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KPMG Insights

E-News from the EU Tax Centre

Issue 169 – January 27, 2023

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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Latest CJEU, EFTA and ECHR

CJEU

AG opinion on Romanian WHT on remuneration paid by a resident service recipient to a non-resident service provider

On January 19, 2023, Advocate General (AG) Pitruzzella of the Court of Justice of the European Union (CJEU or Court) rendered his opinion in case C-461/21. In addition to a series of questions related to the VAT treatment applicable on the plaintiff's operations – which will not be dealt with here, the case also concerns the compatibility with EU law of Romanian withholding tax rules on the remuneration paid by a resident service recipient to a non-resident service provider.

The plaintiff is a Romanian company operating road freight transport services that concluded a contract with a Danish company for foreign VAT recovery services in a number of EU Member States. The Danish company's remuneration for those services was calculated as a percentage of the VAT refunded in each country and was paid by the plaintiff gross of any Romanian tax.

The Romanian tax authorities considered that the remuneration received by the Danish company constitutes a "commission" under the Romania – Denmark double tax treaty and assessed that the plaintiff failed to withhold tax on the payments made, in accordance with domestic law. The plaintiff brought an appeal before a regional administrative court against the assessment notice issued, following which the regional administrative court decided to refer preliminary questions to the CJEU. With regard to the withhodling tax obligation, the question raised referred to the compatibility with the EU freedom to provide services (under Article 56 of the Treaty on the Functioing of the EU – TFEU) of the obligation to withhold tax on the remuneration due for the service supplied, while there is no such requirement with respect to payments to a local service provider. Furthermore, the Court was asked whether the fact that the tax due is levied on the gross amount of the income received by a non-resident, while the corporation tax for a service provider resident in the same Member State is is levied on the net amount, represents an infringement of EU law (i.e. a 'net taxation' argument).

The AG first analyzed whether the services received by the plaintiff constitute a supply of services within the meaning of Article 57 TFEU and thus fall within the scope of the EU freedom to provide services. The AG noted that, from the broad definition of the concept of "service" in Article 57 TFEU, the contract concluded between the plaintiff and the Danish company involves the provision of "service". The AG further noted that the classification of a payment for services on the basis of national law or under a double tax treaty should not affect the classification as a "service" within the meaning of Article 57 TFEU.

The AG continued by analyzing the plaintiff's claim that the contested withholding tax rules restrict the EU freedom to provide services. The AG recalled settled case-law according to which requiring service recipients to withhold tax at source on remuneration paid to a foreing service provider, while there is no such obligation in the case of remuneration paid to a local service provider, constitutes a restriction on the freedom to provide services in so far as it entails an additional administrative burden and associated liability risks. However, such rules are justified by the need to ensure effective collection of tax and do not go beyond what is necessary to attain the objective pursued.

As regards the 'net taxation' argument, the AG upheld settled case law according to which the EU freedom to provide services precludes national legislation under which non-resident service providers are taxed on gross income, without being granted the possibility of deducting business expenses directly linked to those

activities, whereas resident providers of services are entitled to such a possibility. If the CJEU upholds this position, it will be for the national court to assess which business expenses may be regarded as being directly related to the activity in question, by reference to relevant national rules.

EU Institutions

European Commission

Foreign Subsidies Regulation enters into force

On January 12, 2023, Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market entered into force. The Regulation entered the implementation phase and will come into effect six months later, on July 12, 2023.

The regulation was first proposed by the European Commission in May 2021 and agreed by the European Parliament and the Council in 2022. It is intended to limit the regulatory gap in the EU Single Market, whereby subsidies granted by non-EU governments went largely unchecked, while subsidies granted by Member States were subject to close scrutiny. The regulation is intended to reduce the distortions created by subsidies granted by non-EU countries to companies operating in the EU's single market. The Regulation gives the European Commission powers to investigate financial contributions received in non-EU countries by groups operating in the EU internal market. Contributions that may be subject to investigation include tax exemptions granted to an undertaking where these are limited, in law or in fact, to one or more undertakings or industries.

As a next step, the Commission will present a draft Implementing Regulation to clarify the relevant rules and procedures. The draft implementing regulations will then be open for public comments before being finalized and implemented by the middle of 2023.

For more information, please refer to Euro Tax Flash Issue 495 and the Commission's official website.

