other key building blocks, including rules on scope and excluded entities, the calculation of the tax base and the burdensome data collection required to apply the revenue sourcing mechanics.

As regards next steps, representatives from the OECD and the Task Force on the Digital Economy noted that revised rules on tax certainty and proposed rules on administration and removal/identification of unilateral measures will be published for public consultation shortly. In addition, they assured their commitment to reach agreement on the Amount A building blocks in a timely manner to meet the intended deadline of mid-2023 for signing the Multilateral Convention implementing Amount A.

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

Local Law and Regulations

Angola

WHT reduction for services paid to non-resident companies

On August 22, 2022, a legislative amendment was published in the Angolan Official Gazette to reduce the applicable withholding tax on services paid to non-resident companies from 15 percent to 6.5 percent, effective from January 1, 2023.

Bulgaria

Public consultation launched on the implementation of DAC7

On August 23, 2022, the Bulgarian Ministry of Finance launched a public consultation on a draft law to transpose the Council Directive (EU) 2021/514 (DAC7) into domestic law. The law would require digital platform operators to provide the Bulgarian tax authorities with information about certain users ("sellers") on their platform to enable the Bulgarian tax authorities to exchange this information with other EU Member States.

The deadline for responses to the public consultation was September 6, 2022. Member States are required to implement DAC7 by December 31, 2022 and transpose it into domestic law with effect of January 1, 2023.

Croatia

Public consultation launched on the implementation of DAC7

On August 16, 2022, the Croatian government launched a public consultation on a draft law to transpose the DAC7 into domestic law.

The deadline for responses to the public consultation is September 15, 2022.

Denmark

Public consultation launched on the introduction of a digital streaming services levy

On August 15, 2022, the Danish government launched a public consultation on a draft law to introduce a 6 percent levy on revenue from streaming services in Denmark – referred to as the "cultural contribution", to be effective from 2024 (for previous coverage please refer to E-News Issue 156). The levy shall be applicable for media service providers with an annual turnover ecxeeding DKK 15 million (approximately EUR 2 million) and shall be derived from the turnover as stated in the financial statement of the previous financial year.

The deadline for responses to the public consultation was September 12, 2022. As a next step, the draft law will be presented to the Danish Parliament in October 2022.

According to the consultation document, the proposed cultural contribution is not considered to be in conflict with the G20/Inclusive Framework October agreement in respect of the OECD's Two Pillar Solution, which provides for the removal of all digital service taxes and equivalent measures. However, it is noted that the proposed levy might need to be adapted in light of potential future developments in relation to Amount A (Pillar One). For an overview of existing, proposed and withdrawn digital services taxes, please refer to KPMG's development summary of the taxation of the digitalized economy.

Finland

Plans to introduce windfall profit tax on energy announced

On September 1, 2022, the Finnish Ministry of Finance issued a release on the government's budget proposal for 2023. In the release, the government expressed its intention to impose a new windfall profit tax on certain energy companies. Similar to the windfall profit taxes introduced by other countries, the aims of the proposal is to raise funds to finance measures that would provide relief from rising inflation and energy prices and is intended to apply to the extraordinary profits of electric, gas, and oil companies resulting from the recent increases in gas prices.

No details have been revealed with respect to the characteristics of the new windfall profit tax. However, the release notes that the measure should be designed in a way that will safeguard the potential for investment in clean energy.

As a next step, the budget proposal shall be presented to the Finnish Parliament on September 19, 2022.

Germany

Guidance on withholding taxation of cross-border payments for software development issued

On August 2, 2022, the German Federal Ministry of Finance issued guidance on the withholding taxation of cross-border payments for software development, to reflect amendments to the German copyright law that became effective on June 7, 2021.

The guidance provides clarifications and a non-exhaustive list of criteria to assess whether a licensing of copyright protected software qualifies as an economic purchase or a temporary purchasing of software rights. While the latter triggers an obligation to deduct withholding tax, an economic purchase of software rights is not subject to German withholding tax and, in general, requires the contractual grant of extensive, exclusive and irrevocable rights of use and exploitation of the software for an unlimited period of time.

The guidance applies to all open cases under which the relevant contractual arrangement was concluded after June 6, 2021. For reasons of simplification, the tax administration will also apply the guidance to all software licensing payments that accrue after June 6, 2021.

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

Greece

Clarifications on the application of windfall profit tax on energy companies

On September 5, 2022, the Greek government issued guidance on the application of a special 90 percent levy on windfall profits of certain energy producers generated between October 1, 2021 and June 30, 2022 (tax period) that was introduced on May 26, 2022. The windfall profits are calculated on a monthly basis and determined as the difference between the profit generated in a given month of the tax period and the profit for the corresponding month of the previous year.

