E-News from the EU Tax Centre

Issue 178 – June 6, 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:

- **European Commission:** Recommendations for Member States in 2023 European Semester Spring Package
- **IASB:** Adoption of IAS 12 amendments – Temporary relief from deferred tax accounting for Pillar Two taxes
- **France:** New measures to counter international tax fraud announced
- **Germany:** Interim findings and outcomes from DAC6 reporting
- **Greece:** Guidance on temporary solidarity contribution issued
- **Luxembourg:** Implementation of DAC7
- **Netherlands:** Updated legislative proposal to implement minimum taxation (Pillar Two)
- **Qatar:** Income tax amendments provide for new permanent establishment and economic substance regulations
- **Switzerland:** Consultation launched on updated draft ordinance regulating minimum taxation in Switzerland (Pillar Two)
- **Spain (court decision):** German alternative investment fund entitled to refund of dividend withholding tax

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Infringement Procedures and Court Referrals

Infringements

Formal notice sent to Bulgaria for failure to transpose correctly the fifth Anti-Money Laundering Directive

On June 1, 2023, the European Commission (EC or the Commission) decided to send a letter of formal notice to Bulgaria on the grounds of its incorrect transposition of the fifth Anti-Money Laundering Directive (Directive 2018/843 or AMLD 5).

Whilst Bulgaria had notified transposition AMLD 5, the Commission identified several instances of incorrect implementation. These areas include aspects such as the obligation to register, license, or regulate services providers, the lack of a mechanism to solve discrepancies of information offered by the national beneficial ownership register and the improper application of the concepts of 'establishment' or 'residence'.

Bulgaria has two months to respond to the letter of formal notice. If the response is deemed as unsatisfactory, the Commission may decide to send a reasoned opinion.

For more details, please refer to the EC's June infringement package.

EU Institutions

European Commission

Recommendations for Member States in 2023 European Semester Spring Package

On May 24, 2023, the European Commission issued the European Semester Spring Package 2023, which includes recommendations for each of the 27 Member States, along with a communication for these recommendations. Key takeaways include:

- The equitable treatment of taxpayers and successful funding of public services are made possible by a balanced tax mix, powerful instruments to counteract devious tax planning techniques, and better tax compliance.
- While properly accounting for the distributional effects of such a change, shifting some of the tax burden from labor to other tax types, such as environmental and real estate taxes, would encourage the green transition and promote sustainable growth and job creation.
- Businesses or individuals in a Member State might employ aggressive tax planning techniques, causing unfavorable ripple effects on the rest of the EU. Therefore, prompt and well-planned action is required.
- An important milestone has been reached with the adoption of the EU Minimum Tax Directive (Pillar 2).
- As tax administrations continue to modernize and digitalize procedures, compliance costs should decrease even more and tax income should increase.

Malta and Luxembourg were the only two Member States to receive tax related recommendations, including:

- *Luxembourg:* Increase efforts to successfully counter aggressive tax planning, especially by ensuring that outgoing payments of interest and royalties to zero- or low-tax jurisdictions are sufficiently taxed.
- *Malta:* Effectively manage aspects of the tax system that may promote aggressive tax planning by individuals and multinational corporations, including by ensuring that payments of interest, royalties, and dividends that are transferred abroad are sufficiently taxed, and by changing the regulations for non-domiciled companies.

OECD and other International Institutions

International Accounting Standards Board – IASB

Adoption of IAS 12 amendments – Temporary relief from deferred tax accounting for Pillar Two taxes

On May 23, 2023, the IASB issued final amendments to IAS 12 Income Taxes in light of the implementation of the OECD GloBE rules (Pillar Two).

The amendments clarify that taxes levied based on the Income Inclusion Rule (IIR), the Under-Taxed Profits Rule (UTPR) and domestic minimum top-up taxes (Pillar Two taxes) qualify as income taxes in the scope of IAS 12. A temporary exception is introduced from deferred tax accounting for Pillar Two taxes where the GloBE rules have been enacted or substantively enacted in a jurisdiction in which a group operates. The exception applies immediately and retrospectively until the IASB decides either to remove it or to make it permanent. Importantly, companies need to disclose that they have applied the relief.

In addition, the amendments introduce disclosure requirements for affected companies.

