



[Latest CJEU, EFTA and ECHR](#)

[Infringement Procedures and CJEU Referrals](#)

[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 170 – February 9, 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:

- [**CJEU:** General Court clarifies conditions of access to documents prepared in the Council's working groups](#)
 - [**CJEU referral:** Swedish CJEU referral on the withholding tax treatment of foreign public sector pension institutions](#)
 - [**Infringement procedures:** Incomplete transposition of DAC7 into national law](#)
 - [**State aid:** CJEU annuls in part the Commission's decision on the Spanish tax lease system for the purchase of ships](#)
 - [**OECD:** Release of Administrative Guidance on the Pillar Two GloBE Rules](#)
 - [**Denmark:** Public consultation on DAC 8 launched](#)
 - [**Italy:** Consultation on draft clarifications in relation to amended patent box regime](#)
 - [**Qatar:** Plans to implement GloBE Rules \(Pillar Two\) and to amend FSIE regime](#)
 - [**Bulgaria \(local case law\):** Decision on the application of withholding tax on fictitious interest assessed on interest free loans](#)
 - [**Germany \(local case law\):** Outsourced activities to be considered for applying the motive test under former German CFC rules](#)
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Latest CJEU, EFTA and ECHR

General Court

General Court clarifies conditions of access to documents prepared in the Council's working groups

On January 25, 2023, the General Court of the European Union (General Court or the Court) gave its decision in case [T-163/21](#) (De Capitani v Council). The case concerns access to documents prepared by the Council within its working groups related to the EU Public Country-by-Country (CbC) Reporting Directive file¹.

The General Court confirmed that documents drawn up within the Council's working groups are governed by the principle of publicity and transparency of the legislative procedure, deriving from the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the EU (the Charter). On the other hand, such documents are also covered by the disclosure exception set out in secondary legislation², under which EU institutions can refuse access in duly justified cases.

Nevertheless, the Court found that none of the Council's pleas support the conclusion that disclosing the documents under dispute would seriously undermine the legislative process in a concrete, actual, and non-hypothetical way. Based on these findings, the General Court held that Council should have granted access to documents prepared in its working groups throughout the discussions on the EU Public CbCR file.

For more information, please refer to Euro Tax Flash [Issue 505](#).



Infringement Procedures and CJEU Referrals

Referrals

Swedish CJEU referral on the withholding tax treatment of foreign public sector pension institutions

On January 24, 2023, [reference](#) was made to the CJEU by the Swedish Supreme Administrative Court (the Court) for a preliminary ruling in a case regarding the withholding tax treatment of foreign public sector pension institutions.

The plaintiffs are three Finnish public sector pension institutions claiming a refund of the dividend withholding tax charged in Sweden. Currently, Swedish public pension funds are treated as state agencies and are exempt from tax on dividend income, whereas non-Swedish pension funds are subject to a 15 percent dividend withholding tax. The plaintiffs have argued that the Finnish pension funds are in a comparable situation to resident pension funds and consequently the differentiated treatment represents

¹ Legislative procedure 2016/0107 (COD) concerning Directive (EU) 2021/2101 of the European Parliament and of the Council of November 24, 2021, amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

² Regulation (EC) 1049/2001 of the European Parliament and of the Council of May 30, 2001, regarding public access to European Parliament, Council and Commission documents.

a breach of EU law. The Swedish tax authorities and administrative courts have previously rejected similar claims.

In parallel, the European Commission initiated infringement proceedings against Sweden on this topic. As reported in E-News [Issue 144](#), in the European Commission's view, treating foreign public pension institutions less favorably is a breach of the principle of the free movement of capital.

For more information, please refer to a [tax alert](#) prepared by KPMG in Finland.

Infringements

Non-conformity of Spanish legislation with the Directive on tax dispute resolution mechanism

On January 26, 2023, the European Commission (EC) sent a letter of formal notice to Spain for the incorrect transposition of the EU Directive 2017/1852 on tax dispute resolution mechanisms. In its assessment, the EC considers that the national implementing legislation does not provide for a number of key features of the rules. The deadline for Spain to reply to the letter of formal notice is two months. In the absence of a satisfactory response, the EC may decide to issue a reasoned opinion.

For more information, please refer to the EC's [press release](#).

