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E-News from the EU Tax Centre

Issue 163 – October 19, 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.

Today's edition includes updates on:

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- **Council of the EU:** EU solidarity contribution on surplus profits in the fossil sector adopted
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Latest CJEU, EFTA and ECHR

CJEU

Penalties for failure to comply with the obligation to keep or provide transfer pricing documentation compatible with EU law

On October 13, 2022, the Court of Justice of the European Union (CJEU) issued a judgment in case C-431/21 concerning sanctions for incompliance with transfer pricing documentation requirements. Under German law there is a rebuttable presumption that if a taxpayer fails to keep and submit the appropriate transfer pricing documentation its German taxable income is higher than the one declared. In these cases, tax authorities are required to estimate the additional income based on certain price bands and could chose to select the upper value of the range and impose additional penalties computed as a percentage (5 percent to 10 percent) of the additional income estimated, plus late payment penalties (if the case). The referring Court asked the CJEU to rule on whether these rules are compliant with the freedom of establishment and the freedom to provide services established by the Treaty on the Functioning of the European Union (TFEU) – see E-News Issue 140.

The Court noted that the obligation to provide tax documentation applies only to cross-border transactions between related parties, whereby one entity has a definite influence on the other. The Court therefore concluded that the measures under dispute need to be assessed in light of the freedom of establishment. The CJEU continued by analyzing the compatibility of the transfer pricing documentation requirements with EU law. The Court noted that – based on settled case-law – requiring taxpayers to document cross-border transactions with related parties enables Member States to monitor whether the transactions were performed at market value and to exercise their taxing powers. Moreover, such rules are justified by the need to preserve the allocation of the power of taxation between Member States and, in the Court's view, do not go beyond what is necessary to attain the objective pursued. Therefore, the Court concluded that the documentation requirements were not precluded by EU law.

The Court then analyzed whether the imposition of additional penalties was contrary to EU law. The Court referred to its settled case-law based on which imposing penalties may be considered necessary in order to ensure compliance with national rules, provided that such penalties are proportionate to the gravity of the infringement which it is designed to penalize. Furthermore, the Court confirmed the Commission's view that imposing a penalty computed as a percentage of the adjustment of taxable income is suitable for establishing a correlation between the fine and the gravity of the taxpayer's actions. In the Court's view, the 10 percent ceiling ensures that the penalty is not excessive. In light of the above, the Court concluded that the penalty was proportional and therefore not precluded by EU law.

AG opinion on the Spanish tax lease system for the purchase of ships

On September 29, 2022, Advocate General Pikamäe of the CJEU rendered his opinion in joined cases C-649/20 P, C-658/20 P and C-662/20 P on whether the Spanish tax lease system for the purchase of ships constituted illegal State aid.

The Spanish tax lease system allowed shipping companies to benefit from a 20 percent to 30 percent price reduction when purchasing ships constructed by Spanish shipyards. The European Commission (EC) found that the objective of this tax lease system was to grant tax advantages to economic interest groupings (EIGs) and the investors participating in them, that then passed on part of those benefits to the shipping companies that acquired a new ship. The EC adopted a decision in July 2013 concluding that the system constituted State aid in the form of a selective tax advantage that was partially incompatible with the internal market and ordered the Spanish authorities to recover the aid from the investors (the Decision).

Following an action brought by impacted taxpayers, the Decision was annulled by the General Court in December 2015. The EC appealed the General Court's ruling and the CJEU set aside the judgment and referred the case back to the General Court for further analysis. In its second judgement (on September 23, 2020), the General Court dismissed the actions brought by the taxpayers, which then brought appeals before the Court of Justice against that judgment.

The AG dismissed the appellants arguments that the General Court failed to conduct the three-step analysis[1] when assessing the selectivity of the advantage. In the AG's view, the Commission was right to consider that the CJEU did not intend to make that analysis a requirement. Instead, the AG endorsed the method used by the General Court to examine the selectivity of the regime under dispute. The AG noted that the tax authorities were conferred with discretionary power to authorize certain elements of the aid (early depreciation), which was exercised based on vague and non-objective criteria. Therefore, in the AG's view, the selectivity criterion was met.