Work program for first half of 2023

On January 17, 2023, the European Commission published its work program for the period from January 25, 2023, until June 28, 2023. The key direct taxation measures anticipated for the first half of 2023 include:

- the launch of the Commission's proposal for tackling the role of enablers involved in facilitating tax evasion and aggressive tax planning in the European Union (SAFE) on June 7, 2023; and
- the launch of the Commission's proposal for new EU common system for the avoidance of double taxation and prevention of tax abuse in the area of withholding taxes (FASTER), also with an indicative date set for June 7, 2023.

For more information on both initiatives, please refer to Euro Tax Flash Issue 501.

Public consultation on DAC7 draft implementing regulation

On January 20, 2023, the European Commission launched a public consultation on a draft implementing regulation to establish the criteria for determining whether the information automatically exchanged under

an agreement between the tax authorities of Member States and a non-EU country is equivalent to that specified in Council Directive (EU) 2021/514 ('DAC7').

Where the European Commission has determined that Member States receive equivalent information from non-EU countries that apply similar reporting regimes (e.g. under the OECD's multilateral competent authority agreement (MCAA)), DAC7 provides relief from the reporting obligations for non-EU platform operators in the EU to eliminate double reporting.

For more details, please refer to the Commission's consultation page.

European Parliament

Report on Unshell proposal adopted

On January 17, 2023, the European Parliament approved the report on the Directive laying down rules to prevent the misuse of shell entities for tax purposes (Unshell Directive). While the report is generally supportive of the text proposed by the Commission, a number of amendments are recommended, including:

Gateways:

- changes to the threshold criteria in the gateway tests in Article 6(1) of the proposed Directive, including decreasing the relevant income gateway to 65 percent from the current 75 percent threshold, a decrease in the asset test to 55 percent from 60 percent and a decrease in the cross-border gateway threshold from 60 percent to 55 percent;
- amend the outsourcing gateway criteria in Article 6(1) to limit the scope to services qualifying as outsourced to those received from third parties;
- delete of the carve-outs for undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income.

Substance indicators:

- extend the own premises indicator to cover premises shared with entities of the same group;
- extend the own bank account criterion to cover e-money accounts, and to clarify that the relevant income is received by the undertaking through that account;
- delete the requirement that the undertaking's directors are not employed by a third party and do not perform an equivalent role for companies outside the group;
- additional documentary evidence to be submitted by undertakings required to report on substance.

Rebuttal of the shell presumption: introduction of a deadline (i.e. 9 months after the submission of the rebuttal request) by when Member States are required to decide on whether the undertaking is a shell or not.

Tax consequences: removal of the option for Member States to issue a certificate of tax residence with a warning declaration to entities that are deemed to be a shell entity.

Other: a reduction in penalties for failing to comply with the Directive from 5 percent of turnover to 2.5 percent of turnover (for late filing) and to 4 percent of the turnover (for a false declaration in the tax return). For undertakings with zero or low revenue, the penalty would be based on the total assets of the undertaking.

The report represents the Parliament's opinion on the Directive and is a required step in the legislative process of adopting tax files under Article 115 of the Treaty of the Functioning of the European Union. The report reflects the Parliament's consultative role in the process and is not binding on the Council. It remains up to the 27 EU Member States to agree on the final text of the Directive at Council level, which may not reflect the amendments recommended by the EP.

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

OECD and other International Institutions

OECD

Public comments received on the removal of Digital Services Taxes under Amount A (Pillar One)

On January 20, 2023, the OECD released comments received on draft rules requiring the removal of Digital Services Taxes (DSTs) and other relevant similar measures following the implementation of Amount A under Pillar One (for previous coverage, please refer to E-News Issue 168).

The OECD received a total of 30 responses, including a response letter submitted by KPMG International, which highlights the following key concerns:

- existing measures could continue to apply to groups with an Ultimate Parent Entity located in a jurisdiction that is not a Party to the Pillar One Multilateral Convention (pending);
- the proposed definition of DSTs or relevant similar measures is ambiguous and could be read not to include existing DSTs;
- unclear process to identify DSTs and similar measures;
- the enforcement mechanism (i.e denying a jurisdiction taxing rights over Amount A) is weak and should be strengthened.

