E-News from the EU Tax Centre

Issue 165 – November 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.

Today's edition includes updates on:

- **CJEU**: The CJEU annuls Commission decision on Luxembourg transfer pricing ruling
- **Council of the EU:** ECOFIN Council agrees on revised Code of Conduct (Business Taxation)
- **European Commission:** Feedback period for BEFIT call for evidence extended
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- **Czech Republic:** Windfall profits tax on fossil sector and banks approved by Parliament
- **Denmark:** DAC7 guidance published
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- **Netherlands:** Updated policy statement on Dutch hybrid mismatch rules
- **Belgium (court decision):** Belgian annual tax on securities accounts - Constitutional Court cancels specific anti-abuse measures

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Latest CJEU, EFTA and ECHR

CJEU

The CJEU annuls Commission decision on Luxembourg transfer pricing ruling

On November 8, 2022, the Court of Justice of the European Union (CJEU or the Court) gave its decision in the joined cases C-885/19 P and C-898/19 P. Both cases concern the validity of a decision issued by the European Commission (the "Decision"), which found a transfer pricing ruling granted by Luxembourg to be incompatible with EU State aid rules.

The case was first disputed in front of the General Court of the EU, which ruled in favor of the European Commission (Commission or the EC). In the appeal brought before it, the CJEU concluded that the General Court was wrong to confirm the Commission's approach to apply a version of the arm's length principle not codified in domestic law. Finding that the selectivity analysis was vitiated, the CJEU decided to set aside the General Court's judgement and to annul the Commission's Decision.

For more details, please refer to Euro Tax Flash Issue 492.

CJEU decision on taxation of recovery of write-downs on shares after the transfer of registered office to another Member State

On November 10, 2022, the Court of Justice of the European Union (CJEU) issued a judgment in case C-414/21 concerning taxation of recovery of write-downs on shares after the transfer of a company's registered office to Belgium from another Member State. Under Belgian law, recovery of write-downs on shares are tax exempt and correspondingly write-downs are, in principle, not tax deductible. Moreover, under Belgian law, in the event of a transfer of the registered office to Belgium, the value of capital gains and losses realized after the transfer is determined based on the transferred assets' book value at the time of transfer. Any unrealized capital gains are exempt if recorded in a separate liability account.

The plaintiff was a Luxembourg incorporated company that had its registered office in Luxembourg. During this period, the company recognized write-downs in relation to shares held in other companies, which it claimed as tax deductible in Luxembourg. The amounts were not utilized due to the company's loss-making position and were carried forward as increased tax loss in Luxembourg. Subsequently, the company transferred its registered office from Luxembourg to Belgium and became a Belgian incorporated company. Following the transfer, the company recovered part of the write-downs on shares. The Belgian tax authorities took the view that such recovery of write-downs was taxable on the basis that the amounts had not been recorded in a separate liability account. The referring Court asked the CJEU to rule on whether these rules are compliant with the freedom of establishment.

In addressing this question, the CJEU upheld it previous decisions and re-iterated that, while EU law protects the freedom of establishment, that freedom does not guarantee that the transfer of a company's tax residency between Member States will be tax neutral and should not be understood to mean that a Member State has to adjust its tax rules so as to eliminate disparities in comparison to another Member State, whether those disparities lead to a tax advantage or not.

The Court held that a company that has transferred its registered office to a Member State that had no tax jurisdiction to the company's profits prior to the transfer, is not in a comparable situation with a company that has already been resident in that Member State for tax purposes. In light of the above, the Court determined that the freedom of establishment does not preclude the disputed Belgian legislation.

Infringements Procedures and CJEU referrals

CJEU referrals

Dutch referral on the compatibility of the interest deduction limitation rules with EU law

On September 2, 2022, the Dutch Supreme Court referred a case to the CJEU on the compatibility of the Dutch interest deduction limitation anti-profit shifting rule (Section 10a of the Corporate Income Tax Act). Based on the disputed rules, financing costs related to loans received from related parties and used to acquire other companies are not deductible for tax purposes. The rules also include a rebuttal provision under which taxpayers can deduct the expenses if able to demonstrate that both the loan and the legal transactions concerned are based on sound business reasons.