The guidance includes clarifications on exclusions for certain types of energy producers and details on the calculation of the levy.

Transitional measure provides for equal treatment of EU and UK dividends in fiscal year 2021

On September 2, 2022, a transitional measure was published in the Greek Official Gazette providing for an equal tax treatment of dividends received from and paid to UK resident entities compared to dividends paid within the EU.

As a result, UK dividends received by a legal entity that is tax resident in Greece are exempt from income tax subject to Greek minimum participation requirements. In addition, no withholding taxes apply on dividends paid by a Greek legal entity to a UK company where the applicable minimum participation requirements are met.

The measure applies for the 2021 tax year only in light of ongoing negotiations between Greece and the United Kingdom on a new tax treaty.

Italy

Measures to accelerate tax dispute resolution and improve tax court efficiency introduced

On August 9, 2022, legislative measures were officially introduced aiming at accelerating the resolution of tax disputes and elevating the efficiency and the quality of the decisions from the tax courts. Key measures include:

- a new selection process for tax judges;
- various rules to improve the efficiency of tax litigation;
- a new amnesty program to reduce the number of disputes before the Supreme Court.

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

Luxembourg

Clarifications on time threshold for cross-border workers under certain tax treaties

On August 26, 2022, the Luxembourg tax authorities issued guidance clarifying the application of time thresholds under the double tax treaties with Belgium, France and Germany for cross-border workers to be taxable in their residence state. The guidance includes clarifications on:

- the relevant time thresholds: 24 days (Belgium), 29 days (France) and 19 days (Germany);
- the requirement to proportionally reduce the time threshold in case of part-time contracts and employment for only part of a year;
- tax consequences when exceeding the thresholds, i.e. the residence state recovers the right to tax the employment income for the entire period that the taxpayer worked in the residence state or a third state;
- timing aspects such as that in 2022 the time thresholds apply for the period July 1 to December 31, 2022 to account for days spent working from home due to the COVID-19 pandemic;
- required documentation of evidence.

Poland

Draft amendments to “Polish Deal” corporate income tax measures submitted to Parliament

On August 25, 2022, the Polish government submitted a legislative proposal to the Parliament to amend corporate income tax provisions that were enacted as part of the “Polish Deal” (for previous coverage, please refer to E-News Issue 157). The proposed amendments include:

- modification and postponement of minimum income tax provisions by two years (instead of the previously proposed one-year postponement);
- repeal of hidden dividend regulations;
- amendments to the withholding tax regime; and
- repeal of the requirement to follow the arm’s length principle and satisfy the documentation obligation for indirect tax haven transactions

The amendments would become effective January 1, 2023. For more details, please refer to report prepared by KPMG in Poland.

Romania

Windfall profit taxation of energy companies extended and broadened

With effect from September 1, 2022, the Romanian government broadened the scope of the windfall profit levy to include not only energy producers but also certain energy suppliers and traders. The levy is charged at a rate of 80 percent on the average selling price of electricity in a month that exceeds RON 450 per MWh, subject to certain exemptions. While the levy was initially set to be applied for the period November 1, 2021 to March 31, 2022, the measure has been extended to March 31, 2023.

Similar to the windfall profit taxes introduced by other countries, the initiative aims to raise funds to finance measures that would provide relief from rising inflation and energy prices.

United Kingdom

Plans to maintain the current corporate income tax rate of 19 percent announced

On September 8, 2022, the UK's new Prime Minister revealed in Parliament plans to maintain the corporate income tax rate of 19 percent instead of increasing it to 25 percent with effect from April 2023, as previously foreseen by the 2021 Budget (for more details, please refer to E-News Issue 128).

The Prime Minister also announced that no new taxes shall be introduced, including no extension of the application of the previously introduced windfall profit tax (for more details, please refer to E-News Issue 158).

The new register of overseas entities is live

On August 1, 2022, the UK government announced the launch of the new register of overseas entities requiring the disclosure of beneficial owners and managing officers where overseas entities:

- own or lease land or property (acquired on or after January 1, 1999 in England or Wales, and December 8, 2014 in Scotland);
- plan to buy, sell or transfer property or land in the UK;
- have bought property or land in Northern Ireland on or after August 1, 2022;
- have disposed of property or land after February 28, 2022.

For more details, please refer to the guidance that was issued by the UK government on July 25, 2022.