Incomplete transposition of DAC7 into national law

On January 27, 2023, the EC sent letters of formal notice to fourteen Member States that had not notified or only partially notified the national measures transposing Council Directive (EU) 2021/514 (DAC7) into domestic legislation. These Member States are Belgium, Estonia, Greece, Spain, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania and Slovenia. The deadline for Member States concerned to reply to the letters of formal notice and complete their transposition is two months, or the Commission may decide to issue a reasoned opinion. The letters of formal notice have not been made publicly available by the EC. Since then, several Member States, including Belgium, Estonia, Croatia, Latvia, Lithuania, Malta and Romania have published/ adopted DAC7 implementing legislation.

For more information, please refer to the EC's [press release](#).



State aid

CJEU annuls in part the European Commission's decision on the Spanish tax lease system for the purchase of ships

On February 2, 2023, the Court of Justice of the European Union (CJEU or the Court) gave its [decision](#) in joined cases C-649/20 P, C-658/20 P and C-662/20 P on whether the Spanish tax lease system for the purchase of ships constituted illegal State aid.

The Spanish tax lease system allowed shipping companies to benefit from a 20 percent to 30 percent price reduction when purchasing ships constructed by Spanish shipyards. The EC found that the objective of this tax lease system was to grant tax advantages to economic interest groupings (EIGs) and the investors participating in them, that then passed on part of those benefits to the shipping companies that acquired a

new ship. The EC adopted a decision in July 2013 (the Decision) concluding that the system constituted State aid in the form of a selective tax advantage that was partially incompatible with the internal market. The EC ordered the Spanish authorities to recover the aid from the investors.

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

The Court, in line with the AG opinion, dismissed the appellants arguments that the General Court had failed to conduct the three-step analysis³ when assessing the selectivity of the advantage. In the Court's view, the Commission was right to consider that the CJEU did not intend to make that analysis a requirement. Instead, the Court endorsed the method used by the General Court to examine the selectivity of the regime under dispute. The Court noted that the tax authorities were conferred with discretionary power to authorize certain elements of the aid (early depreciation), which was exercised based on vague and non-objective criteria. In the Court's view, the selectivity criterion was met. The Court therefore rejected all the grounds of appeal relating to selectivity of the Spanish tax lease system as unfounded.

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

In light of the above, the Court annulled in part the Commission decision.



EU Institutions

European Commission

Public comments received on BEFIT initiative

On January 26, 2023, the European Commission's (EC's) [public consultation](#) on the "Business in Europe: Framework for Income Taxation (BEFIT)" initiative ended. The EC received a total of 48 responses, including a response letter submitted by KPMG member firms in the EU.

KPMG supports the EC's ambition to simplify compliance requirements and to promote tax certainty. However, we are concerned that the practical operationalization of the BEFIT initiative may in fact lead to increased costs and complexities. Accordingly, our submission highlights the need for further analysis to assess whether the envisaged goals can be achieved in practice. Our contribution also attempts to highlight

³ Under settled case-law, the qualification of a tax measure as selective is based on a three-step approach when analyzing the criteria related to the existence of a selective advantage: i) identifying the reference system of ordinary or 'normal' taxation; ii) determining if the relevant measure entails a derogation from the reference system; and iii) assessing if the derogation is justified by the nature or general scheme of the reference system.

key areas that require further consideration with a view to alleviating complexity and administrative costs. We also note the need for compliance with EU primary law principles and compatibility with international tax reforms and standards and with tax treaties.

Our submission further advocates for a deferral of further BEFIT considerations until the Pillar One and Pillar Two rules have had sufficient time to be operationalized and business have had sufficient time to understand and comply with these changes to the international and EU tax systems.

For more information, please refer to Euro Tax Flash [Issue 504](#).

[Proposal for flexibilization of State aid rules](#)

On February 1, 2023, the EC sent to Member States for consultation a proposal for a new Temporary Crisis and Transition Framework as part of the wider [Green Deal Industrial Plan for the Net-Zero Age](#). Under the proposed new framework, the EC would allow further flexibility for Member States to grant aid to businesses in the green technology sectors that are at risk of relocating outside of the EU. Key elements of the proposal include:

- Member States would be allowed to implement schemes to support new investments in production facilities in defined, strategic net-zero sectors, including through tax benefits;
- a revised general block exemption regulation that would increase the threshold under which green aid could be granted to companies without notifying the EC;
- simplification of the state aid calculation by enabling Member States to provide aid as a fixed percentage of total investment costs;
- expansion of the scope of the temporary crisis framework to all renewable energy sources;
- extension of the deadline for project implementation from 30 months to 36 months.