The Supreme Court acknowledged the CJEU's decision in the Lexel case (C-484/19) (see E-News Issue 124) that held that the exception to the ten percent rule in the Swedish interest deduction limitation rules, applicable between 2013 and 2018, is contrary to the freedom of establishment. The exception stated that interest related to intra-group financing cannot be deducted if the main reason for the financing transaction is to create a significant tax benefit. The CJEU placed particular emphasis on the fact that the exception to the ten percent rule may cover transactions carried out on market terms and which consequently do not constitute wholly artificial or fictitious arrangements. The Supreme Court was unsure on how this ruling impacted the Dutch interest limitations and referred this question to the CJEU.

State aid

Extension of the scope of in-depth investigation into Gibraltar's corporate tax regime

On October 31, 2022, the European Commission issued a press release, announcing the extension of the scope of the investigation into Gibraltar's corporate tax regime to reassess one tax ruling issued in 2012 to a specific Gibraltar company (the plaintiff). The investigation aims to reassess the compatibility with EU law of Gibraltar's corporate income tax exemption regime for royalties and the ruling.

In December 2018, the Commission decided that Gibraltar's exemption scheme constitutes State aid incompatible with the internal market. In April 2022, the General Court partially annulled the State aid decision issued by the Commission, in so far as it related to individual aid granted to the plaintiff, based on a tax ruling, for the period 2014 onwards. The annulment also covered the order for recovery connected with that measure. On the other hand, the Court upheld the Commission's finding based on which Gibraltar's corporate tax exemption for royalty income applicable until December 31, 2013 constitutes unlawful State aid - see Euro Tax Flash Issue 473.

The decision to extend the scope of the original investigation was taken to further specify the measure in favor of the plaintiff, in line with the Court's indications, and also to re-examine the information that was submitted by the United Kingdom in relation to the 2012 tax ruling. The extension of the scope of the in-depth investigation gives interested parties an opportunity to submit comments on the measures under assessment.

In accordance with Article 92 of the Agreement on the Withdrawal of the UK from the EU, the Commission remains competent for administrative procedures that were initiated before the end of the transition period on December 31, 2020.

EU Institutions

Council of the EU

ECOFIN Council agrees on revised Code of Conduct (Business Taxation)

On November 8, 2022, the Economic and Financial Affairs Council of the EU (ECOFIN Council) agreed on a revision of the Code of Conduct for Business Taxation.

The revised Code of Conduct expands the definition of harmful tax regimes to cover features of tax systems that have general application and that may have harmful effects (such as those that lead to double non-taxation), provides for additional options to rollback harmful tax regimes, and strengthens the information exchange between Member States in respect of potentially harmful tax measures. The revised Code of Conduct also clarifies the decision-making process in the Code of Conduct Group, which is responsible for the review of potentially harmful tax practices, the collaboration with the European Commission and the interplay with ongoing State aid proceedings.

In general, the revised Code replaces the 1997 version as from January 1, 2023. However, an exception is provided for assessments of tax measures of general application, which will start from January 1, 2024 and only focus on measures enacted or modified on or after January 1, 2023.

For more information, please refer to Euro Tax Flash Issue 491.

European Commission

Feedback period for BEFIT call for evidence extended

The deadline for the feedback and consultation period on the European Commission's call for evidence in relation to its new initiative on Business in Europe: a Framework for Income Taxation (BEFIT) was extended from January 5, 2022 to January 26, 2023.

For more information, please refer to the Commission's consultation website and Euro Tax Flash Issue 489.

European Parliament

Public exchange of views on tax policies in the Commission's work program

On November 14, 2022 a public debate was held between members of the European Parliament's Subcommittee on Tax Matters (FISC), members of the Budget Committee of the Czech Parliament and representatives of the European Commission (including Benjamin Angel, Director of the DG TAXUD division). Key takeaways included:

- *Pillar Two:* According to Mr. Angel (Director of the Commission's DG TAXUD division) and the Czech delegation, both the Commission and the Czech Presidency hope to overcome Hungary's veto and to reach unanimous agreement at Council level before year-end. According to Mr. Angel, the Commission prefers enhanced cooperation over unilateral implementation if no unanimous agreement is reached. Nevertheless, the Commission also acknowledges that Member States could adopt the GloBE rules unilaterally if this is aligned with the latest compromise text. By contrast, the Czech representatives noted their preference for unilateral implementation and questioned on a more general basis whether binding EU measures such as directives and regulations are the most efficient tool. In this regard, they expressed concerns that directives would not sufficiently address specificities of individual Member States and opened a debate whether soft law approaches might be a better solution (e.g. coordination among Member States).