The AG continued by analyzing the method of calculating the incompatible aid and noted that the General Court failed to examine whether the shipping companies were also beneficiaries of the regime under dispute. In practice, part of the tax advantage was transferred by the investors to the shipping companies through private contracts, which led to an indirect advantage. In the AG's view, where an undertaking has transferred part of the advantage resulting from a State measure to another entity, it is necessary to quantify precisely the aid to be recovered from that undertaking, so that the latter loses only the advantage which it has enjoyed over its competitors. As such, the indirect advantage granted to the shipping companies should be recovered from the latter.

In light of the above, the AG recommended that the CJEU finds that the part of the tax advantage transferred by the EIGs to the shipping companies under the private contracts concluded between them must be deducted from the amount to be recovered from the EIG investors and that the Court should therefore annul in part the Commission decision.

Infringement Procedures and CJEU Referrals

Referrals

Romanian request for a preliminary ruling on local tax incentives for the construction industry

On June 10, 2022, the Satu Mare Court requested the CJEU to rule on whether local tax incentives for the construction industry are compliant with EU law (case C-387/22). Under the Romanian law applicable at that time, individuals employed by companies active in the construction industry benefited from a range of payroll tax reliefs and reductions provided that certain conditions were met. The incentives were however not applicable for employees seconded abroad.

The plaintiff was a construction company that applied the tax incentives for the construction sector in respect of employees that were working in Germany and Austria. The Romanian tax authorities challenged

[1] The Commission generally uses a three-step approach when analyzing the criteria related to the existence of a selective advantage: i) identifying the reference system of ordinary or 'normal' taxation; ii) determining if the relevant measure entails a derogation from the reference system; and iii) assessing if the derogation is justified by the nature or general scheme of the reference system.

the treatment applied by the Romanian taxpayer on the grounds that the employees were not providing services in Romania. Following an appeal brought by the taxpayer, the lower district court asked the CJEU for guidance on whether the tax incentives under dispute infringe EU law.

EU Institutions

Council of the EU

October revision of the EU list of non-cooperative jurisdictions

On October 4, 2022, the Council of the EU adopted conclusions on the list of non-cooperative jurisdictions (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II – so called "grey list").

The Council agreed to move Anguilla, the Bahamas and Turks and Caicos Islands from the grey list (Annex II) to the list of non-cooperative jurisdictions (Annex I).

Following this latest revision, the EU list of non-cooperative jurisdictions includes the following twelve jurisdictions: American Samoa, Anguilla, the Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands, Vanuatu.

In addition, Armenia and Eswatini were added to the grey list following their commitments to amend or abolish preferential tax regimes in the scope of the OECD Forum on Harmful Tax Practices (FHTP), while Bermuda and Tunisia were removed from the grey list, having fulfilled their commitments in relation to the effective implementation of substance requirements (Bermuda) and country-by-country (CbC) reporting exchange relationships (Tunisia).

As a result, the grey list includes the following twenty-two jurisdictions: Armenia, Barbados, Belize, Botswana, the British Virgin Islands, Costa Rica, Dominica, Eswatini, Hong Kong, Israel, Jamaica, Jordan, Malaysia, Montserrat, North Macedonia, Qatar, Seychelles, Thailand, Turkey, Uruguay, Russian Federation and Vietnam.

For more details, please refer to Euro Tax Flash Issue 487.

Solidarity contribution on surplus profits in the fossil sector adopted

On October 6, 2022, the Council of the EU adopted a Regulation on an emergency intervention to address high energy prices. The Regulation was published in the EU Official Journal on October 7 and entered into force the following day.

Among other measures, 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 (for previous coverage, please refer to E-News Issue 161) in order to finance relief measures for households and companies and to invest in renewable energy sources.

Under the adopted regulation, the contribution applies to companies and permanent establishments that are resident in an EU Member State for tax purposes and that perform activities in the oil, gas, coal and

refinery sectors, where at least 75 percent of turnover is generated in the field of the extraction, mining, refining of petroleum or manufacture of coke oven products. Those in-scope taxpayer shall be subject to a rate of at least 33 percent on surplus profits that are above a 20 percent increase on the average profits generated in the four fiscal years starting on or after January 1, 2018. Member States can choose whether to apply the measures with respect to taxable profits generated in 2022 and/ or 2023.

The resolution also allows Member States to apply national measures that are considered to be equivalent to the solidarity contribution. This shall be the case where national measures share similar objectives, are subject to similar rules as the temporary solidarity contribution and generate comparable or higher proceeds to the estimated proceeds from the solidarity contribution.