The new framework would be in place on a temporary basis until December 31, 2025 and would replace the current State aid and Temporary Crisis Framework that is in effect until December 31, 2023.

For more information, please refer to EC's [release](#).

[European Parliament](#)

[FISC sub-committee workshop on BEFIT initiative](#)

On January 25, 2023, the European Parliament's Subcommittee on Tax Matters (FISC) discussed with experts and stakeholders the EC's BEFIT initiative on a common set of corporate tax rules in the EU.

Three quest speakers provided their views on the building blocks proposed as part of the EC's public consultation and generally agreed that a common set of rules would be a desirable goal that would benefit the EU internal market. Key takeaways include:

- the ambition to decrease administrative burden and complexity was welcomed by all speakers;
- there are concerns in relation to the timing of the initiative,
- the application of the BEFIT rules should be optional from a business perspective (which was opposed by an academic scholar and members of the European Parliament (MEPs);
- cross-border loss relief, as well as transfer pricing and administrative simplifications (including a one stop show approach) would be welcomed by businesses;
- the BEFIT rules should be aligned with the Pillar Two GloBE Rules;
- formulary apportionment needs to be easy to apply and unambiguously.

In addition, MEPs expressed their concern that the BEFIT proposal would not move forward, in light of the experience with previous similar initiatives, such as the proposal for an EU Common Consolidated Corporate Tax Base (CCCTB).

For more information, please refer to EP's [release](#).



OECD and other International Institutions

Organisation for Economic Cooperation and Development – OECD

Release of Administrative Guidance on the Pillar Two GloBE Rules

On February 2, 2023, the OECD/G20 Inclusive Framework (IF) on BEPS released agreed Administrative Guidance (AG) to clarify the interpretation of several elements of the GloBE Rules and to provide guidance to tax administrations on how to apply the Rules.

The AG addresses a wide range of issues that IF members have identified as most in need of immediate clarification and simplification for stakeholders, including:

- guidance on the design and operation of a qualified domestic minimum top-up tax (QDMTT) that will be used for an assessment of whether domestic minimum top-up taxes adopted by IF members meet the requirements for qualified status;
- clarifications on the rule order in relation to the application of QDMTT, CFC taxes, IIR and UTPR;
- clarifications in relation to the 'deemed consolidation test' relevant for various GloBE provisions;
- clarifications regarding the treatment of intra-group transactions recorded at cost, debt releases and accrued pension expenses;
- introduction of a carry forward mechanism for excess negative tax expenses to avoid top-up tax liabilities in years with a net operating loss;
- specific reference to the US Global Intangible Low-Taxed Income (GILTI) rules as a CFC tax regime for GloBE purposes and introduction of a simplified allocation approach for GILTI taxes and taxes levied under other blended CFC tax regimes;
- clarifications in relation to the application of GloBE Rules to insurance companies;
- broad interpretation of the term "transfer of assets" during the transition period and clarifications in relation to the treatment of pre-regime deferred tax assets;

According to the press release, the AG will be incorporated into a revised version of the Commentary that will be released later this year and will replace the original version of the Commentary issued in March 2022 (for previous coverage, please refer to E-News [Issue 150](#)). It is further noted that the IF will continue to release further items of guidance on an ongoing basis, to ensure that the GloBE Rules continue to be implemented and applied in a coordinated manner.

In addition, the AG notes that further work on the development of a QDMTT Safe Harbor is required at IF level. The QDMTT safe harbor was therefore not included in this tranche of guidance.

For more information, please refer to the OECD's [release](#) and a dedicated KPMG [report](#).

Public comments received on Amount B consultation document (Pillar One)

On January 30, 2023, the OECD released [comments](#) received on the three main design elements of Amount B under Pillar One (for previous coverage, please refer to E-News [Issue 167](#)).