- *Once tax law is enacted but before top-up tax is effective:* The company is required to disclose information that is known or can be reasonably estimated and that helps users of its financial statements to understand its exposure to Pillar Two income taxes at the reporting date. This information does not need to reflect all the specific requirements in the legislation – companies can provide an indicative range. Disclosures may include quantitative and qualitative information:
    - *Qualitative information:* How the company is affected by Pillar Two taxes and in which jurisdictions the exposure arises (e.g., where the top-up tax is triggered and where it will need to be paid).
    - *Quantitative information*: The proportion of profits that may be subject to Pillar Two income taxes and the average effective tax rate applicable to those profits, or how the average effective tax rate would have changed if Pillar Two legislation had been effective.

  If information is not known or cannot be reasonably estimated at the reporting date, then a company discloses a statement to that effect and information about its progress in assessing the Pillar Two exposure.

- *After top-up tax is effective:* Only one disclosure is required – i.e., current tax expense related to top-up tax.

These new disclosures apply from December 31, 2023. No disclosures are required in interim periods ending on or before December 31, 2023. The amendment will be included in the 20th edition of Insights into IFRS to be published in September 2023.

In addition, on June 1, 2023, the IASB published an exposure draft proposing similar amendments to the IFRS for small- and medium-sized enterprises (SMEs). Stakeholders are invited to provide comments by July 17, 2023.

For more information, please refer to a dedicated KPMG report.

Local Law and Regulations

Bahrain

Government considering introducing corporate tax in light of Pillar Two commitment

On May 24, 2023, the Bahraini government announced that it is considering the introduction of a corporate tax in light of its commitment to the OECD's Pillar Two global minimum tax initiative. According to the Minister of Finance, studies are currently being conducted in this respect and results will be presented to the Parliament once available.

Channel Islands and Isle of Man

Joint statement describing an agreed approach to Pillar Two implementation

On May 19, 2023, the governments of Guernsey, Jersey, and the Isle of Man issued a joint statement describing their agreed approach to implementation of the OECD's Pillar Two global minimum tax framework.

The statement provides that the intention is to implement an Income Inclusion Rule and a Domestic Minimum Tax regime that will only apply to large, in-scope multinational enterprises from 2025. For groups that do not meet the Pillar Two revenue threshold of EUR 750 million, the islands' 0/10 corporate tax regimes would continue to apply.

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

Czech Republic

Proposed increase of corporate income tax rate

At the beginning of May, the Czech government announced a number of direct and indirect tax changes expected to apply beginning January 1, 2024. From a direct tax perspective, the key proposal is an increase of two percentage points in the standard corporate income tax rate from 19 percent to 21 percent. Legislative language is yet to be published and will likely be discussed in the chamber of deputies in June.

For information on further proposed amendments, please refer to a report prepared by KPMG in the Czech Republic.

Denmark

Temporary solidarity contribution on the fossil sector published

On May 16, 2023, Denmark published a law in the Official Gazette to introduce a solidarity contribution on energy companies in the fossil sector (for previous coverage, please refer to E-News Issue 170). Key features 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 is levied at a rate of 33 percent on excess profits;
- excess profits are 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 last four fiscal years starting on or after January 1, 2018;
- special credit rules apply to allow hydrocarbon producers to offset the solidarity contribution liability against hydrocarbon tax paid in 2023.

The tax entered into force on May 17, 2023.

France

New measures to counter international tax fraud announced

On May 5, 2023, the French Minister for Public Accounts announced new measures against international tax and customs fraud. Key direct tax features include:

- the annual turnover threshold exceeding which multinational corporations must present transfer pricing documents will be lowered (current threshold of EUR 400 million);
- the statute of limitations for cross-border transfers of intangible will be extended to more than three years;
- taxpayers will be subject to a "tax indignity" penalty , which would prevent them from receiving any tax benefits if they are convicted of fraud;
- the French government will seek to increase the number of tax audits on the largest multinational groups by 25 percent until 2027, as well as, form a special audit team with a focus on international tax fraud;
- action will be initiated to increase international tax transparency, with a view to enabling tax authorities to have an overview of taxpayers' worldwide assets.

The measures will be detailed in a global plan to counter international tax fraud, however, it is reported that the main measures will be included in the 2024 Finance Bill.

Proposal for tax credits and other initiatives for green industries

On May 16, 2023, the French government announced plans to propose tax credits and other initiatives to take advantage of relaxed EU state aid rules (see Euro Tax Flash Issue 508) intended to support EU Member States in their transition to a greener economy. Key features of the envisioned tax credits include:

- applicable to companies that invest in green industries;
- between 20 percent and 45 percent of the cost of investments in strategic sectors for green reindustrialization to be creditable for tax purposes;
- aim is to encourage tangible and intangible investments in electric batteries, heat pumps, hydrogen technology, solar panels, and wind turbines;
- estimated annual cost of EUR 500 million to be financed by reducing tax breaks for vehicles powered by fossil fuels.