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

Economic impact assessment of the Two-Pillar Solution

On January 18, 2023, the OECD provided an update on the estimated economic impact of implementing the OECD's two-pillar solution. The assessment is based on updated data and incorporates many recently agreed design features of Pillar One and Pillar Two (e.g., the GloBE Model Rules and the Amount A Progress Report). Key estimates include:

- Pillar Two is expected to result in annual global revenue gains of around USD 220 billion (approximately EUR 202 billion), or 9 percent of global corporate income tax revenues (previous estimates showed additional annual tax revenues of USD 150 billion).
- Pillar One is expected to allocate taxing rights on about USD 200 billion (approximately EUR 184 billion) in profits to market jurisdictions annually (previous estimates showed reallocated profits of USD 125

billion) with annual global tax revenue gains of between USD 13 and 36 billion (approximately EUR 12 to 33 billion), based on 2021 data.

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

New FAQs in relation to OECD reporting rules published

On January 17, 2023, the OECD released new FAQs related to the Model Reporting Rules for Digital Platforms (MRDP) and updated FAQs on the Mandatory Disclosure Rules (MDRs) for Addressing CRS Avoidance Arrangement and Opaque Offshore Structures.

The questions set out in the MRDP FAQs were received from business and government delegates. The answers to such questions aim to clarify definitions, due diligence procedures and reporting requirements under the MRDP and to ensure consistency in their implementation.

The MDR guidance provides clarifications on the scope, application and administration of the rules.

IASB

Exposure draft on IAS 12 amendments for Pillar 2 released

On January 9, 2023, the International Accounting Standards Board (IASB) released an exposure draft with proposed amendments to IAS 12 in light of the implementation of the OECD GloBE rules. The proposal provides for a temporary exception to deferred tax accounting where the GloBE rules or a Qualified Domestic Minimum Top-up Tax have been enacted or substantively enacted in a jurisdiction in which a group operates. Under the proposed amendment, entities would be required to disclose that they have applied the exception. In addition, the proposal provides for additional disclosure requirements for periods in which the Pillar Two legislation is enacted or substantively enacted, but not yet in effect.

According to the exposure draft, the temporary exception to deferred tax accounting applies immediately upon issue of the amendments and retrospectively. The additional disclosures apply for annual reporting periods beginning on or after January 1, 2023.

The consultation on the exposure draft runs until March 10, 2023.

For more information, please refer to the web article and talkbook issued by KPMG's International Standards Group in relation to the release.

Local Law and Regulations

Albania

Tax law changes in 2023

In December 2022, the Albanian government published several tax law amendments in the Official Gazette. Key changes include:

- amendments to the tax procedures law (including expansion of certain definitions, increases in penalties, and other changes to the functions of the tax administration);
- revision of the general anti-avoidance rules aimed at disregarding arrangements put in place for the main purpose of obtaining a tax advantage under consideration of whether the arrangement qualifies as genuine (i.e., put into place for valid commercial reasons that reflect economic reality);
- introduction of a temporary windfall profits tax (solidarity contribution) on energy producers levied at a rate of 50 percent on the additional income deriving from the sale of the energy with a price higher than ALL 8.5/KW (approximately EUR 0.07/KW) and by following a specific formula. The tax is effective until December 31, 2024 and only applies if by September 30 of the respective year the expected energy price for the following year is higher than 180 EUR/MWh.

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

Croatia

Croatia launches public consultation on extra profit tax guidance

On January 9, 2023, the Croatian Ministry of Finance launched a public consultation on draft guidance on the calculation and reporting of the new extra profit tax.

The draft guidance provides details on the effect of mergers in calculating extra profits. The draft also clarifies that taxpayers that fall in scope of the solidarity contribution (as defined in EU Regulation 2022/1854) are subject to the Croatian extra profit tax irrespective of whether they meet the revenue threshold test under the extra profit tax regime.

The deadline for responses to the public consultation was January 23, 2023.

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

Finland

New R&D tax incentives announced

On December 29, 2022, the Finnish government announced the introduction of new R&D tax incentives. Key features of the new regime include:

- a new general additional deduction of 50 percent of salary and service expenses for R&D activities, with a maximum deduction of EUR 500,000 and a minimum deduction of EUR 5,000 per year;

- a new special additional deduction of 45 percent of the increase in R&D related salary and service expenses compared to the previous year, with a maximum deduction of EUR 500,000 per year and no minimum threshold.

The new law is complementary to the existing R&D tax incentive that is in effect since January 2021 and provides for a 150 percent deduction of R&D subcontracting costs incurred between 2021 and 2027. Where the taxpayer makes use of the existing R&D tax incentive, the general additional deduction is not available.

The new general deduction is effective from January 1, 2023 and the new additional deduction applies from January 1, 2024.

For more information on R&D tax incentives, please refer to KPMG's Global R&D Incentives Guide, which will be updated on a regular basis.

