Latest CJEU, EFTA and ECHR

State aid

EU Institutions

OECD and other International Institutions

Local Law and Regulations

Local Courts

KPMG Insights

E-News from the EU Tax Centre

Issue 166 – November 29, 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:** Court invalidates certain transparency obligations under AMLD
- **United Nations**: Agreement on new tax leadership role
- **Austria**: Proposal for a temporary solidarity contribution on the fossil sector
- **Croatia:** Public consultation launched on proposal for an Extra Profit Tax
- **Finland:** Clarifications on DAC7 reporting obligations published
- **Ireland:** Proposal for a temporary solidarity contribution from the fossil sector
- **Malta:** Transfer pricing rules introduced
- **Spain:** ATAD 2 reverse hybrid mismatch rules introduced
- **United Kingdom:** Tax proposals and updates announced in the government's Autumn Statement
- **Italy (court decision):** Intermediate holding companies in private equity structures served non-tax purpose

---

Latest CJEU, EFTA and ECHR

CJEU

CJEU restricts access to beneficial ownership information

On November 22, 2022, the Court of Justice of the European Union (CJEU or the Court) gave its decision in joined cases C-37/20 and C-601/20. The cases concern the validity of conditions for allowing access to beneficial ownership information under the EU Anti-Money Laundering Directive.

The CJEU held that, in light of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union (the Charter), the provision of Directive (EU) 2018/843 (AMLD 5) requiring Member States to provide access to beneficial ownership data to any member of the general public was invalid as it violates the right to privacy and the protection of personal data.

For more details, please refer to Euro Tax Flash Issue 494.

State aid

CJEU ruling on reduced property tax rates applicable to the Irish fossil fuel sector

On November 17, 2022, the Court of Justice of the European Union (CJEU or the Court) gave its decision in the case C-578/21 P. The case concerns an appeal brought by the Irish Wind Farms Association (IWFA) against a European Commission's (EC) Decision confirming that a measure based on which fossil fuel electricity producers benefitted from lower property tax rates than other electricity producers did not constitute State aid. The Commission's decision was based on the grounds that the measure under dispute did not entail any economic or selective advantage.

Following an initial appeal brought by the IWFA against the Decision, the General Court upheld on July 7, 2021, the Commission's findings.

In its ruling in the appeal, the CJEU rejected the arguments brought by IWFA that the EC had been faced with serious difficulties in its assessment of the contested measure and that it should have been required to initiate a formal investigation procedure. In this respect the CJEU noted that the appellants were not able to prove that the Commission was not capable to overcome technical difficulties considering, in particular, the support received from the Irish authorities. Lastly, the CJEU also rejected the appellants' claim that the General Court distorted the evidence submitted before it.

In light of the above, the CJEU agreed with the General Court that the wind farmers were not able to justify their request that the Commission opens a formal State aid investigation and dismissed their appeal.

EU Institutions

European Parliament

FISC sub-committee held a workshop on tax transparency in the Cayman Islands

On November 14, 2022, the European Parliament's Subcommittee on Tax Matters (FISC) held a public exchange of views with the Minister for Financial Services and Commerce of the Cayman Islands, Mr. André Ebanks. The aim of the hearing was to gather insights on the Cayman Islands' commitments to follows the EU's tax good governance principles in relation to tax transparency and the prevention of base erosion and profit shifting.

During the discussion, Mr. Ebanks highlighted that the Cayman Islands endorse the OECD's Pillar 1 and Pillar 2 initiatives. In the Minister's view, countries with indirect tax systems – such as the Cayman Islands, are not required to change their regimes but should provide an additional level of reporting and exchange of information. Mr. Ebanks further noted that the Cayman Islands have already fully implemented economic substance requirements and are therefore not on the EU list of non-corporative jurisdiction for tax purposes. However, the Minister confirmed that the Cayman Islands have not so far been removed from the EU AML list.

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

OECD and other International Institutions

OECD

G20 leaders' declaration considers progress of the OECD work on taxation and transparency

On November 16, 2022, the G20 leaders issued a declaration following their meeting in Bali, which provides for the following comments in relation to the OECD's work on taxation and transparency:

- commitment to the swift implementation of the OECD two-pillar solution;
- call to complete the negotiations of the Subject to Tax Rule (STTR) under Pillar Two that would allow the development of a Multilateral Instrument for its implementation;
- call to finalize Pillar One, including remaining issues with a view to signing the Multilateral Convention in the first half of 2023;
- endorsement of the Crypto-Asset Reporting Framework (CARF) and the amendments to the Common Reporting Standard, including their role in facilitating automatic exchange of information.