The solidarity contribution or equivalent measures shall be implemented by Member States by December 31, 2022. A number of Member States have introduced (e.g. Greece, Hungary, Italy, Spain) or are considering introducing (e.g. Czech Republic, Finland, Germany, Poland) windfall profit taxes or contributions, which will need to be assessed and potentially amended in light of the equivalence provisions in the Regulation. The remaining Member States now need to consider whether to introduce the solidarity contribution prescribed by the Regulation or design acceptable equivalent national measures.

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

European Commission

Call for evidence relating to a new common corporate tax system in the EU (BEFIT) issued

On October 13, 2022, the European Commission published a call for evidence for an impact assessment and asked for public feedback on proposed policy options for a new corporate tax system referred to as "Business in Europe: Framework for Income Taxation (BEFIT)".

This initiative would provide common rules for determining the corporate tax base for EU-based entities that are part of a group with global consolidated revenues above a certain threshold. BEFIT would also include provisions for the allocation of profits to Member States based on a pre-defined formula (formulary apportionment). Once allocated, profits would be subject to the corporate income tax rate of the respective Member State.

Interested parties are asked to provide feedback and comments by January 5, 2023. The planned adoption by the Commission of a legislative proposal is expected for the third quarter of 2023.

For more details, please refer to Euro Tax Flash Issue 489.

European Parliament

Resolution calls on European Commission to adjust EU solidarity contribution and to swiftly adopt the EU Minimum Tax Directive

On October 5, 2022, the European Parliament adopted a resolution on the EU's response to the increase in energy prices in Europe. Despite the Council's agreement on a solidarity contribution (for more information, please see above), the resolution stresses concerns that some of the largest energy companies in the EU may not be subject to the contribution. Accordingly, the resolution calls on the Commission to further strengthen the proposal and to design proper anti-tax avoidance rules. The resolution further requests that the revenues of windfall profits taxation should be redirected to vulnerable

consumers and small and medium sized enterprises and to fund innovation and investments in renewable energies, energy efficiency and energy infrastructure.

In the context of raising public revenue, the resolution also highlights the importance of a swift adoption of the EU Minimum Tax Directive. In the view of the European Parliament, the minimum tax rules should become effective by January 2023.

For more details, please refer to the press release of the European Parliament.

Resolution on the impact of crypto assets and blockchain on taxation

On October 4, 2022, Members of the European Parliament (MEP) adopted a resolution requesting a better use of blockchain to fight tax evasion and a more coordinated taxation and information exchange approach in relation to crypto assets.

According to the resolution, national administrations should use blockchain to facilitate efficient tax collection. In this context, the resolution calls on the European Commission to identify the best practices of using this technology to empower tax administrations and tackle corruption, tax fraud and evasion.

The resolution also recommends that the European Commission should evaluate how different Member States tax crypto assets with a view to establish a framework that provides for a clear and broadly accepted definition of crypto assets and a coherent definition of what would constitute a taxable event and rules where the taxable event would take place.

Finally, the resolution calls on the European Commission to swiftly add to the scope of the Directive on Administrative Cooperation (DAC) the exchange of information in relation to crypto-assets and e-money under consideration of the recent OECD framework on crypto-asset reporting (CARF) and revisions of the Common Reporting Standard.

For more details, please refer to the press release of the European Parliament.

FISC sub-committee workshop on national tax reforms in the Netherlands

On October 13, 2022, the European Parliament's Subcommittee on Tax Matters (FISC) held a public exchange of views with the Dutch State Secretary for Taxation and Tax Administration, Marnix van Rij. The aim was to gather insights on the progress of national tax reforms implemented in the Netherlands to combat aggressive tax schemes and to understand the Dutch government's views on current European and international tax issues. The discussion followed up on a meeting held in March 2022 (for more details, please refer to E-News Issue 152).

Mr. van Rij highlighted that the Netherlands has made significant progress in relation to tackling aggressive tax planning, as was confirmed by the European Commission's assessment in relation to the country-specific recommendations made to the Netherlands in the context of the recovery and resilience facility. As an example, the State Secretary mentioned the significant decrease of funds being channeled through the Netherlands to low tax jurisdiction due to stricter withholding tax and earning stripping provisions.