France

2023 Financial transaction tax – List of in-scope companies published

On December 21, 2022, the French tax authorities published the list of French companies whose shares will be in scope of the financial transaction tax in 2023. The French financial transaction tax is applied on acquisitions of shares traded on a regulated market that are issued by French tax resident companies exceeding a market capitalization of EUR 1 billion on December 1 of the previous year. The tax is levied at 0.3 percent of the acquisition price.

For more information on Financial Transaction Taxes in the EU, please refer to the EU Tax Centre's dedicated website.

Ireland

Revenue opinion or confirmation issued in 2017 – action required

On January 17, 2023, the Irish Tax Authority published an updated Tax and Duty Manual to provide guidance to taxpayers who wish to continue to rely on opinions / confirmations issued by the Irish Revenue in the period between January 1 and December 31, 2017, in respect of a transaction, period or part of a period, on or after January 1, 2023. According to the updated guidance, a taxpayer who wishes to continue to rely on such an opinion / confirmation is required to make an application for its renewal or extension on or before March 31, 2023.

For more details, please refer to the Irish tax authority e-brief.

Lithuania

Temporary solidarity contribution on the fossil sector enacted

On December 23, 2022, Lithuania published in the Official Gazette the bill to introduce 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 contribution is levied at a rate of 33 percent on excess profits and in addition to the general corporate income tax;
- excess profits are 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 contribution is not deductible for tax purposes.

The temporary solidarity contribution is applicable for fiscal year 2023 and entered into force on January 1, 2023.

Morocco

Temporary suspension of Country-by-Country Reporting local filing requirement

On December 16, 2022, the Moroccan tax authorities issued an announcement providing for a temporary exception to certain companies operating in Morocco that are part of multinational groups (MNE) to file a Country-by-Country (CbyC) report in Morocco.

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

Spain

Proposal for updating list of non-cooperative jurisdiction

On January 12, 2023, the Spanish government launched a public consultation seeking public comments on a draft decree that would establish criteria to determine jurisdictions that are considered to be non-cooperative or to have harmful tax regimes. Under consideration of the work performed by the EU and the OECD, the new list of non-cooperative jurisdictions would replace the existing national list and would include the following jurisdictions:

American Samoa, Anguilla, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Fiji, Gibraltar, Guam, Guernsey, Isle of Man, Falkland Islands, Jersey, Mariana Islands, Palau, Samoa, Seychelles, Solomon Islands, Trinidad and Tobago, Turks and Caicos, Vanuatu, and U.S. Virgin Islands.

Comments were requested by January 23, 2023. According to the draft decree, the new list of non-cooperative jurisdictions would enter into force on the date following the date of its publication in the Official Gazette.

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.

Switzerland

Tonnage tax regime approved by National Council

On December 13, 2022, the National Council approved draft legislation to introduce a tonnage tax regime in Switzerland. Under the new rules, a tonnage tax would replace income tax at the communal, cantonal

and direct federal levels, with the tax base to be determined based on net tonnage of ships (freight capacity) instead of income.

As a next step, the draft legislation is subject to approval by the Council of States.

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

Turkey

Additional R&D and design deduction extended

On January 10, 2023, the Turkish government extended the application of the temporary additional deduction for qualifying innovation and research and development (R&D) expenditure from December 31, 2023 to December 31, 2028.

Under this regime, qualifying expenditures made in technology centers, R&D centers, design centers or related projects supported by the government are generally subject to a 100 percent tax deduction. An additional 50 percent deduction applies where certain innovation and R&D indicators have increased by at least 20 percent (e.g. number of registered patents, the share of R&D and design expenditure in total turnover, etc.) within a year.

For more information on R&D tax incentives, please refer to KPMG's Global R&D Incentives Guide, which will be updated on a regular basis.

United Kingdom

Guidance on the application of the new corporate income tax rates

On January 9, 2023, HMRC released updated guidance to provide clarifications on the application of the new small profit tax rate.

As from April 1, 2023, the main corporate tax rate increases to 25 percent, but companies with sufficiently small profits will continue to be subject to only 19 percent. Under the new rules, the small profits rate of 19 percent will apply if a company's relevant profits (referred to as its 'augmented profits') are below GBP 50,000 (approximately EUR 56,600), the main rate of 25 percent will apply if relevant profits are over GBP 250,000 (approximately EUR 283,200), and 'marginal relief' will be available to give an intermediate overall effective rate if the profits are between these limits. The thresholds for determining the applicable tax rate and any marginal relief are divided by the total number of associated companies.