Details of these measures will be published as part of the Finance Bill for 2024, with the draft law due to be examined in the Senate in June and the National Assembly in July.

For more information, please see the press release by the French government.

Guidance on temporary solidarity contribution published

On May 15, 2023, the French tax authorities published guidance to clarify calculation, reporting and payments requirements in respect of the temporary solidarity contribution on the fossil sector as introduced as part of the 2023 Finance Bill (see E-News Issue 168). The guidance also provides clarifications on how the rules apply to integrated tax groups and other special cases.

Germany

Interim findings and outcomes from DAC6 reporting

On May 8, 2023, the German government responded to parliamentary questions on interim findings and outcomes from the application of mandatroy disclosure rules for cross-border arrangements (Council Directive 2018/822 – DAC6) since July 1, 2020. Key takeaways include:

- The German Federal Tax Office (BZSt) has received 26,921 disclosures of cross-border tax arrangements (as at March 31, 2023).
- Of the disclosures made, 76.5 percent were filed by intermediaries, while 22.9 percent were filed by relevant taxpayers.
- Out of 206 potentially aggressive tax planning arrangements identified as part of the legal policy evaluation (as at March 31, 2023), a need for legal policy action was identified in respect of 24 such arrangements.
- According to the government, identified loopholes in the tax laws have already been addressed in the meantime, e.g. as part of the law to prevent tax avoidance and unfair tax competition of June 25, 2021 (see E-News Issue 136).
- The responses note that the German government does not have knowledge of the number of initiated tax audits and the amount of additional tax revenue generated as a result of the DAC6 reporting obligation in Germany.
- The responses refer to an evaluation of DAC6 hallmarks that is being conducted at EU level. Based on the government's responses, it is not foreseeable whether and when this evaluation would trigger legislative amendments at EU level. However, the responses make reference to the coalition agreement of the German government, which includes the aim to expand the reporting obligation to purely domestic tax arrangements.
- While acknowledging the CJEU decision in case C-694/20 (Orde van Vlaamse Balies e.a.) of December 8, 2022 (see Euro Tax Flash Issue 497), the German government takes the view that DAC6 is generally compatible with the fundamental rights of the EU.

Greece

Guidance on temporary solidarity contribution issued

On May 18, 2023, the Greek tax authorities issued a decision to provide guidance on the application of the temporary solidarity contribution on the fossil sector ("the Contribution") that was introduced by Article 114 of Law No. 5007 of December 23, 2022. Key features include:

- the Contribution is in line with Council Regulation (EU) 2022/1854;
- the Contribution applies to qualifying companies (i.e. those generating at least 75 percent of their turnover from coal and lignite mining, extraction of crude oil, natural gas pumping, or manufacture of coking and refining products);
- the Contribution is levied at a rate of 33 percent on excess profits generated in 2022;
- excess profits are calculated as the taxable profits in the fiscal year 2022 that are above 20 percent of the average taxable profits of the last four fiscal years starting on or after January 1, 2018;
- the Contribution is payable in eight instalments, the first of which is due on the last working day of the month proceeding the submission date for the Contribution return;
- for companies with a year end of December 31, 2022, the deadline for completing and submitting the return is June 30, 2023;
- for companies with other year end dates, the return is due by the last working day of the sixth month following the year end.

Luxembourg

Implementation of DAC7

On May 19, 2023, Luxembourg published the law to transpose DAC7 into domestic legislation. Key takeaways include:

- The provisions of the Luxembourg 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 up to EUR 250,000 (maximum penalty). Late registration, late filing and filing of inaccurate or outdated information may be sanctioned with a penalty of EUR 5,000 (lump sum amount).

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

For more information on the state of play of DAC7 implementation in other EU Member States, please refer to Euro Tax Flash Issue 513.

Netherlands

Updated legislative proposal to implement minimum taxation (Pillar Two)

On May 31, 2023, the Dutch government published an updated legislative proposal to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive (2022/2523).