For more information, please refer to the G20 press release.

Aggregated country-by-country reporting data published

On November 17, 2022, the OECD released the fourth edition of the Corporate Tax Statistics database that covers over 160 countries and jurisdictions and includes new aggregated Country-by-Country Reporting (CbCR) data on the activities of almost 7,000 MNEs.

Key insights of the statistics include:

- In 2019, the share of corporate tax revenues in total tax revenues was 15 percent on average and amounted to 3.1 percent of the GDP on average in the 115 jurisdictions for which corporate tax revenues are available in the database.
- In 2022, 12 jurisdictions had no corporate tax regime or a CIT rate of zero. Two jurisdictions, Barbados (5.5 percent) and Hungary (9 percent), had a positive corporate tax rate less than 10 percent (without taking into account Hungary's local business tax).
- In 2021, the average effective tax rate across 77 jurisdictions surveyed (20.2 percent) was 1.2 p.p. lower than the average statutory tax rate (21.4 percent) due to, in particular, favorable tax depreciation rules for tangible and intangible assets and allowances for corporate equity.
- R&D tax incentives in form of direct support and tax relief measures are increasingly used to promote business R&D with 33 out of the 38 OECD jurisdictions offering tax relief on R&D expenditures in 2021, compared to 19 in 2000.
- The new CbCR data shows indicators for base erosion and profit shifting towards low-rate investment hubs. The median value of revenues per employee in jurisdictions with a corporate income tax rate of zero is USD 2 million (approximately EUR 1,920,000) as compared to just USD 295,000 (approximately EUR 283,000) for jurisdictions with a rate lower than 20 percent and USD 340 000 (approximately EUR 326,000) for jurisdictions with a rate higher than 20 percent. Moreover, in investment hubs, related party revenues account for 35 percent of total revenues, whereas the average share of related party revenues in high-, middle- and low- income jurisdictions is around 15 percent.

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

Mutual agreement procedure statistics for 2021 published

On November 22, 2022, the OECD published the 2021 mutual agreement procedure (MAP) statistics covering 127 jurisdictions, including all members that joined the Inclusive Framework on BEPS prior to 2022. Key insights of the latest MAP statistics include:

- Significantly more MAP cases were closed in 2021 compared to 2020 due to the greater use of virtual meetings, increases in the number of staff and their amount of experience, the prioritization of simpler cases, and greater collaboration to solve common issues collectively that could be applied across multiple MAP cases.
- The number of new MAP cases opened in 2021 decreased (by approximately 3 percent) compared to 2020 due to a significant decrease in new transfer pricing cases.
- While approximately 75 percent of the MAPs concluded in 2021 were fully resolved, approximately 2 percent of MAP cases were closed with no agreement (3 percent in 2020).
- On average, the time to close MAP cases was approximately 32 months for transfer pricing cases (35 months in 2020) and 21 months for other cases (18.5 months in 2020).

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

United Nations

Agreement on new tax leadership role

On November 23, 2022, the United Nations Economic and Financial Committee approved a resolution to develop a new international tax cooperation framework that was initially proposed by a Group of African countries.

The resolution aims at strengthening the inclusiveness and effectiveness of international tax cooperation by evaluating the possibility of developing an international tax cooperation framework or instrument through an intergovernmental process. Under consideration of other multilateral bodies, including the OECD/G20 Inclusive Framework which is currently in the lead of developing and agreeing international tax standards, the resolution envisions to make changes to the existing international tax order.

In response to the adopted resolution, representatives from the European Union, the US and Japan highlighted concerns in relation to the interplay with the ongoing two-pillar solution to address global tax challenges under the OECD/G20 Inclusive Framework.

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

Local Law and Regulations

Austria

Proposal for a temporary solidarity contribution on the fossil sector

On November 18, 2022, the Austrian Ministry of Finance announced 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 features of the proposal include:

- the contribution would be levied at a rate of 40 percent on excess profits generated between July 1, 2022 to December 31, 2023;
- 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);
- excess profits may be reduced by 50 percent of the expenses related to renewable energy investments (to reduce the effective contribution rate to 33 percent).

As a next step, the draft law is subject to approval by the Austrian Parliament and the Federal Council.