In this context, the guidance sets out clarifications regarding the concept of 'associated companies'. According to the guidance, a company qualifies as an associated company of another company if one has control of the other, or both are under the control of the same person or persons. This includes non-UK resident companies but excludes dormant and certain 'passive' entities. The guidance adopts a wide definition of control – which can mean, for example, that companies not in the same group may still be 'associated'. More generally, the combination of this broad definition with the exclusions for dormant and 'passive' entities means that in many cases the number of 'associated companies' a given entity has will not straightforwardly equate to the number of companies in its group.

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

Public consultation on potential reforms to UK's R&D tax reliefs

On January 13, 2023, the UK government launched a consultation on further changes to the research and development (R&D) tax relief regimes with the aim of merging the existing schemes into a single, simplified regime based on the current R&D expenditure credit (RDEC) scheme.

As from April 1, 2023, two R&D tax relief regimes will be available in the UK:

- Small and Medium Enterprises (SME) scheme: an additional 86 percent tax deduction for qualifying R&D costs; and
- RDEC scheme: a taxable 'above the line' 20 percent credit on qualifying R&D costs for large companies and SMEs that aren't eligible under the SME scheme.

The consultation seeks input on the potential introduction of a single, simplified above the line credit regime which would apply to all claimants irrespective of company size. The proposed regime would be modelled, as far as possible, on the existing RDEC scheme with a credit being calculated as a percentage of a company's qualifying R&D expenditure. The credit itself would be taxable and would be a similar benefit to both profit and loss makers. A decision on the proposed rate for the single credit regime would be made later and subject to limits on the overall cost envelope of the regime. The consultation asks for views on a more generous relief for targeted types of R&D or R&D intensive companies.

The consultation runs until March 13, 2023. The stated objectives are tax simplification, ensuring value for money for the taxpayer and tackling abuse, to potentially come into effect from April 1, 2024.

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

Mandatory Disclosure Rules regulations published

On January 16, 2023, the UK government published the final regulations for the introduction of the OECD's 'Mandatory Disclosure Rules for Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures'. Key features of the regulations include:

- the 'look back' period for reporting pre-existing arrangements starts from June 25, 2018 (the same as under the EU Mandatory Disclsoure Rules under DAC6);
- certain exceptions apply for the reporting of pre-existing arrangements where the amount involved is less than USD 1 million (approximately EUR 919,000) or where relevant information has already been provided under DAC6;
- a reporting obligation should only arise to a person with a relevant link to the UK;
- any reporting will need to be done online using XML file format (i.e. there will be no online manual reporting system).

The new regulations will come into force on March 28, 2023. Any arrangements entered into on or after this date must be reported to HMRC under the new rules. The new reporting rules will replace the existing DAC6 regulations which will be repealed at the same time. HMRC have confirmed the DAC6 reporting portal will remain open for one month to allow arrangements entered into before March 28, 2023 to be reported under DAC6.

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

Local Courts

Czech Republic

Decision on the application of thin capitalization rules

A regional court in the Czech Republic (Court) issued its decision in a case concerning bonds issued under a commission agency agreement. The Court held that the thin capitalization rules did not apply to interest on bonds issued for unrelated investors under a commission agency agreement.

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

Denmark

Supreme Court decision on beneficial ownership in relation to dividend payments (EU Parent-Subsidiary Directive)

On January 9, 2023, the Danish Supreme Court ruled in two cases on the withholding tax exemption benefit under the EU Parent-Subsidiary Directive. This ruling relates cases T Denmark (C-116/16) and Y Denmark (C-117/16), the two joined Danish cases on the concept of beneficial ownership of dividend distributions that were ruled on by the CJEU. Both cases concern dividend distributions made by a Danish resident company to an intermediate holding company resident in the EU.

In both cases, the Danish company requested an exemption from the Danish withholding tax levied on the payments made to the EU holding company based on the EU Parent-Subsidiary Directive. The Danish tax authorities denied the exemption, arguing that the company receiving the income was part of a conduit structure and could not be considered the beneficial owner of the payment. The cases made their way through the Danish courts and were eventually referred to the CJEU. The CJEU concluded on February 26, 2019 that it is for the referring courts to assess whether the arrangements under review constitute an abuse under EU law, taking into account in particular the existence of conduit companies (for more details, please refer to Euro Tax Flash Issue 396).