The State Secretary further confirmed that the Netherlands is supporting current initiatives at EU level, including the EU Minimum Tax Directive and the revision of the Code of Conduct. As regards the Commission's Unshell proposal, Mr. Van Rij assured the audience of the Netherlands' support but noted that further considerations should be given to the application of appropriate substance indicators to define what constitutes a shell company. The State Secretary noted that those indicators should not only take into account premises and personnel of a company but should also reflect the company's economic activity in a Member State.

As regards tax competition in the EU, Mr. Van Rij noted that the Netherlands is committed to take further steps in respect of tax cooperation and harmonization within the EU. In this context, he advised that EU action should not only focus on harmful tax practices but also consider subsidies, in order to prevent Member States from engaging in a race to the bottom to attract foreign investment.

Finally, the State Secretary noted that – in order to avoid unilateral actions – the use of qualified majority voting or enhanced cooperation in tax matters should be considered when Member States fail to reach unanimity at Council level.

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

FISC sub-committee workshop on national tax reforms in Luxembourg

On October 13, 2022, the FISC subcommittee discussed with experts the national tax reforms implemented in Luxembourg to combat aggressive tax schemes. The aim was to gather insights on the progress of national tax reforms and to identify remaining challenges.

Two academic scholars presented their views on the progress Luxembourg has made to tackle tax avoidance and aggressive tax planning, including the implementation of the EU's Anti-Tax Avoidance Directive (ATAD) and the Directive on Administrative Cooperation (DAC) and a reform of the advance tax ruling practice. However, the scholars also noted that in their view Luxembourg remains to be a central conduit country for foreign investment due to certain characteristic of the Luxembourg tax system, including its generous participation exemption regime, a low effective corporate tax rate, low withholding tax rates on outbound payments and a wide treaty network.

In addition, representatives of the European Commission advised that Luxembourg has not yet sufficiently addresssed the country-specific recommendations to curb aggressive tax planning that the country received 'in the context of the recovery and resilience facility. In particular, they called on Luxembourg to take further steps by expanding the non-deductibility of interest and royalty payments to jurisdictions with no or low corporate income tax and to ensure the effectiveness of defensive measures against jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes.

During the Q&A session, MEPs requested additional information regarding the need for further changes to the Luxembourg tax system, including in particular in relation to current rules on the carryforward of tax losses and beneficial ownership. MEPs also raised concerns that Luxembourg would take a key role in watering down legislative proposals at Council level, such as the Unshell proposal, and questioned whether Luxembourg would feature on the EU list of non-cooperative jurisdiction if it would be a third country.

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

OECD and other International Institutions

OECD

OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors

On October 10, 2022, the OECD published the Secretary-General Tax Report to the G20 Finance Ministers and Central Bank Governors providing updates on the latest developments in international tax reforms,

including on the OECD's BEPS initiatives, tax transparency efforts and other G20 tax deliverables. Key updates include:

- *Pillar One*: The report makes reference to the most recent work result in form of a public consultation document on the administration and tax certainty aspects in relation to Amount A – reallocation of profits of multinational enterprises to market jurisdictions (for more details, please see further below). The report commits to reaching agreement on the Amount A building blocks in a timely manner for the Multilateral Convention to be drafted and adopted by mid-2023. This shall enable the Multilateral Convention to enter into force in 2024, once it has been ratified by a critical mass of jurisdictions, as defined by the MLC. As a next step, an additional public consultation document is set to be published by the end of 2022 on the withdrawal and standstill of digital services taxes. In parallel to Amount A, the report notes that a consultation document will be released by end of this year on Amount B with a view to complete the ongoing work in the first half of 2023.
- *Pillar Two*: The technical work on a 15 percent global minimum corporate tax rate is largely complete, with the GloBE Implementation Framework to be released later this year to facilitate implementation and co-ordination between tax administrations and taxpayers. In addition, the report refers to the OECD/G20 Inclusive Framework on BEPS progress report September 2021 – September 2022, according to which draft model tax treaty provisions and commentary for the Subject-to-tax-rule (STTR) are expected to be released for public comment later in the year.
- *BEPS Project implementation*: The report provides updates on the OECD's monitoring of the effective implementation of BEPS minimum standards including Action 5 on Harmful Tax Practices, Action 6 on Tax Treaty Abuse, Action 13 on CbC Reporting and Action 14 on Mutual Agreement Procedures.
- *Crypto-asset reporting*: The report notes that a new crypto-assets reporting framework (CARF) and amendments to the common reporting standard (CRS) have been finalized and agreed by by 38 member countries of the OECD, along with the G20 countries (for more details, please see below).
- *Carbon Mitigation*: The report makes reference to an upcoming OECD report on Pricing Greenhouse Gas Emissions which tracks the use and impacts of climate measures such as carbon pricing instruments. The report also provides an update on the establishment of the Inclusive Forum on carbon mitigation approachess to increase global mitigation efforts by sharing data and experience in relaiton to local greenhouse gas emission reduction strategies.