The proposal closely follows the text of the EU Directive (for more details, please refer to Euro Tax Flash Issue 500) and also incorporates certain items that were subsequently released by the OECD Inclusive Framework. Key features of the proposal include:

General

- The Qualified Domestic Minimum Top-up Tax (QDMTT) and the IIR would apply for financial years starting on or after December 31, 2023.
- The UTPR would generally be applicable one year later, i.e. for financial years starting on or after December 31, 2024. However, the UTPR would apply for financial years starting on or after December 31, 2023 where the UPE of the group is located in an EU Member States that opted for the IIR and UTPR deferral (Article 50 of the Directive). The UTPR Top-up Tax would be collected in form of an additional Top-up Tax.
- The draft takes into account additional OECD materials, including elements of the GloBE Implementation Framework (e.g. Transitional and Permanent Safe Harbors) and the Administrative Guidance (e.g. special allocation rules for taxes imposed under blended CFC regimes).

QDMTT

- The Dutch QDMTT would generally be calculated in accordance with the general GloBE rules. However, foreign covered taxes (e.g. CFC taxes) that would be allocated to Dutch constituent entities under the regular GloBE rules, need to be excluded for Dutch QDMTT purposes.
- The QDMTT definition provides that the income or loss for the jurisdiction can be computed using an acceptable financial accounting standard or an authorized financial accounting standard that differs from the one used in the Consolidated Financial Statements provided that it is adjusted to prevent any material competitive distortions.
- The draft provides for a QDMTT Safe Harbor rule. This Safe Harbor would require a QDMTT to be computed in accordance with the UPE's acceptable financial accounting standard or IFRS.

Administration

- In case of multiple domestic constituent entities of the group, the draft provides for the introduction of a minimum tax group, which includes all domestic constituent entities of the MNE group, and that is treated as one single taxpayer for QDMTT and UTPR filing and payment purposes. The top domestic parent is generally the designated entity responsible for filing and payment purposes.
- While the GloBE Information Return must be filed within 15 months after the end of the fiscal year (18 months for the first reporting year), a self-assessment top-up tax return and the payment of any top-up tax due must be filed and paid within 17 months after the end of the fiscal year (20 monthsfor the first reporting year).
- The draft also includes reference to the transitional penalty regime, following which the Dutch tax authorities will give careful consideration to imposing sanctions during the transition period. This will not apply in cases of fraud or intent, nor with respect to administrative penalties which may be imposed in respect of filing the top-up tax return and paying the related top-up tax.

As a next step, the bill will be debated by the House of Representatives in the coming months, followed by a discussion in the Dutch Senate. The bill is expected to enter into force on December 31, 2023.

For more information, please refer to a report prepared by KPMG in the Netherlands and the release published by the Dutch government.

Qatar

Income tax amendments provide for new permanent establishment and economic substance regulations

On May 16, 2023, the Council of Ministers in Qatar published Decision No. 3 of 2023, which provides for amendments to the Executive Regulations of the Income Tax Law. Key features include:

Changes regarding what constitutes a permanent establishment ("PE")

- A "negative list" is introduced in accordance with the 2017 OECD Model Tax Convention such that certain activities will not constitute a PE as long as the activity is preparatory or auxiliary in nature.
- New registration requirements for non-resident entities carrying out "negative list" activities in Qatar.
- New rules for a non-resident insurer regarding the activities that could constitute a PE (e.g. new agency PE rules regarding the activities of independent agents).

Rules regarding the calculation of taxable income for a PE

- Introduction of the concept of a separate legal entity for PEs.
- Elimination of the 3 percent limit on allocation of overhead costs to a PE and introduction of new rules for the allocation of same (i.e. now calculated in accordance with the separate legal entity concept).
- Limits on certain payments made by a PE to a parent / related entity. In particular, certain related entity payments will not be deductible for corporate income tax purposes (e.g. royalties and payments made for the right to use patents, commission paid in lieu of certain services rendered or for management, and interest paid on certain loans to the PE).
- The introduction of a force of attraction rule providing that certain income will be attributed to a PE.

Economic substance

- Economic substance requirements shall be applicable to relevant entities that, within the previous two fiscal years, (i) derive more than 75 percent of relevant income attributable to immovable property, dividends, interest or royalties, (ii) more than 60 percent of the entity's book value attributable to assets outside of Qatar, (iii) more than 60 percent of the entity's relevant income originates from foreign sources, and (iv) if management of daily operations and key decision making functions are outsourced.
- Certain entities are excluded from the provisions (entities listed on the Qatar Stock Exchange, regulated financial institutions, entities that are wholly owned by Qatar tax residents and mainly hold shares in Qatar businesses, holding companies in Qatar that are wholly owned by Qatar tax resident shareholders or by an ultimate parent entity that is tax resident in Qatar, and entities with at least five full-time employees that perform core income generating activities that generate the relevant income etc.).
- A relevant entity will be required to submit a report (as part of the annual income tax return) outlining whether it satisfies the minimum substance indicators.