Belgium

Council of Ministers approval of draft law implementing tax measures announced in the 2023 and 2024 budget

On November 18, 2022, the Belgian Council of Ministers approved a draft bill introducing tax measures announced in the budget for 2023 and 2024 (for more details please refer to E-News Issue 163).

Key corporate tax measures include:

- abolition of the notional interest deduction;
- a temporary change to the minimum taxable income limitation, which has been applicable since 2018 for companies with a taxable income that exceeds EUR 1 million. Under the current rules, the deduction of certain tax attributes – including losses carried forward, dividends-received-deduction (DRD) carried forward, etc, is limited to 70 percent of the carry forward amount exceeding EUR 1 million. The proposed change would temporarily reduce the deductibility percentage from 70 percent to 40 percent;
- changes to the method of calculating the foreign tax credits related to royalties.

As a next step, the draft rules are subject to approval by the Belgian Parliament.

Amendments to the statute of limitations approved by the Belgian Parliament

On November 10, 2022, the Belgian Parliament approved a law revising the statute of limitations for several tax liabilities, as well as the interest rates applicable to late payment of certain tax liabilities and refundable amounts. Key amendments include:

- increased statute of limitations in case of tax liabilities for which the relevant tax return was not timely submitted or not filed at all (from 3 years to 4 years);
- an extended investigation and assessment period of six years for specific cases, such as: transfer pricing investigations for companies that are subject to international reporting obligations (e.g. local transfer pricing file or country-by-country reporting), transactions with companies based in tax havens, potentially abusive withholding tax reductions or reliefs based on double tax treaties or EU directives;
- increased statute of limitations in case of fraud (from 7 years to 10 years).

Due to increase of the maximum state of imitations, taxpayers would be required to retain the relevant documents and records for 10 years. The new rules will generally apply starting from January 1, 2023 (with some exceptions).

For more information on the impact of the new law on VAT liabilities, please refer to a report prepared by KPMG in Belgium.

Bulgaria

Draft bill to transpose DAC7

On November 11, 2022, a draft bill was submitted to the Bulgarian Parliament to transpose the Council Directive (EU) 2021/514 (DAC7) into domestic law. Once adopted, the law will require digital platform operators to provide the Bulgarian competent authority with information about certain users ("sellers") on their platform to enable the Bulgarian 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.

Croatia

Public consultation launched on proposal for an Extra Profit Tax

On November 17, 2022, the Croatian government launched a public consultation on a draft proposal for an Extra Profit Tax that was prompted by the EU Regulation on an emergency intervention to address high energy prices. Key features of the proposal include:

- the Extra Profit Tax would be applicable in fiscal year 2022 to all corporate taxpayers with a total income exceeding HRK 300 million (approximately EUR 40 million) in that year, regardless of their business activity (i.e. broader scope compared to the EU Regulation);
- the tax would be levied at a rate of 33 percent on extra profit generated in fiscal year 2022;
- extra profit would be calculated as the taxable profit in accordance with the corporate tax law that are above 20 percent of the average taxable profit of the preceding four fiscal years (i.e. 2018 to 2021);
- where a tax loss was incurred in any of the previous tax periods, the taxable profit would be deemed to be zero for the purposes of calculating the Extra Profit Tax;
- exemptions would apply for certain taxpayers (e.g. newly established companies and taxpayers discontinuing business activities in 2022) and certain types of income (e.g. gains realized from the sale of certain long-term assets to unrelated person);
- in-scope taxpayers would be required to file a separate Extra Profit Tax return within the same time limits that apply for Croatian corporate profit tax.

The public consultation deadline is December 1, 2022.

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

Finland

Clarifications on DAC7 reporting obligations published

On November 11, 2022, the Finnish tax authorities (FTA) published clarifications on the upcoming transposition of DAC7 into domestic law. Key clarifications include:

- platform operators that are domiciled or registered in Finland as providers of annual reports are subject to the DAC7 reporting requirements;
- reporting data must be submitted for the first time for calendar year 2023 by the end of January 2024 and the information will be submitted electronically via Ilmoitin.fi or alternatively via the FTA's e-service.

For previous coverage on Finnish DAC7 implementation, please refer to E-News Issue 164.