For more details please refer to the OECD's publication overview.

Public consultation on administration and tax certainty aspects of Amount A (Pillar One)

On October 6, 2022, the OECD/G20 Inclusive Framework on BEPS issued a public consultation document seeking public comments on the administration and tax certainty aspects in relation to Amount A of the OECD Pillar One solution.

The document is structured as follows:

- Section 1 provides the administrative rules for in-scope groups to comply with the Amount A rules, including filing requirements and access to relief from double taxation.
- Section 2 provides tax certainty rules for all provisions under Amount A, including the elimination of double taxation.
- Section 3 provides tax certainty rules for issues related to Amount A, including transfer pricing and business profits disputes.

The OECD's release highlights that the draft rules do not reflect consensus from the Inclusive Framework on BEPS regarding the substance of the document and that comments are requested by November 11, 2022.

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

New transparency framework for crypto-assets

On October 10, 2022, the OECD released a new global tax transparency framework to provide for the reporting and exchange of information with respect to crypto-assets.

The framework consists of rules and commentary that can be transposed into domestic law to collect information from reporting crypto-asset service providers with a relevant nexus to the implementing jurisdiction. Key aspects of the new proposed framework include:

- scope of crypto-assets to be covered;
- scope of entities and individuals that are subject to data collection and reporting requirements;
- scope of transactions that are subject to reporting;
- information to be reported in respect of such transactions; and
- due diligence procedures to identify crypto-asset users and to determine the relevant tax jurisdictions for reporting and exchange purposes.

In addition, the OECD proposed a number of amendments to the Common Reporting Standard (CRS) to bring new digital financial products (i.e. specified electronic money products and central bank digital currencies) within its scope, while also providing provisions to ensure an efficient interaction between the CRS and the CARF in order to avoiding duplicative reporting. The CRS amendments further include more detailed reporting requirements, strengthened due diligence procedures and certain exclusions for genuine non-profit organizations.

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

Country-by-Country reporting guidance issued

On October 13, 2022, the OECD issued updated guidance on BEPS Action 13 (CbC reporting) in order to provide clarifications in respect of certain key questions of interpretation that have arisen as jurisdictions have moved into the implementation stage. The OECD aims to ensure consistent implementation and to provide certainty for both tax administrations and taxpayers.

Key updates concern clarifications on reporting permanent establishment information and dealing with short and long accounting periods.

Please also refer to KPMG's Tax News Flash for additional information.

BEPS Action 13 peer review report issued

On October 4, 2022, the OECD issued the fifth annual peer review report for the BEPS Action 13 minimum standard requiring multinational enterprises to report revenues, profits, taxes paid and certain measures of economic activity on a country-by-country basis. The review covered 134 jurisdictions – key findings include:

- Over 100 jurisdictions have a domestic legal framework for CbC reporting in place. In addition, a number of jurisdictions have final legislation approved that is awaiting official publication.

- 28 jurisdictions have received a general recommendation to put in place or finalise their domestic legal or administrative framework and 27 jurisdictions received one or more recommendations for improvements to specific areas of their CbC reporting framework.
- 82 jurisdictions have multilateral or bilateral competent authority agreements in place.
- 88 jurisdictions have undergone an assessment by the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) concerning confidentiality and data safeguards in the context of implementing the AEOI standard, and did not receive any action plan.
- 64 jurisdictions have provided detailed information, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use of CbC reports.

The next peer review report is expected to be issued in the third quarter of 2023.