- *Pillar One:* Mr. Angel confirmed the Commission's intention to put forward a legislative proposal for the implementation of Pillar One depending on the process made in relation to the Multilateral Convention that is currently expected to be signed by mid-2023.
- *BEFIT:* Mr. Angel advised that the European Commission has 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)" (for more details, please refer to Euro Tax Flash Issue 489). Following the public consultation process that will end on January 26, 2023, the Commission is aiming for a Directive proposal to be published by July 2022 as a next step. Mr. Angel noted that it is now on the Commission to demonstrate that this framework provides administrative relief for taxpayers, which will be the Commission's top priority. In response to the Czech delegation's concerns regarding the likelihood of unanimous approval of such initiative, Mr. Angel highlighted two key features of the BEFIT initiative that deviate from the previous CCCTB proposals, namely that Member States have agreed to formulary apportionment (Pillar One) and to common tax base calculation principles (Pillar Two) as part of the October 2021 Inclusive Framework agreement on BEPS 2.0.
- *Unshell/ATAD3:* Mr. Angel noted that the proposal for the Unshell Directive is currently discussed in the Council working group with a focus on what tax consequences should be applied on companies that lack substance. In response to concerns raised by the Czech delegation, Mr. Angel noted that the latest compromise proposal of the Czech Presidency would provide for significant carve-outs for companies with sufficient staff and activities to minimize the administrative burden. He also highlighted the importance of the Unshell initiative due to the lack of substance-related information currently provided by taxpayers as part of their income tax return. He further argued that existing anti-abuse measures (such as CFC rules and GAAR) are quite difficult to use and are only applied ex post whereas the Unshell Directive would be applied ex ante. According to the draft agenda for Council meetings during the second half of 2022, the Czech Presidency plans to provide a progress report on the Unshell proposal at the ECOFIN meeting on December 6, 2022 (for more details, please refer to E-News Issue 158).
- *Faster and safer tax excess refund (FASTER):* Mr. Angel announced that the Commission is aiming to table a Directive proposal for a more efficient WHT refund procedure in the EU by end of spring / beginning of summer 2023 to tackle the long-standing issue in the Capital Market Union in relation to the difficulty and burden for taxpayers to request WHT refunds. Earlier this year, the Commission had held a public consultation on policy options for a common EU withholding tax framework for on dividend and interest payments (for more details, please refer to E-News Issue 157).
- *DAC8:* Mr. Angel advised that the Commission will shortly table a proposal for an extension of the Directive on Administrative Cooperation (DAC8) to cover the exchange of information on crypto-currencies as well as tax rulings for individuals. While Mr. Angel did not share any indication on when to expect the release proposal, the Commission is reportedly aiming for this proposal to be released on December 7, 2022.

Regulation addressing foreign subsidies distorting the internal market adopted

On November 10, 2022, the European Parliament adopted a new regulation on foreign subsidies distorting the EU internal market. The Regulation is intended to limit the regulatory gap in the EU Single Market, whereby subsidies granted by non-EU governments currently go largely unchecked, while subsidies granted by Member States are subject to close scrutiny (e.g. whether they constitute a harmful preferential tax treatment).

Compared to the proposal of European Commission from May 2021 the adopted text provides for a number of amendments including a reduced period of public procurement investigations, an extension of the scope of the regulation to state companies and the establishment of special channels for notifying the Commission about potentially distortive subsidies.

As a next step, the regulation needs to be adopted by the Council of the EU, which seems likely given the Council's previous endorsement letter (for more details, please refer to E-News Issue 159).

OECD and other International Institutions

OECD

Exchange of information with respect to income earned on digital platforms and through offshore financial assets

On November 9, 2022, 22 jurisdictions signed the multilateral competent authority agreement (MCAA) for the automatic exchange of information under the OECD's Model Rules for reporting by platform operators with respect to sellers in the sharing and gig economy (implemented in the EU through DAC7). According to the OECD's release, the agreement will allow jurisdictions to automatically exchange information that tax authorities have collected from operators of digital platforms with respect to transactions and income generated by platform sellers.