The OECD received a total of 62 responses, including a [response letter](#) submitted by KPMG International, which provides for the following key comments:

- KPMG supports the objective of simplifying and streamlining the application of the arm's length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity jurisdictions.
- The proposed scoping limitations are not necessary to comply with the arm's length principle and will significantly limit the potential benefits of Amount B.
- The design of the pricing methodology remains uncertain and may lead to more compliance costs, for taxpayers, potentially imperiling proactive adoption of the Amount B methodology by taxpayers.
- There is no indication that the IF is considering strengthening existing tax certainty frameworks, which KPMG considers essential for the effective administration of Amount B
- KPMG supports the proposal of establishing standardized contractual terms that taxpayers seeking to apply Amount B could incorporate into their intragroup contracts.
- KPMG supports the proposal to build the methodology based on a standardized benchmarking framework using publicly available corporate financial information and encourages the IF to find a way to make this dataset as well as the econometric modelling publicly available.
- The proposed documentation requirements should be revisited and substantially reduced.

For more information, please refer to KPMG's [Tax News Flash](#) and the OECD [release](#).

Release of manual on handling of MAPs and APAs

On February 2, 2023, the OECD released a [manual](#) on the handling of multilateral mutual agreement procedures (MAPs) and advance pricing arrangements (APAs).

The manual covers the following key sections:

- Clarifications on the definition of a multilateral case, the legal basis for handling multilateral cases, the request filed in multilateral cases and the connection between access to multilateral procedures and the OECD BEPS Action 14 minimum standard.
- Guidance in relation to approaching the other jurisdictions concerned in multilateral cases, the coordination of procedural matters, the modalities of discussions, the interaction of available domestic remedies or procedures with multilateral cases, the implementation of agreements arising from these cases, arbitration where there is no MAP agreement and the rights and the obligations and role of the taxpayer.
- Simplified examples of transactions that would generally benefit from multilateral solutions.
- Indicative timelines for each step of a multilateral MAP or APA case.

According to the OECD release, the manual aims to provide legal and procedural non-binding guidelines for multilateral MAP and APA cases, highlighting possible benefits and issues arising from different practices applied by experienced jurisdictions. The manual should allow tax administrations to explore whether implementation of these procedures is appropriate considering the circumstances of their own

MAP and APA programs and to consider whether the guidance therein may be incorporated in their domestic guidance on MAP or APA processes to provide additional clarity.

In addition, the manual outlines the actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally.

For more information, please refer to the OECD's [release](#) and a KPMG [TaxNewsFlash](#).

African Tax Administration Forum – ATAF

[Release of draft model legislation for domestic minimum top-up tax implementation \(Pillar Two\)](#)

In December 2022, the African Tax Administration Forum (ATAF) released [draft model legislation](#) to assist African countries that wish to enact a domestic minimum top-up tax (DMTT).

According to the release, ATAD advises its members to carefully consider the design of the DMTT and the extent to which it should align with the GloBE Rules in order to meet the requirements for qualified status under the IF peer review process and to also avoid adverse impacts on foreign direct investment.



Local Law and Regulations

Belgium

[Updated guidance on interest deduction limitation rules](#)

On January 12, 2023, the Belgian authorities issued [guidance](#) on the application of the interest deduction limitation rules that were implemented in accordance with the EU Anti-Tax Avoidance Directive (2016/1164) in 2019, including clarifications on:

- entities excluded from the scope of the interest deduction limitation regime;
- the concept and scope of excess borrowing costs;
- the application of grandfathering measures in respect of old loans to which the previous thin capitalization rules should apply;
- EBITDA calculation;
- special rules for groups and restructurings.

Bulgaria

[Updated list of preferential tax regimes](#)

On January 24, 2023, Bulgaria published an [updated](#) list of jurisdictions with preferential tax regimes. The updated list includes the following jurisdictions:

- The U.S. Virgin Islands;
- Guam;
- Christmas Island;
- Pitcairn Islands; and

- Palau.

The list is effective from February 1, 2023 and replaces the [former list](#) of preferential tax regimes that included 26 jurisdictions.