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

Report on tax incentives and GloBE Rules

On October 6, 2022, the OECD released a report highlighting the need for policy makers to reassess the design of tax incentives in light of the OECD's Pillar Two rules. The report flags a number of aspects for emerging and developing countries to consider as they prepare for Pillar Two. Specifically, the report discusses the existing use of tax incentives in developed and developing countries, analyses key provisions of the Global Anti-Base Erosion (GloBE) Rules and shows how they may impact different types of tax incentives differently.

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

Update on BEPS MLI

On September 30, 2022, South Africa deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI will enter into force on January 1, 2023 for South Africa.

In addition, Mongolia signed the MLI on October 6, 2022 becoming the 100th jurisdiction to join the BEPS Convention.

The MLI now covers in total 2,901 unique tax treaties that have been listed by MLI signatories. A number of 1,839 treaties have already matched, i.e. treaties that have been notified by (at least) two signatories, and are expected to be modified by the MLI.

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

Local Law and Regulations

Belgium

Approval of draft DAC7 legislation

On September 23, 2022, a draft law was approved by the Belgian Council of Ministers to transpose the Council Directive (EU) 2021/514 (DAC7) into Belgium domestic law. The law will require digital platform operators to provide the Belgian competent authority with information about certain users ("sellers") on their platform to enable the Belgian competent authority to exchange this information with other EU Member States. In addition, the law will introduce provisions for the possibility to conduct in Belgium joint audits between Belgian competent authorities and those of another EU Member State.

The draft law has now been sent to the Belgian Council of State for advice. To comply with DAC7, the domestic legislation must be implemented by December 31, 2022 and the rules need to be applied from January 1, 2023.

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

Tax measures in the 2023 and 2024 budget

On October 11, 2022, the Belgian government reached an agreement on the budget for 2023 and 2024. Key corporate tax measures include:

- introduction of an excess profit tax (windfall profit tax) for energy producers with an income above EUR 180 per MWh between January 1 and November 30, 2022 and above EUR 130 per MWh between December 1, 2022 and June 30, 2023 (possibly extended beyond June 2023);
- a solidarity contribution from the oil sector;
- a minimum tax of 15 percent for companies with profits above EUR 1 million by limiting the carry-forward of losses in 2023;
- abolition of the notional interest deduction, at least for large companies.

As a next step, the Belgian Minister of Finance has been asked to submit a legislative proposal by December 1, 2022.

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

Czech Republic

Details of proposed windfall profit tax announced

On October 6, 2022, the Czech Ministry of Finance announced further details of the proposed tax on extraordinary profits (windfall profit tax) generated by certain producers and sellers in the energy sector, banks and oil companies (for previous coverage, please refer to E-News Issue 162). Key aspects of the proposed windfall tax regime include:

- The windfall profit tax would be levied on banks with a prior year net interest income of more than CZK 6 billion (approximately EUR 244 million) and on energy companies with a prior year overall turnover of more than CZK 2 billion (approximately EUR 81 million).

- The windfall profit tax would be charged at a rate of 60 percent in addition to the generally applicable corporate income tax.
- The base for the windfall profit tax would be calculated as the taxable profits in the given fiscal year starting, which are above 20 percent of the average taxable profits of the last four fiscal years (2018-2021).
- The windfall profit tax would apply on a temporary basis for a period of three years (2023-2025).

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.

As a next step, the proposed bill will follow the regular legislative process with the aim of becoming effective on January 1, 2023.

Denmark

Implementation of DAC7

On September 6, 2022, the Danish Minister of Taxation issued an Executive Order implementing DAC7 into Danish law. The Executive Order will require digital platform operators to provide the Danish competent authority with information about certain users ("sellers") on their platform to enable exchange of information with other EU Member States.

The measures will be effective for calendar years as of January 1, 2023.

France

Limitations on interest rates in respect of shareholder loan updated

On September 29, 2022, the French Ministry of Finance issued the quarterly interest rates to determine the deductibility of interest payments to shareholders. According to French tax rules, corporations may deduct interest payments to shareholders up to the average interest rate as defined by the Ministry, unless the taxpayer can provide evidence demonstrating that any higher interest rate applied is at arm's length. For companies with a 12-month fiscal year ending between September 30 and December 30, 2022, the rates were set as follows:

- 1.66 percent for fiscal years ending between September 30 to October 30;
- 1.76 percent for fiscal years ending between October 31 to November 29;
- 1.87 percent for fiscal years ending between November 30 to December 30.