In addition, 15 jurisdictions signed a separate MCAA for information exchanges under the mandatory disclosure rules for common reporting standard avoidance arrangements and opaque offshore structures. This agreement will enable the annual automatic exchange of information collected from intermediaries that have identified arrangements to circumvent the common reporting standard and structures that disguise the beneficial owners of assets held offshore.

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

United Nations

Proposal for a subject-to-tax-rule to be included in the UN Model Taxation Convention

On October 3, 2022, the United Nations published the draft proposal for the inclusion of a general subject-to-tax-rule (STTR) in the UN Model Taxation Convention between developed and developing countries that was presented for discussion during the UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) twenty-fifth meeting (for previous coverage, please refer to E-News issue 164). The draft text concerns new provisions for a STTR regarding taxation by the source state and taxation by the residence.

Local Law and Regulations

Austria

Implementation of DAC7

On July 19, 2022, the Tax Amendment Act 2022 was published in the Official Gazette of Austria and included the transposition of DAC7 into domestic law. The law requires digital platform operators to provide the Austrian competent authority with information about certain users ("sellers") on their platform to enable the Austrian competent authority to exchange this information with other EU Member States. The rules will be applicable from January 1, 2023.

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

Draft ordinance on crypto taxation

On October 20, 2022, the Austrian Ministry of Finance issued a draft ordinance providing clarifications on the taxation of cryptocurrencies where the acquisition costs and the acquisition date are not known.

As part of the Environmentally Responsible Tax Reform 2022 specific regulations on the taxation of cryptocurrencies had been introduced in March 2022 providing that cryptocurrency holdings will be counted as income from capital assets, and will be taxed at the a special rate of 27.5 percent (for previous coverage, please refer to E-News Issue 149). As a result, Austrian crypto service providers will be obliged required to deduct capital gains tax on income from cryptocurrencies as from January 1, 2024.

For more information, please refer to a report prepared by KPMG in Austria and to the dedicated website of the Austrian Ministry of Finance.

Changes to the reclaim procedure in relation to withholding taxes on dividend distributions

The Austrian Ministry of Finance has recently issued draft guidelines that would amend the requirements to reclaim Austrian withholding tax on dividend distributions by non-resident shareholders. The new draft guidelines provide that only the foreign shareholder who holds the shares on the day before the General Assembly deciding on the dividend distribution is entitled to reclaim Austrian withholding tax.

The draft guidelines build on the decision by the Austrian Administrative Court of June 28, 2022, which held that the recipient of the dividend payment is the beneficial owner at the time of the resolution of the General Assembly. As a result, the entitlement to a refund for withholding tax on dividend distributions will be available to the shareholder who recognizes the shares in the securities account on the day before the General Assembly. As part of the refund procedure and in order to prevent abusive arrangements, a journal showing purchases and disposals must be submitted to the tax authorities.

For more information, please refer to a report (in German language) prepared by KPMG in Austria.

Belgium

Proposal for a windfall profit tax on registered oil companies

On October 28, 2022, the Belgian government approved a proposal for the introduction of a temporary tax on certain companies in the oil and refinery industries prompted by the agreed solidarity contribution at EU level. Key aspects of the proposal include:

- registered oil companies that are actively operating in the refining sector, having refining capacity in Belgium would be subject to a contribution of EUR 6.09 per ton of crude oil imported between January 1, 2022 and December 31, 2023;
- registered oil companies that have been defined as primary participants for diesel and gasoline products for the year of 2022 by the Royal Decree of February 5, 2019 would be subject to a contribution of EUR 7.80 per cubic meter of product released for consumption, between the period of January 1, 2022 and December 31, 2023.

This windfall profit tax would complement the already existing annual nuclear levy. As a next step, the draft bill was submitted to the State Council for consultation.

For more details, please refer to the press release of the Belgian government.