Certain tax proposals removed from the updated the legislative plan

On November 17, 2022, the Finnish government issued an announcement noting that the work for updating the indicative plan for government proposals and government reports to be submitted to the Finnish

Parliament for the remaining government term has been completed. Key legislative measures previously proposed that have now been removed from the updated legislative plan include:

- the extra deduction of 150 percent applicable for research and development expenditure (R&D) costs incurred as part of cooperation projects between research organizations and companies;
- exit taxation for individuals moving abroad;
- taxation in Finland of gains derived by foreign funds from real estate investments "as broadly as possible";
- introduction of economic legislation concept.

For previous coverage, please refer to E-News Issue 140.

Greece

Windfall Tax on electricity producers approved

On November 18, 2022, a new temporary levy on excess revenue generated by electricity producers was enacted, thereby replacing the previous contribution that was applied between October 1, 2021 and June 30, 2022 (for previous coverage, please refer to E-News Issue 161). Key features of the new levy include:

- the new levy applies at a rate of 60 percent on excess revenue generated in the period August 1, 2022 to July 31, 2023;
- the excess revenue is determined on a monthly basis and equals the amount of revenue that exceeds a certain maximum retail price, which is set based on the average cost of electricity supply plus a reasonable profit mark-up;
- where the monthly revenue falls below the maximum retail price, the monthly levy is zero and the negative amount can be offset against the excess revenue of the following months;
- the levy qualifies as a tax deductible expense for the energy supplier.

Hungary

Draft legislation introducing tax-related amendments

On October 18, 2022, the Hungarian government submitted to the Parliament draft legislation providing for various tax amendments. Key income tax measures include:

- transposition of public Country-by-Country Reporting (please refer to Euro Tax Flash Issue 493);
- amendments in relation to the dates the group membership in a tax group is deemed to be terminated;
- amendments in relation to the utilization of carryforward losses incurred before 2015;
- amendments to rules on the preferential exchange of shares;
- extension of the application deadline for the Hungarian advertisement tax by one year, i.e. the tax rate remains 0 percent until December 31, 2023;
- amendments to the tax base determination for the Hungarian local business tax;
- amendments to procedural rules in relation to advance pricing arrangement.

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

Amendments to windfall profit tax measures

On November 7 and 9, 2022, respectively the Hungarian government published decrees modifying the windfall profits taxes introduced on July 1, 2022 (for previous coverage, please refer to E-News Issue 156). Key amendments include:

- *Surtax for oil companies:* Increase of the tax rate from 25 percent to 40 percent, which is applied on the price difference between a specific world market price and the purchase price of crude oil originating from Russia.
- *Surtax on power plants*: New surtax at a rate of 10 percent in 2022 (13 percent in 2023) on the turnover realized by power plants providing balancing energy.
- *Surtax on financial institutions:* Certain exclusions from the surtax base, including gains from sales of goods and services that are not derived from usual business activities.
- *Surtax on insurance companies*: Advance surtax payments until November 30, 2022 shall be calculated in accordance with the rates applicable for 2023 (1 percent to 7 percent), instead of the rates applicable for 2022 (2 percent to 14 percent).
- *Financial transaction tax:* Certain exclusions from the tax base, including transactions that do not exceed HUF 20,000 and that do not relate to any business activity, and broadened scope to include providers of cross border investment services.

The amended rules shall apply to tax years starting after December 31, 2021.

Implementation of DAC7

On November 4, 2022, Law XXXIX/2022 was published in the Official Gazette transposing DAC7 into domestic law. The law requires 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. The rules will be applicable from January 1, 2023.

Iceland

Draft bill provides for extension of R&D incentives and exemption from WHT for UK dividends

On November 15, 2022, the Ministry of Finance of Iceland published a draft bill proposing changes to various tax laws. Key corporate tax measures include:

- extension to 2023 and 2024 of the temporary measure which allows for the deduction of 35 percent (SMEs) or 25 percent (large companies) of qualifying research and development (R&D) expenses (for previous coverage, please refer to E-News Issue 157);
- introduction of a temporary exemption from withholding tax on dividends paid to UK companies in light of ongoing negotiations between Iceland and the United Kingdom on a new tax treaty.

Ireland

Proposal for a temporary solidarity contribution from the fossil sector

On November 22, 2022, the Irish government announced 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 features of the proposal include:

- the contribution would be levied at a rate of 75 percent on excess profits generated in 2022 and 2023;
- 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);
- losses from previous years shall not be taken into account in the calculation of the tax base;
- the proceeds from the solidarity contribution are expected to be collected in 2023 and 2024.