- The tax authorities may refuse to provide a tax residency certificate to a relevant entity if it is determined that it is not engaging in substantial activity, and the entity may be liable to a penalty equal to 15 percent of its net income.

The amendments shall be effective from May 17, 2023.

Spain

Implementation of DAC7

On May 25, 2023, Spain published [Law 13/2023] in the Official Gazette to transpose DAC7 into domestic legislation. Key takeaways include:

- The law sets out the basic guidelines for the reporting obligation as well as the rules and procedures for due diligence and registration, which are closely aligned with the text of the Directive.
- Failures to comply with these obligations may be sanctioned in accordance with the general penalty regime in Spain (case-by-case analysis). In case of non-compliance with due diligence obligations, the Spanish rules provide for an administrative penalty of EUR 200 for each case of breach.

Importantly, the effective application of the DAC7 rules is still pending approval of the regulations required to complete the transposition. In addition, no procedural guidance has yet been issued to clarify registration and reporting requirements.

For more information on the state of play of DAC7 implementation in other EU Member States, please refer to Euro Tax Flash Issue 513.

Additional tax law amendments enacted

On May 25, 2023, Spain also published in the Official Gazette additional legislative measures including amendments to interest deduction limitation rules, amendments to DAC6 and the implementation of tax dispute resolution. Key aspects include:

- *Interest limitation rules:* With effect from January 1, 2024, the Spanish interest limitation rules will be amended to be aligned with the EU Anti-Tax Avoidance Directive (2016/1164 – ATAD). Under the amended rules, the calculation of EBITDA will no longer take into account expenses or income that is excluded from the corporate tax base. In addition, both mortgage securitization funds and asset securitization funds will be in scope of the interest deduction limitation going forward.
- *DAC6:* In line with the CJEU decision of December 8, 2022 (see Euro Tax Flash Issue 497), Spanish intermediaries subject to legal professional privilege are no longer required to notify other intermediaries of their reporting obligation under DAC6. Based on the amended law, intermediaries are, however, still required to inform clients about their reporting obligations within five days following the date on which the reporting obligation was triggered.
- *Tax dispute resolution:* The law also completes the implementation of the EU Tax Dispute Resolution Directive (2017/1852) into local legislation. On January 26, 2023, the European Commission had sent a letter of formal notice to Spain for the incorrect transposition of the Directive (see E-News Issue 170).

The amendments, unless otherwise stated, entered into force on May 26, 2023.

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

Switzerland

Consultation launched on updated draft ordinance regulating minimum taxation in Switzerland (Pillar Two)

On May 24, 2023, the Swiss Federal Council launched a public consultation on an updated draft ordinance for the implementation of the OECD's Pillar Two Model Rules. Key features include:

- The Swiss rules closely follow the OECD Model Rules and it is outlined that the Swiss implementation is to be interpreted according to the respective commentary and respective rules and standards of the OECD/G20.
- The DMTT and the IIR would apply for financial years starting on January 1, 2024.
- The draft does not provide for the date from which UTPR may apply, however, based on the explanatory notes, it appears that the Swiss Government is in favor of applying the UTPR from 2025, in line with the European Union.
- The draft outlines that the economically most important unit of a group would be required to pay the tax in its home canton for all the constituent entities across Switzerland (one-stop shop approach).
- The top-up tax would be levied by the cantons as part of a mixed assessment procedure, similar to corporate income tax. The tax authorities would calculate and assess the tax, while the taxable business entities would be obliged to submit a self-declaration. The declaration and the procedure would be handled electronically via a portal.
- The draft includes penalty provisions similar to corporate income tax (i.e. administrative offence for e.g. not filing of GIR; top-up tax evasion including instigation/abetting/participation; tax fraud).

The consultation ends on September 14, 2023. The entry into effect is subject to an amendment of the constitution that would empower the government to release the respective (temporary) implementing ordinances. The amendment of the constitution is subject to a referendum on June 18, 2023.

For more information, please refer to the Swiss Federal Council's consultation webpage and a report prepared by KPMG in Switzerland.

United Arab Emirates

Clarifications in relation to new corporate income tax regime issued

Recently, the Ministry of Finance has published several Ministerial Decisions providing clarifications in respect of key elements of the new UAE corporate income tax regime on federal level, including:

- scope provisions,
- determination of tax residency,
- determination of the corporate tax base,
- use of accounting standards,
- relief for business restructurings,
- free trade zones,
- interest deduction limitation rules,
- participation exemption rules,

- group taxation rules,
- transitional rules,
- transfer pricing documentation requirements.