Bulgaria

Proposal for a temporary solidarity contribution on the fossil sector

On November 1, 2022, the Bulgarian government submitted to the Parliament a proposal for the introduction of a solidarity contribution on surplus profits generated by companies in the oil, gas, coal, and refinery industries in accordance with the EU Regulation on an emergency intervention to address high energy prices. Key aspects of the proposal include:

- application to companies and permanent establishments with at least 75 percent of their 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 that are above 20 percent of the average taxable profits of the preceding four fiscal years (i.e. 2018 to 2021);
- the payment of temporary solidarity contribution will be due similar to the annual corporate tax payment on June 30 of the following year.

Once adopted, the temporary solidarity contribution would be applicable for fiscal years 2022 and 2023 and considered in force as of the date following the date when the EU Regulation was published in Official Journal of the European Union (October 7, 2022).

Czech Republic

Windfall profits tax on fossil sector and banks approved by Parliament

On November 4, 2022, the Lower House of the Czech Parliament approved the introduction of a temporary tax on extraordinary profits ("windfall profits tax"), which will be broader than the EU solidarity contribution. Key design features include:

- application to certain categories of corporate income taxpayers in the fossil fuel, energy and banking sectors with qualifying profits exceeding CZK 50 million (approximately EUR 2.06 million) in a taxable period;
- extraordinary profits will be defined as taxable profits exceeding 20 percent of the average taxable profits

generated in the four fiscal years starting on or after January 1, 2018;
- the tax will be levied at a rate of 60 percent and applied on top of the statutory corporate income tax (19 percent on the entire tax base);
- the tax will apply between 2023 and 2025 with first prepayments due in the second half of 2023.

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

Denmark

DAC7 guidance published

On November 2, 2022, the Danish tax authorities published guidance providing clarifications on the application of the DAC7 reporting requirements as implemented into Danish law (for previous coverage, please refer to E-News Issue 163).

The guidance provides general information about the reporting framework under DAC7 and an overview of the registration, notification and reporting requirements for Danish, EU and non-EU reporting platform operators.

Estonia

Approval of draft DAC7 legislation

On October 20, 2022, draft law was approved by the Estonian government to transpose DAC7 into domestic law. The law will require digital platform operators to provide the Tax and Customs Board (MTA) of Estonia with information about certain users ("sellers") on their platform to enable the MTA 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.

For more information, please refer to the press release of Estonia's Ministry of Finance.

Germany

Updated ordinance on cross-border transfers of functions published

On October 25, 2022, an updated version of the ordinance on the application of the arm's length principles in relation to the cross-border transfer of functions was published in the Official Gazette. The update aims to adapt and restructure the existing regulations on the arm's length principle with the current measures under the OECD Transfer Pricing Guidelines.

The new provisions are applicable to all assessment periods starting after December 31, 2021.

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

Netherlands

Draft legislation for temporary solidarity contribution on fossil sector for 2022

On November 1, 2022, the Dutch government submitted draft legislation to the Lower House of Parliament (House of Representatives) that would introduce a temporary solidarity contribution on the 2022 surplus profits of qualifying companies engaged in crude oil, natural gas, coal and petroleum refining activities, in accordance with the regulation agreed at EU level. Key features of the proposal include:

- application to Dutch-based companies or permanent establishments subject to corporate tax with at least 75 percent of their 2022 turnover attributable to operations in the fossil fuel sector;
- the tax would be levied at a rate of 33 percent on surplus profits and in addition to the general corporate income tax;
- excess profits would be calculated as the taxable profits in the fiscal year 2022 that are above 20 percent of the average taxable profits of the preceding four fiscal years;
- if a taxpayer is part of a fiscal unity, the taxable corporate income tax profit must be calculated as if the taxpayer is not part of the fiscal entity.
- the contribution is not deductible for corporation tax;
- the contribution will take the form of a remittance-based tax and will require paper tax returns to be filed.
- the filing deadline will be 17 months after the end of the contribution year.
- the payment deadline is the same as the filing deadline, i.e. the contribution will also be due within 17 months of the end of the contribution year.

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

Updated policy statement on Dutch hybrid mismatch rules

On November 3, 2022, the Dutch Ministry of Finance published an update to the policy statement on local hybrid mismatch rules in correspondence with the EU Anti-Tax Avoidance Directive 2017/952 (“ATAD 2”). According to the updated statement, the double deduction of costs in hybrid situations where cost-plus transactions are carried out may not trigger anti-hybrid mismatch measures and may be allowed to the extent there is also a dual inclusion of income.