Office of Tax Simplification launches hybrid and remote working review

On August 31, 2022, the UK's Office of Tax Simplification announced the launch of a review of tax and social security implications of both domestic and international hybrid and remote working arrangements. Where possible, it will make recommendations to ease compliance for employers and employees and better reflect current and evolving working patterns with a view of publishing a report on this in 2023.

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

Local Courts

Italy

Withholding tax rules in respect of dividends paid to US investors in breach of EU law

On September 1 and September 2, 2022, respectively, the Italian Supreme Court issued two decisions confirming that the Italian tax treatment of dividends paid to U.S. pension funds is discriminatory and breaches EU law. The Supreme Court held that the funds were entitled to a refund of the difference between the tax treaty rate of 15 percent and the domestic rate of 11 percent. The court stated that the differing treatment of U.S. pension funds and Italian pension funds may hinder investments, thus resulting in a restriction on the free movement of capital.

These decisions are consistent with a previous Supreme Court decision finding in favor of non-EU collective investment funds (please refer to E-News Issue 158).

For more details, please refer to a [report](#) prepare by KPMG in Italy.

United Kingdom

First-tier tribunal ruling in relation to UK anti treaty shopping rules

On August 22, 2022, a UK first-tier tribunal (FTT) issued a decision in a case concerning withholding tax relief under the UK – Ireland double tax treaty. The plaintiff was an Irish company that acquired from an entity incorporated in the Isle of Man interest debt claims against a UK company. When the interest debt claim was settled, a 20 percent UK withholding tax was deducted from the payable amounts and remitted to the UK state budget. The plaintiff requested the reimbursement of the UK withholding tax based on the provisions of the UK – Ireland double tax treaty. The UK tax authorities rejected the claim on the grounds that the anti-abuse provision under Article 12 (5) applied, based on which the withholding tax relief is not applicable for interest related to debt claims assigned in order to take advantage of the treaty.

The FTT held that the purpose of the Irish company when acquiring the interest debt claim was to make a profit (computed as the difference between the interest debt claim and the acquisition price), and not to benefit from the withholding tax relief. As a result, the FTT upheld the appeal.

KPMG Insights

European Commission agenda for business taxation in the EU – BEPS 2.0 and beyond one year later

An updated version of the "European Commission agenda for business taxation in the EU-BEPS 2.0 and beyond" memo has now been published on the EU Tax Centre's website and takes stock of developments that have taken place since the European Commission's May 2021 Communication on Business Taxation in the EU.

In short, the publication has been updated to provide an overview of current status and next steps for key EU wide tax initiatives from the EC's Communication, including:

- implementation of the global agreement on BEPS 2.0 in the EU and the future of the EU Digital levy;
- the announced initiative of disclosing effective tax rates paid by large companies;
- targeting the use of shell entities;
- the proposal on creating a Debt Equity Bias Reduction Allowance (DEBRA);
- status of the upcoming new framework for income taxation for businesses in Europe (Business in Europe: Framework for Income Taxation or BEFIT).

For more information, please refer to the EU Tax Centre updated document on the KPMG webpage.

EU Anti-Tax Avoidance Directive (ATAD 1 & 2) – Implementation by EU Member States

A summary of the results of a KPMG member firm survey on the implementation of the EU Anti-Tax Avoidance Directive by EU Member States has now been published on the EU Tax Centre's website.

The EU Tax Centre conducted a survey of KPMG member firms in the EU in late 2021 / early 2022 to ascertain whether each of the five ATAD measures (interest limitation, exit taxation, controlled foreign company, general anti-abuse and anti-hybrid mismatch rules) had been fully transposed by Member States, as well as summarizing some of the key choices made by EU Member States when incorporating the rules into their domestic laws

To access the survey findings, please refer to the ATAD survey webpage.

KPMG report on the proposed EU carbon border adjustment mechanism (CBAM)

The scope of carbon pricing initiatives accomplished through carbon taxation is increasing rapidly and is becoming a significant part of country policy strategies to achieve the nationally determined contributions under the 2015 Paris Agreement.

Beginning January 2026, importers would have to start purchasing carbon border adjustment mechanism certificates, with the number of certificates being equal to the total emissions embedded in the goods imported, reduced to account for carbon prices already paid in the country of origin and adjusted to reflect any free allowances still allocated under the EU emission trading system. Full implementation would only be achieved in 2035 when free allowances would be completely phased out.

For more information on key actions, considerations and next steps in relation to the EU's Carbon Border Adjustment Mechanism, please refer to a report prepared by the KPMG Global Trade and Customs Practice.

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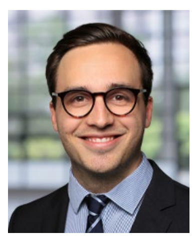

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Key links

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