Denmark

Public consultation on temporary solidarity contribution on the fossil sector

On January 27, 2023, the Danish government [launched](#) a public consultation on a proposal for the introduction of a temporary tax on energy companies prompted by the EU Regulation on an emergency intervention to address high energy prices. Key features of the proposal include:

- application to Danish companies and permanent establishments with at least 75 percent of their 2023 turnover attributable to operations in the fossil fuel sector;
- the tax would be levied at a rate of 33 percent on excess profits;
- excess profits would be calculated as the taxable profits (for corporate income tax purposes) in the fiscal year 2023 that are above 20 percent of the average taxable profits of the preceding four fiscal years;
- special credit rules would apply to allow hydrocarbon producers to offset the solidarity contribution liability against hydrocarbon tax paid in 2023.

The consultation ends on February 24, 2023. The solidarity contribution is intended to come into force the day after the law is published in the Official Journal.

Public consultation on DAC 8 launched

On January 26, 2023, a public consultation on the Commission's proposal to amend the Directive on Administrative Cooperation (DAC 8) was [launched](#) by the Danish Ministry of Taxation.

Under the proposed amendments, the DAC would be extended to cover the exchange of information on crypto-assets, as well as tax rulings for individuals (DAC8). The rules also aim to introduce a common system of minimum penalties for serious non-compliance offences, applicable both to existing and proposed disclosure requirements. For more details, please refer to Euro Tax Flash [Issue 498](#).

Stakeholders are invited to submit comments to the Danish Ministry of Taxation by February 23, 2023.

France

Revised list of non-cooperative jurisdictions issued

On February 3, 2023, the French tax authorities [published](#) a revised list of non-cooperative jurisdictions. The French list generally follows the EU list of non-cooperative jurisdictions adopted by the Council of the EU on October 4, 2022 (please see E-News [Issue 163](#)), but applies additional local tax good governance criteria.

Accordingly, the French list includes the following jurisdictions and territories: American Samoa, Anguilla, the Bahamas, the British Virgin Islands, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos Islands, the US Virgin Islands, and Vanuatu.

For details on defensive measures adopted by EU Member States against non-cooperative jurisdictions, please refer to KPMG's [summary](#) of proposed or enacted measures.

Germany

[Clarifications on DAC7 reporting obligations published](#)

On February 2, 2023, the German Ministry of Finance published [guidance](#) providing clarifications on the application of the German DAC7 reporting rules (for previous coverage, please refer to E-News [Issue 168](#)).

The guidance provides clarifications in relation to definitions and terms included in the German transposition law, availability of tax certainty mechanisms, registration and reporting requirements, reporting procedure as well as documentation and due diligence requirements.

Ireland

[Impact of corporate reorganizations on interest deductions clarified](#)

On February 1, 2023, the Irish tax authorities published an updated Tax and Duty Manual on charges related to income for corporation tax purposes. The manual has been updated to provide guidance the treatment of payments and receipts of interest and royalties without deduction of income tax. Furthermore, the manual has been updated to clarify that the qualifying loan conditions will not be satisfied in case of corporate reorganizations, mergers or divisions, which involve the dissolution of the investing or the investee company.

For more details, please refer to the [e-brief](#) issued by the Irish tax authorities.

[Time period for exchange of CbC reports reduced by Revenue](#)

On January 25, 2023, the Irish tax authorities confirmed the reduction of the exchange time period for country-by-country (CbC) reports from 18 months to 15 months. The reports will be exchanged with the relevant authorities within 15 months following the last day of the fiscal year for which the CbC report has been prepared.

For more details, please refer to the [e-brief](#) issued by the Irish tax authorities.

Italy

[Consultation on draft clarifications in relation to amended patent box regime](#)

On January 19, 2023, the Italian tax authorities [launched](#) a public consultation on a draft circular providing clarifications on the Italian patent box regime, as amended by the 2022 Budget Law (for more details, please refer to a [report](#) prepared by KPMG in Italy).

The circular includes clarifications on eligible taxpayers, qualifying R&D activities, qualifying intellectual property, eligible R&D expenses as well as application and documentation requirements.

Stakeholders were invited to submit comment by February 3, 2023.

Liechtenstein

Plans to implement GloBE Rules (Pillar Two) announced

On December 16, 2022, the government in Liechtenstein [announced](#) plans to introduce a domestic minimum top-up tax from January 1, 2024 and a separate legislative act to implement the OECD GloBE Model Rules in accordance with the EU and Swiss implementation timeline. Given that the Swiss and EU timeliness might not be aligned in relation to the UTPR application, it remains to be seen what timeline Liechtenstein will opt for (for previous coverage, please refer to Euro Tax Flash [Issue 500](#) and E-News [Issue 168](#)).