Germany

Draft decree published to update the list of non-cooperative jurisdictions

On October 11, 2022, the German Ministry of Finance published a draft decree that would update the list of non-cooperative jurisdictions for purposes of the German law to combat tax avoidance and unfair tax competition.

In line with the conclusion adopted by the Council of the EU on October 4, 2022, the updated list would include the following twelve jurisdictions: American Samoa, Anguilla, the Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands, Vanuatu.

If a jurisdiction is considered non-cooperative, the following defensive measures apply in Germany:

- disallowing the deductibility of payments made to that jurisdiction;
- stricter controlled foreign corporations rules;
- denial of reduced withholding tax rates;
- denial of participation exemptions for dividends received / gains from the sale of shares in a subsidiary resident in that jurisdiction;
- introduction of documentation requirements for transactions with non-cooperative jurisdiction.

For more details on defensive measures adopted by EU Member States against non-cooperative jurisdictions, please refer to KPMG's Summary of proposed or enacted measures.

Greece

Amendments to domestic tax code

On September 23, 2022, Law 4972/2022 was published in the Official Gazette of Greece introducing various tax regulations. Key corporate tax measures include:

- correction of profits of affiliated enterprises for domestic intra-group transactions following a tax audit;
- clarifications on the scope of stamp duty levied on interest bearing loans;
- penalties for non-transmission of retail receipts issued by Electronic Tax Mechanism (FHM);
- amendment of provisions for the issuance of electronic invoices.

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

Guidance on additional deductions for investments by SMEs in certain sectors released

On September 29, 2022, a Ministerial decision was published in the Official Gazette of Greece, providing the legal basis, procedure, conditions and details in relation to the additional 100 percent deduction of eligible costs incurred by small and mid-sized enterprises (SMEs) in relation to the green economy, energy and digitization. The decision concerns the following key topics:

- beneficiaries;
- aid limit and aid accumulation;
- types of expenses relating to green economy, energy and digitalization;
- conditions for granting the surcharge deduction and other tax issues;
- procedure for granting the aid and obligation to monitor/control compliance of the de minimis Regulation conditions;
- enterprises obligations;
- recovery of the aid.

Hungary

Draft bill to transpose DAC7

On September 27, 2022, a draft bill was submitted to the Hungarian Parliament to transpose DAC7 into domestic law. Once adopted, the law will require digital platform operators to provide the Hungarian competent authority with information about certain users ("sellers") on their platform to enable the Hungarian competent authority to exchange this information with other EU Member States. To comply with DAC7, the domestic legislation must be implemented by December 31, 2022, and the rules should be applied from January 1, 2023.

Poland

Draft legislation to introduce windfall profit taxes on large enterprises

On September 24, 2022, the Polish government announced plans to introduce a tax on extraordinary profits (windfall profit tax) generated by certain large companies. Key aspects of the proposed windfall tax regime include:

- the tax would be levied on companies with an average annual number of employees of more than 250 and annual net turnover from the sale of goods, products and services as well as from financial operations exceeding EUR 50 million;
- the tax would be charged at a rate of 50 percent;
- the general tax base would be calculated as the profits in the given fiscal year, which are above average profits of the fiscal years 2018, 2019 and 2021 (the year 2020 will not be included in the calculation due to the economic effects caused by the pandemic);
- the tax base for banks would amount to the return on assets that exceeds the three-year average.

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.

As a next step, a legislative proposal will be issued by the Polish government.

Romania

Bill implementing public Country-by-Country Reporting Directive

On September 7, 2022, legislation to implement the EU Public CbC Reporting Directive was published in the Romanian Official Gazette. The Directive requires qualifying multinational enterprises doing business in the European Union to publicly disclose certain information on a country-by-country basis.

Whilst the public CbC reporting rules are intended to be applied by Member States for financial years starting on or after June 22, 2024 at the latest, Romania chose an earlier adoption date (i.e. applicability for financial years starting on or after January 1, 2023). Romania also made use of the so-called "safeguard clause", under which Member States can choose to allow in-scope groups to defer the disclosure of commercially sensitive information, for up to five years. Furthermore, Romania opted to exempt companies from the requirement to publish the CbC reports on their website, provided that they are made available free of charge on the website of the local Chamber of Commerce.

For more information, please refer to the EU Tax Centre's dedicated website.