This position applies to financial years commencing on or after January 1, 2020, and tax assessments that have become irrevocable can be reduced ex officio.

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

Tax measures announced as part of the 2023 Budget passed by the Lower house of Dutch Parliament

On 10 November 2022, the Lower House of the Dutch Parliament passed a bill incorporating the tax measures announced as part of the 2023 Budget.

For previous coverage, please refer to E-News Issue 162.

Proposed amendments to the DAC7 transposition bill passed by the Lower House of Dutch Parliament

On November 10, 2022, the Lower House of the Dutch Parliament passed a bill providing for amendments to the bill transposing the Council Directive (EU) 2021/514 (DAC7) into domestic law.

For previous coverage, please refer to E-News Issue 162.

Poland

Clearance opinion on debt for equity swap published

On October 24, 2022, a clearance opinion was published by the Polish tax administration concerning the tax recognition of the exchange of shareholders loans for company equity.

According to the opinion, specific debt for equity swap transactions are not to be deemed artificial to the extent the tax benefit resulting from the transaction is not the primary or one of their primary purposes of the transaction and does not go against the subject or purpose of tax law or its provision.

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

San Marino

Patent box regime abolished

On October 25, 2022, Law No. 148 was published by the government of the Republic of San Marino introducing various amendments to San Marino's 2022 budget including the abolishment of the patent box regime. Qualifying taxpayers that already submitted their election before October 1, 2022, may continue to benefit from the regime until its expiration.

Sweden

Proposal to enhance research and development (R&D) deduction

On November 8, 2022, the Swedish government submitted the 2023 budget to the Swedish Parliament which includes a proposal to enhance qualified research and development (R&D) deductions of employer contributions from SEK 600,000 (approximately EUR 56,000) to SEK 1.5 million (approximately EUR 140,000) per month with an entry into force date on July 1, 2023.

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

Spain

Spanish government to move forward on windfall taxes on banks despite ECB concerns

On November 2, 2022, the European Central Bank (ECB) issued a non-binding opinion in response to a request from the National Bank of Spain on behalf of the Spanish government. The opinion concerned the Spanish imposition of windfall taxes on enterprises operating in the energy sector, credit and financial institutions (for more details on the Spanish windfall profit tax, please refer to E-News Issue 159). The opinion notes several concerns that the proposed levy would negatively affect the competition conditions in the market and pose a risk to the financial stability, resilience of the banking sector and their ability to provide credit.

On November 10, 2022, the Spanish government reaffirmed its commitment to move ahead with implementation of the windfall tax and proposed a number of amendments to the draft legislation prompted by the ECB opinon. As a next step, the draft legislation is to be approved by the Parliament.

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

United Kingdom

New transfer pricing guidelines adopted

On November 8, 2022, the UK Treasury published updated transfer pricing guidelines in order to align with the OECD's 2022 edition of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations released on January 20, 2022 (please refer to E-News Issue 147). The updates will take effect for accounting periods beginning on or after January 1, 2023 for corporation tax purposes and from April 6, 2023 for income tax purposes.

Local Courts

Belgium

Belgian annual tax on securities accounts - Constitutional Court cancels specific anti-abuse measures

On October 27, 2022 the Belgian Constitutional Court issued its decision in joint cases concerning the Belgian annual tax on securities accounts. The Constitutional Court ruled that the annual tax on securities is compatible with the principles of equality and non-discrimination and partially nullified its anti-abuse provisions. More specifically in its judgment the Constitutional Court annulled the tax specific anti-abuse measures and the retroactive application of the tax general anti-abuse measure.

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

Germany

Loss recognized on settling option can be carried back to offset related income earned in earlier year

On November 8, 2022, the German Federal Fiscal Court (Court) issued a decision (Case No.: XIII R 27/21) concerning the taxation of income and settlement expenses from options over time. Options are capital investments for advanced investors and their performance is linked to the prices of underlying assets such as shares, indices or even commodities such as gold. The Court ruled, in deviation from the approach taken by the German tax authorities, that closing-out expenses can be taken into account retroactively in the year of the option writer's income to reduce tax.