According to the release, the legal consultation proceedings are expected to start at the end of March 2023 with a view to submit legislation to the Liechtenstein Parliament by September 2023.

Luxembourg

CbC reporting frequently asked questions document updated

On January 24, 2023, the Luxembourg tax authorities updated the frequently asked questions [section](#) on the CbC reporting guidance webpage. A key update refers to clarifications brought for CbC reporting for investments funds, in cases where the fund comprises sub-funds and only the fund (umbrella) is considered as being a part of the multinational group. Under the guidance, the sub-funds will not be required to file notifications and the fund will not have to list the sub-funds in its CbC report.

Malta

Implementation of DAC7

On January 20, 2023, Malta [published](#) the law to transpose DAC7 into domestic law. Key takeaways include:

- The provisions of the Maltese DAC7 law are closely aligned with the text of the Directive.
- Failures to comply with the obligations may be sanctioned with an administrative penalty of EUR 5,000 (non-compliance with due diligence procedures) and EUR 2,500 (non-compliance with requirements to retain documentation and reporting information for a minimum period of five years).

No procedural guidance has yet been issued to clarify registration and reporting requirements.

Netherlands

DAC6 clarifications updated

On February 3, 2023, the Dutch tax authorities published [clarifications](#) in relation to the notification requirements for intermediaries, who are subject to legal professional privilege, to notify other intermediaries of their reporting obligation under DAC6.

In accordance with the CJEU decision of December 8, 2022 (for more details, please refer to Euro Tax Flash [Issue 497](#)), the clarifications limit the scope of such notification requirement. Going forward, Dutch lawyers that act as intermediaries and that are subject to professional secrecy obligations are only required

to inform clients about their reporting obligations, regardless of whether the client is considered to be a relevant taxpayer or intermediary.

In addition, the clarifications note that the identification of such lawyer-intermediary is not a required for the purposes of the disclosure made to the tax authorities by another intermediary or relevant taxpayer in relation to a reportable cross-border arrangement.

Clarifications of transfer pricing mismatch rules issued

On January 24, 2023, the Dutch Ministry of Finance [issued](#) a policy statement clarifying the scope and application of Dutch transfer pricing anti-mismatch rules. Under these relevant rules, assets may need to be recorded at nil value for Dutch tax purposes where they are subject to valuation differences between jurisdictions as a result of certain transactions (e.g. capital contributions).

In this context, the statement clarifies that the anti-mismatch rules do not apply where a taxpayer acquires an asset by means of a capital contribution, profit distribution, repayment of paid-in capital, liquidation dividend or a similar transaction from an affiliated entity that is not subject to a profit tax. This is subject to the condition that both the civil-law structure of the transaction and the financial statements of the transferring party and those of the taxpayer recognize the transaction at fair market value.

The policy statement took effect on January 25, 2023.

For more details, please refer to a [report](#) prepared by KPMG in the Netherlands.

Qatar

Plans to implement GloBE Rules (Pillar Two) and to amend FSIE regime

On February 2, 2023, the State of Qatar issued Law No. 11 of 2022 for the amendment of certain provisions of the Qatar Income Tax Law.

Among other important changes, the State of Qatar has expressed its commitment towards introducing a global minimum tax in accordance with the Pillar Two GloBE Rules. The Executive Regulations (yet to be issued), will provide more details on the scope of application, conditions, and procedures for the application of the Global Minimum Tax.

In addition, the intention was announced to introduce numerous exceptions to Qatar's source-based taxation system. This can be seen in the context of commitments made by the State of Qatar to the EU and the OECD, to implement good governance tax principles and to amend its foreign-source income exemption rules to prevent double non-taxation.

Romania

Implementation of DAC7

On January 31, 2023, Romania [published](#) the bill to transpose DAC7 into domestic law. Key takeaways include:

- The provisions of the Romanian DAC7 law are closely aligned with the text of the Directive;

- Failure to comply with the registration requirements, due diligence procedures, as well as non-reporting/reporting with a delay of the necessary information may be sanctioned with an administrative penalty ranging between approximately EUR 5,000 and approximately EUR 20,000. Other restrictions such as deregistration for not complying with reporting obligations after two reminders issued by the tax authorities also apply.