Slovakia

Draft bill proposes amendments to transfer pricing rules and the introduction of interest limitation rules

On August 17, 2022, a draft bill was submitted to the National Council of the Slovak Republic proposing changes to Slovakia's income tax act. The draft bill includes the following key corporate tax measures:

- proposed amendments to Slovakia's transfer pricing rules, with effect from January 1, 2023;
- introduction of interest limitation rules in line with the EU Anti-Tax Avoidance Directive (ATAD 1), with effect from January 1, 2024.

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

Slovenia

Draft bill to transpose DAC7

On September 27, 2022, a draft bill was submitted to the Slovenian Parliament to transpose DAC7 into domestic law. Once adopted, the law will require digital platform operators to provide the Slovenian competent authority with information about certain users ("sellers") on their platform to enable the Slovenian competent authority to exchange this information with other EU Member States. To comply with DAC7, the domestic legislation must be implemented by December 31, 2022, and the rules need to be applied from January 1, 2023.

Spain

Proposal for new tax measures to combat inflation

On October 6, 2022, the Spanish government submitted the 2023 draft budget bill to the Spanish Parliament, which provides for the introduction of a reduced corporate income tax rate of 23 percent (currently 25 percent) for companies with a turnover of less than EUR 1 million, subject to certain exceptions.

In addition, the Ministry of Finance announced an upcoming proposal for additional tax measures aimed at combating inflation, including:

- limited offset (50 percent) of tax losses within a tax consolidated group, applicable in 2023 and 2024;
- introduction of a new solidarity wealth tax on individuals that have net assets of more than EUR 3 million, applicable in 2023 and 2024, at the following rates:
    - 1.7 percent on net assets between EUR 3 million and EUR 5 million;
    - 2.1 percent on net assets between EUR 5 million and EUR 10 million; and
    - 3.5 percent on net assets of more than EUR 10 million.

Sweden

Proposal for a windfall profit tax

On October 7, 2022, the Swedish Ministry of Finance published a proposal for a temporary tax on excess profits generated by companies in the oil, gas, coal, and refinery industries in correspondence with the agreed solidarity contribution at EU level. Key aspects of the proposal include:

- application to Swedish-based companies with at least 75 percent of their 2023 turnover attributable to operations in the fossil fuel sector;
- the tax would be levied at a rate of 33 percent on excess profits and in addition to the general corporate income tax;
- excess profits would be calculated as the taxable profits in the fiscal year 2023 that are above 20 percent of the average taxable profits of the preceding four fiscal years.

The measures would enter into force on January 1, 2023 and would apply to the tax year starting after December 31, 2022.

Switzerland

Plans to introduce a beneficial ownership register

On October 12, 2022, the Swiss Federal Council announced plans for a draft bill to introduce a beneficial owner register in Switzerland.

The bill would introduce requirements to register and update information on beneficial owners of legal entities. The register would not be publicly available but only accessible to the relevant authorities. In this context, the legislator will also reflect on whether additional measures are required to strengthen the current anti-money laundering framework (e.g. additional rules for legal professions).

The draft bill is due to be issued until end of June 2023. Once drafted, the bill would need to be passed by the Swiss Parliament and may also be subject to a public referendum.

KPMG Insights

EU Financial Services Tax perspectives

As part of the Future of Tax & Legal webcast series, KPMG International will hold a session on November 2, 2022 to take a closer look at some of the latest proposals that have risen to the top of the European tax agenda. Our panel of KPMG tax specialists will share their insights on some of the latest developments impacting the financial services industry including:

- Update on the BEPS Pillar 2 Directive, ATAD 3 and the implications for those countries that are on the EU list of non-cooperative jurisdictions;
- a closer look at the geopolitical environment several of key jurisdictions and the implications for financial services; and
- latest developments in relation to the European Withholding Tax framework.

Please access the event page to register.

Business consequences of tax driving net zero ambitions

Tackling climate change is a key issue that has become more pressing than ever, with the fuel price increases and growing uncertainty caused by the Russian invasion of Ukraine.

There are many questions to address:

- How fast will changes be made?
- To what extent will tax be used as a stick or a carrot?
- What impact will taxes or regulation have on business? How will these interact with each other?

For more information on measures which governments might introduce — in particular tax related ones — and the potential impact on business, please refer to a report prepared by KPMG International.

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Key links

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