Italy

Amendments to windfall taxation

On November 22, 2022, the Italian government announced the draft budget for 2023, which includes plans for an increase of the windfall profit tax rate from 25 percent to 35 percent.

The windfall tax is currently applied on the difference between the added value (as per Italian VAT rules) for the period from October 1, 2021 to April 30, 2022 that exceeds the added value for the same period in the preceding year (the incremental added value) where the increase is at least EUR 5 million in total. The contribution is not due if the increase is less than 10 percent. Under the budget law 2023, the government intends to apply the increased tax rate on taxable excess profits instead of VAT.

As a next step, the draft budget is subject to parliamentary discussion and approval.

Malta

Transfer pricing rules introduced

On November 18, 2022, Malta published legislation introducing transfer pricing rules that are applicable to arrangements between related parties entered into on or after January 1, 2024, including any arrangements entered into before that date which would have been materially changed thereafter.

Under the Maltese transfer pricing rules, arrangements between related parties (associated entities) are defined as having 50 percent or more common direct or indirect participation rights in large multinational groups in scope of Country-by-Country Reporting, or 75 percent in the case of large multinationals excluded from such reporting. Small and medium-sized enterprises (SMEs) as defined by the EU State Aid Regulations fall outside the scope in all cases.

The new rules will be effective from January 1, 2024. For more details, please refer to a report prepared by KPMG in Malta.

Poland

Proposed amendment to tax on certain financial institutions passed by the Parliament

On November 16, 2022, the Lower House of the Polish Parliament (the Sejm) passed a draft bill that would reduce the taxable base for certain financial institutions by the value of bonds guaranteed by the State Treasury.

Following this approval, the draft bill will now be considered by the Upper House of the Polish Parliament.

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

South Africa

Intention to withdraw certain tax practices affecting investment holding structures

In November, 2022, the South African Revenue Service (SARS) announced its intention to withdraw certain tax practices which allow deductions for interest expense against related interest income, with effect for years of assessment commencing on or after March 1, 2023.

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

Spain

ATAD 2 reverse hybrid mismatch rules introduced

On October 19, 2022, the Spanish government published a Royal-Decree for the introduction of reverse hybrid mismatch rules in accordance with the Anti-Tax Avoidance Directive 2017/952 (ATAD 2), effective as from January 1, 2022. The law generally aims to address tax avoidance as a result of a difference in treatment of the entity by the Spanish tax authority as compared to the investor jurisdiction.

Ukraine

Draft bill proposes amendments on improving taxation of controlled foreign companies (CFC)

On October 19, 2022, a draft bill was submitted to the Ukrainian Parliament proposing amendments to the Ukrainian tax code on improving taxation of controlled foreign companies (CFC). Key aspects proposed include:

- clarifications on the submission date of the CFC report and calculation of CFC income;
- clarifications on the criteria for assigning a person to the list of controlled persons;
- improvements of tax audit procedures for CFCs;
- simplification of the procedure for calculating the CFC's adjusted net income;
- clarification that the legal or actual control over a CFC is determined as at December 31 of the corresponding year.

United Kingdom

Tax proposals and updates announced in the government's Autumn Statement

On November 17, 2022, the UK government delivered its Autumn Statement. Key takeaways included:

- *Corporate tax:* The headline rate of corporation tax will increase from 19 percent to 25 percent for companies with over GBP 250,000 (approximately EUR 289,000) in profits from April 1, 2023.
- *Diverted profits tax:* The rate will increase from 25 percent to 31 percent from April 1, 2023.
- *Banking surcharge:* The rate will be reduced from 8 percent to 3 percent from April 1, 2023.
- *Pillar Two:* Additional details have been published on the timeline for the UK implementation of the OECD Pillar Two rules for a global minimum corporate tax rate. Whilst the Income Inclusion Rule (IIR) and a supplementary Qualified Domestic Minimum Top-up Tax (QDMTT) would apply for

accounting periods beginning on or after December 31, 2023, the backstop Undertaxed Profits Rule UTPR) would apply no earlier than accounting periods beginning on or after December 31, 2024.