Procedural guidance to clarify registration requirements is expected to be issued within 90 days from the date when the bill was published.

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

South Africa

Transfer pricing guidance on intragroup loans issued

On January 17, 2023, the South African Revenue Service [issued](#) guidance providing clarifications on the application of the arm's length principle in the context of intra-group loans and the tax consequences where a loan agreement is not at arm's length.

For more details, please refer to a [report](#) prepared by KPMG in South Africa



Local Courts

Bulgaria

Decision on the application of withholding tax on fictitious interest assessed on interest free loans

On January 5, 2023, the Bulgarian Supreme Administrative Court (the Supreme Court) [upheld](#) the tax authorities assessment of withholding tax on fictitious interest related to interest-free loans granted between related parties.

The case concerned a Bulgarian company, which received an interest-free convertible loan from its Luxembourg-based parent company, repayable 60 years after the loan agreement entered into force. Based on national anti-tax evasion and avoidance provisions, the Bulgarian tax authorities computed an arm's length interest rate for the loan and assessed a 10 percent withholding tax on the resulting interest.

The case was previously referred by the Supreme Court to the CJEU. The latter held on February 24, 2022, that, based on settled case-law, the provision under dispute is not covered by the EU Interest and Royalties Directive or the Parent-Subsidiary Directive. The CJEU also concluded that the withholding tax assessed by the tax authorities is not in breach of the fundamental freedom – see E-News [Issue 149](#).

The Supreme Court started by rejecting the plaintiff's plea that the loan constituted a capital contribution under International Accounting Standard 32 Financial Instruments: Presentation (IAS 32), and that therefore the anti-abuse provision concerning debt instruments was not applicable. The Supreme Court noted that accounting treatments could not be used as a basis for interpreting tax law. The Supreme Court also concluded that the withholding tax assessed by the Bulgarian tax authorities was compliant with EU

law due to the fact that it provided for the possibility to recalculate the taxable base (i.e. the deemed interest) to take into account any expenses incurred in connection with that income.

Germany

Outsourced activities to be considered for applying the motive test under former German CFC rules

On September 22, 2022, the Lower Tax Court of Cologne (Court) issued a [decision](#) (6 K 2661/18) providing clarifications on the motive test under the former German CFC rules applicable between 2011 and 2013.

According to the motive test, taxpayers were allowed to provide evidence that a controlled subsidiary located in an EU/EEA member state pursued genuine and actual business activity and therefore does not qualify for the application of German CFC taxation.

The Court held that a Dutch entity that had outsourced the acquisition and marketing of film licenses to a group company located in the same jurisdiction should be considered to conduct actual business activity in the Netherlands. The outsourced activities were attributed to the Dutch entity for purposes of applying the motive test, since the Court considered the outsourcing decision sensible from a commercial perspective, i.e. to create synergy effects and other benefits for the overall group. In addition, the Court noted that the Dutch entity was established solely for non-tax reasons (i.e. liability reasons). Accordingly, the Court decided that the German CFC rules should not apply in this case.

In this context, it is important to mention that the requirements for applying the motive test have been tightened from the 2022 tax year onwards. According to the revised rules, the motive test cannot be applied where a company has outsourced main business activities to third parties.

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



KPMG Insights

Preparing for Pillar 2

As part of the Future of Tax & Legal webcast series, KPMG International will hold a webcast on February 15 and 16, 2023 providing updates on recent developments in respect of the OECD's Pillar 2 solution.

The OECD has released further Administrative Guidance on nearly 30 issues concerning the implementation of the GloBE rules. A number of these are likely to be critical to the implementation projects for in scope MNEs. These include rules surrounding the Qualifying Domestic Minimum Top-up Tax and the manner in which CFC taxes are to be treated. This session will outline this new guidance.

Please access the Future of Tax & Legal [webpage](#) to register.

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.

Tax update for the shipping and offshore sector

KPMG is releasing updates on a regular basis summarizing selected global tax-related developments that are relevant for companies involved in shipping and related industries.

For more details, please refer to the [report](#) prepared by KPMG in the Netherlands.



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