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

Poland

Corporate tax consequences of debt-for-equity swap (Polish Supreme Administrative Court)

On October 21, 2022, the Polish Supreme Administrative Court held that where the face value of new shares issued as a result of a debt-for-equity swap is lower than the shares' market value, the issuer should recognize revenue on their account.

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

Switzerland

Swiss Supreme Court upholds allocation of excess interest costs to German property and denies deduction in Switzerland

On March 16, 2022, the Swiss Federal Supreme Court (Court) published its decision in a case (2C_465/2021) concerning the applicability of the Germany – Switzerland double tax treaty to the allocation of debts and related interest.

The plaintiff was a Swiss resident who owned two real estate properties, one in Switzerland and the other in Germany. The plaintiff claimed the deduction of interest in his Swiss tax return, but the Swiss tax authorities partially rejected the claim and argued that certain interest costs were attributable to Germany. Under Swiss rules debts are distributed proportionally among assets held by taxpayers. In cases where the allocated interest expense exceeds the income from a certain asset, the excess interest costs are allocated to other assets (provided they generate income). The taxpayer challenged the tax authorities' assessment on the grounds that the allocation of interest expenses to Germany, which does not allow interest deductions in this case, leads to double taxation.

The Court acknowledged that the double tax treaty concluded between Switzerland and Germany allocates the taxing rights for immovable property to the contracting state in which this property is located. Nevertheless, as noted by the Court, the treaty does not cover the allocation of debts or interest expenses. In the Court's view, the fact that Germany does not allow the deduction of excess interest expenses allocated to the German property is irrelevant.

In light of the above, the Court held that any potential double taxation results from the differences in the tax systems of the two countries and that Switzerland is not required by the related treaty to allow the full deduction of interest expenses.

KPMG Insights

EU Tax Perspectives webcast – December 14, 2022

The European Union's institutions have been very busy in the past few months, discussing EU implementation of international initiatives but also initiating EU-specific proposals and moving ahead with existing projects.

On December 14, 2022, a panel of KPMG specialists will share their insights on some of the latest developments from across the EU affecting multinational groups operating in Europe. The "EU tax perspectives" webcast will focus on:

- BEPS 2.0 in the EU: State of play on the implementation of the EU Minimum Tax Directive (Pillar Two) and the EU's response to Pillar One
- State of play of various initiatives from the European Commission's Communication on Business Taxation, including Unshell (ATAD 3), DEBRA and BEFIT
- Harmful tax practices: updates on the work of the Code of Conduct Group
- Other developments, including adoption by Member States of upcoming initiatives, such as DAC7 and public CbyC reporting

Please access the event page to register.

BEPS 2.0 – Where are we? Implementation will soon be upon us

As part of the Future of Tax & Legal webcast series, KPMG International held a session on November 8, 2022 to provide an update on the developments in relation to BEPS 2.0. The KPMG Tax Policy leadership group shared insights on Pillar One and Pillar Two including perspectives on OECD releases and developments in the EU, the US and the rest of the world.

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

EU Financial Services Tax perspectives

As part of the Future of Tax & Legal webcast series, KPMG International held 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 shared their insights on some of the latest developments impacting the financial services industry including:

- Update on the BEPS Pillar Two 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.

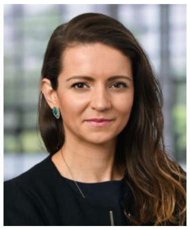
Please access the event page for a replay of the event.

COP27 resource center

KPMG is providing on-the-ground insights from the 27th Conference of the Parties (COP27) to the United Nations Framework Convention on Climate Change (UNFCCC) in Sharm el-Sheikh, Egypt.

COP27 represents the world's last best chance to limit global warming to 1.5°c, turn the Paris commitments into action, and help build a sustainable future for all. It is an opportunity for climate negotiations and to showcase climate action on the world stage.

KPMG's COP27 Resource Center provides climate change insights aimed at helping you understand the potential impacts that COP27 may have on business, government, and society at large. We're focused on measurable actions, and our insights can help leaders identify transformation opportunities tailored to their unique circumstances and prepare for a more sustainable future.



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