- *Windfall profit taxes:* The rate of the energy profits levy, which applies to the profits of oil and gas companies operating in the UK and the UK Continental Shelf, will be increased from 25 percent to 35 percent from January 1, 2023 and will remain in place until the end of March 2028 (for previous coverage, please refer to E-News Issue 158). In addition, a new temporary 45 percent electricity generator levy on “exceptional generation receipts” will be introduced from January 1, 2023 and will also be applied up to March 31, 2028. The levy will apply to groups generating electricity from nuclear, renewable and biomass sources that undertake electricity generation in the United Kingdom and are either connected to a national grid or connected to local distribution networks.
- *Research and development (R&D) tax reliefs:* The research and development expenditure credit rate will increase from 13 percent to 20 percent for expenditure incurred on or after April 2023. The small and medium-sized enterprises (SME) additional deduction will decrease from 130 percent to 86 percent, and the SME credit rate will decrease from 14.5 percent to 10 percent for expenditure incurred on or after April 2023.
- *Transfer Pricing*: From April 2023, large multinational businesses operating in the UK will be required to keep and retain transfer pricing documentation in a prescribed and standardized format, set out in the OECD’s Transfer Pricing Guidelines (Master file and Local file).

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

Response to the consultation on mandatory disclosure rules

On November 24, 2022, the UK government published its response to the consultation on the implementation of the OECD’s ‘Mandatory Disclosure Rules for Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures’. The UK has previously implemented a stripped back version of the EU Mandatory Disclosure Rules (DAC6) with a view to replace these with the OECD rules (for previous coverage, please refer to Euro Tax Flash Issue 439 and E-News Issue 144).

The consultation response notes that reporting of existing arrangements will only be required for arrangements entered into from June 25, 2018, which aligns with the start date for DAC6. Originally the government planned to require historical reporting going back to October 29, 2014. In addition, the government has decided that reporting will be required using XML software.

The new regulations implementing the OECD Model Rules will come into force in the first half of 2023. As a next step, HMRC will now continue to work with stakeholders to draft guidance on the rules.

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

Local Courts

Italy

Court decisions: intermediate holding companies in private equity structures served non-tax purpose

The First Degree Court of Rome (Court) held in two recent cases (11354 and 11355) that intermediate holding companies in private equity structures served a genuine, non-tax purpose and could not be considered as mere conduit entities because their use did not bring any tax benefit.

The cases concerned a UK private equity fund that invested in the Italian market through a Luxembourg holding company. The Italian authorities challenged the applicability of the withholding tax exemption under the Parent Subsidiary Directive (PSD) for dividends distributed by Italian subsidiaries to the Luxembourg parent. The tax authorities based their decision on the following facts: i) in their view the Luxembourg company was a conduit entity, with no economic substance and ii) the supporting documents required for the application of the PSD were only obtained after the dividends were paid.

The Court analyzed the existence of a tax advantage for the ultimate UK parent by applying retroactively the EU fund exemption rule on dividends and capital gains, formally introduced from January 1, 2021. Under this approach, the UK private equity fund would have benefited from a withholding tax exemption had it invested directly in Italy. Based on this reasoning, the Court held that interposing a Luxembourg holding company did not lead to any undue tax advantage. In respect to the delay in collecting the supporting documents for the application of the PSD, the Court held that denying the withholding tax exemption represented a penalty disproportionate to the breach – and therefore not in line with the CJEU's ruling in the case C-553/16.

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

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.

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.

This is an opportunity to create a better world and tackle the most critical issues of our time. The only way to do this is together, but we must act now.

Raluca Enache
Associate Partner
KPMG's EU
Tax Centre

Ana Puscas
Manager
KPMG's EU
Tax Centre

Marco Dietrich
Manager
KPMG's EU
Tax Centre

Christiana Loizou
Senior Manager
KPMG's EU
Tax Centre

Nevena Arar
Assistant Manager
KPMG's EU
Tax Centre

Key links

Visit our website for earlier editions

Privacy | Legal

You have received this message from KPMG International Limited and its related entities in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as

of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

If you wish to unsubscribe from Euro Tax Flash mailing list, please e-mail KPMG's EU Tax Centre mailbox (kpmgeutaxcentre@kpmg.com) with "Unsubscribe Euro Tax Flash" as the subject line. For non-KPMG parties – please indicate in the message field your name, company and country, as well as the name of your local KPMG contact.

If you have any questions, please send an e-mail to kpmgeutaxcentre@kpmg.com. KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

© 2022 Copyright owned by one or more of the KPMG International entities. KPMG International entities provide no services to clients. All rights reserved.

KPMG refers to the global organization or to one or more of the member firms of KPMG International Limited ("KPMG International"), each of which is a separate legal entity. KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. For more detail about our structure please visit home.kpmg/governance.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.