The T Denmark (C-116/16) case refers to a private equity owned structure, where the taxpayer was not able to demonstrate that the Luxembourg parents were the beneficial owners, nor that the real beneficial owners would have been entitled to receive the same dividends free of Danish dividend withholding tax without the interposition of the Luxembourg entities. Consequently, the Danish Eastern High Court ruled in favor of the tax authorities, arguing that the structure represents an abuse of the Parent-Subsidiary Directive, as well as the Denmark-Luxembourg double tax treaty and that the benefits should therefore be denied. The Danish Supreme Court upheld the Danish Eastern High Court decision.

In the Y Denmark (C-117/16), a US multinational had interposed a Cyprus company between a Bermudan entity and its Danish subsidiary. In this case, the Danish Eastern High Court found that the taxpayer had demonstrated with respect to one (out of two) of the dividend payments that the income had flown through the Bermudan entity to the US parent, which could have received the dividends free of Danish withholding tax had it had held the shares directly. The Danish Eastern High Court concluded that, insofar as the

distributions ended up in the US ultimate parent, the benefits of the Denmark-US double tax treaty should be applied.

The Danish Supreme Court upheld the Danish Eastern High Court decision that the Cyprus company was not the beneficial owner of the first dividend distribution. Furthermore, the Supreme Court ruled, contrary to the Danish Eastern Court, that:

- the Bermudan entity was the beneficial owner of the first dividend distribution, instead of the US company, as the income remained in the Bermuda company for five months, during which time it was invested in bonds. Thus, is was assumed that the Bermudan entity was free to decide on how to spend the dividend received. As a result, the ruling determined that Danish withholding tax is due on the first dividend distribution; and
- the taxpayer proved that the US parent was the beneficial owner of the second dividend distribution and as a result, the benefits of the Denmark-US double tax treaty should be applied.

Germany

Application of EU Parent-Subsidiary Directive to a German tax group

On September 22, 2022, the Tax Court of Niedersachsen (Court) issued its decision (1 K 17/20) in a case concerning the application of the EU Parent-Subsidiary Directive when the ultimate parent entity of a German tax group is a tax transparent partnership held by individuals.

Under the German tax rules, dividends derived by resident companies from more than 10 percent shareholdings are generally exempt in line with the EU Parent-Subsidiary Directive. In case of a German tax group, the German tax law provides that dividend income is to be determined at the level of the group / recipient company and is subject to the tax treatment that applies to the group's / recipient's ultimate parent entity.

The plaintiff was a German limited partnership (GmbH & Co. KG), which held investments in a German corporate subsidiary (GmbH). The German corporate subsidiary was part of tax group with a German limited partnership as ultimate parent entity. During 2009 and 2011, GmbH received dividends from a Danish corporation (A/S), in which it held a 50 percent shareholding. The dividends were treated as tax exempt in accordance with the German tax rules on taxation of dividend income.

The Court ruled, in line with the approach taken by the German tax authorities, that the provisions of the EU Parent-Subsidiary Directive do not apply to a German tax group where the ultimate parent entity is a tax transparent partnership with individual shareholders, on the basis that the EU Parent-Subsidiary Directive applies only to corporations. Thus, dividend income from the Danish corporation (A/S) is not eligible for the exemption under the EU Parent-Subsidiary Directive.

The case has been referred to the German Federal Tax Court (Bundesfinanzhof) (IV R 28/22).

KPMG Insights

Update on Pillar 1 and Pillar 2

As part of the Future of Tax & Legal webcast series, KPMG International held a webcast on January 17 and 18, 2023 providing updates on recent developments in respect of the OECD's Pillar 1 and Pillar 2 solution.

The webcast explained the recent OECD releases on Pillar 2 including Safe Harbors, Penalties, Certainty, GloBE information return. In addition, the webcast focused on Amount B of Pillar 1, which deals with standardized tax treatment of marketing and distribution rights. KPMG professionals also looked at developments throughout the world on the implementation of the Global Minimum Tax.

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

EU Carbon Border Adjustment Mechanism: Preparing for the new regulation

The implementation of the European Union's (EU) Carbon Border Adjustment Mechanism (CBAM) on October 1, 2023 is expected to reshape global trade at large. It is imperative that businesses understand and prepare for the changes that the mechanism will bring about.

On February 14, 2023, a panel of KPMG professionals will provide insights into the inner workings of CBAM, explore the effect that these measures have on organizations situated both within and outside of the EU, and delve into why the decarbonization of production, whether it's within the EU or abroad, is expected to be a key source of competitive advantage for selling into the EU market.

Please access the event page to register.

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