The new UAE corporate tax regime is effective for financial years starting on or after June 1, 2023.

For more information, please refer to the dedicated webpage of KPMG in the UAE.

United Kingdom

New HMRC guidance on 'unallowable purpose'

HMRC have issued new guidance on the restriction for interest deductions for loans with an "unallowable purpose". The new guidance provides insight into HMRC's current thinking on when the unallowable purpose rule might apply to restrict UK tax deductions for interest.

It offers a more systematic approach to thinking about the 'unallowable purpose' rule than the guidance it replaces, drawing together key themes from the case law as this currently stands, and reflecting the approach to assessing risk with a number of examples. It also acknowledges that tax considerations should be considered in financing decisions and that even when these sway key decisions it does not automatically follow that tax relief should be denied.

For more information, please refer a report prepared by KPMG in the United Kingdom.

Local Courts

Spain

German alternative investment fund entitled to refund of dividend withholding tax

On April 25, 2023, the Spanish Supreme Court (the Court) rendered a decision holding that the dividend withholding tax applicable to payments made to a German alternative investment fund was in breach of the free movement of capital.

The plaintiff was an alternative investment fund, resident for tax purposes in Germany. Between 2011 and 2014, dividends received by the funds were subject to domestic withholding tax at a rate of 19 or 21 percent, or subject to a reduced rate of 15 percent under the double tax treaty between Germany and Spain. Under Spanish law, domestic investment funds are subject to a 1 percent corporate income tax rate. The plaintiff considered that the Spanish law discriminates between non-resident and domestic investment funds and requested a partial refund of the taxes withheld in Spain.

Following the Court's previous reasoning for alternative investment funds (please refer to a dedictated report prepared by KPMG in Spain), the Court concluded that the plaintiff was in a comparable situation with a Spanish investment fund, based on the following conditions:

- non-resident funds must raise capital contributions from the public in general, notwithstanding the possibility of limiting access to professional or qualified investors;
- non-resident funds must be authorised in their country of origin or residence by the competent supervisory authority; and
- non-resident funds must evidence that they are managed by a duly authorised entity in their country of origin or residence, as an Alternative Investment Fund Manager, under the terms of Directive 2011/61/EU.

As a result, the Court held that the fund was entitled to a refund computed as the difference between tax withheld at source and the tax burden that would have been applicable in the case of a Spanish fund (1 percent).

In its decision, the Court acknowledged that the burden to demonstrate comparibility would in principle lie with the non-resident alternative investment fund. However, the Court also clarified that Spanish tax authorities cannot require disproportionate means of evidence for proving that the fund is in a comparable situation with a Spanish investment fund. Accordingly, the Court held that, in case of doubt, the Spanish tax authorities would need to request an information exchange with the respective residence country of the fund.

KPMG Insights

Revisiting the fundamentals of Pillar Two

The Pillar Two rules have developed from December 2021, with multiple releases from the OECD.

On June 8, 2023, KPMG will hold a webcast that brings those releases together as a coherent whole and not as a series of updates. This will allow multinational enterprises to revisit the fundamentals as we know them today.

Please access the event page to register.

EU Financial Services Tax Perspectives

On June 13, 2023, KPMG will hold its next EU financial services tax perspectives session as part of the Futue of Tax & Legal webcast series.

Countries and territories across the European Union (EU) and Europe continue to operate in a significantly unsettled environment. As geopolitical tensions persist, together with rising interest rates and spiraling inflation, there is a great need for financial stability and operational resilience. Coupled with the continuing rapid digital transformation and increasing compliance challenges financial services institutions should remain competitive in an ever-changing environment.

So, what is on the horizon? Will the tax landscape in Europe become even more volatile in the future? And what does this mean for financial services institutions?

A panel of KPMG tax specialists will share their insights on some of the latest developments impacting the financial services industry including:

- European Withholding Tax Framework – A deep dive into the latest legislative proposals due to be released by the EU Commission on Wednesday June 28, 2023
- SAFE initiative update- Includes ATAD 3 (the EU Unshell Directive) and potential implications for financial services institutions
- Controversy – An update on the dividend withholding tax reassessment on certain equity transactions with a spotlight on Germany and France

Please access the event page to register.

EU tax perspectives session

European Union (EU) Member States and institutions continue to have full agendas that include the implementation of international initiatives and the advancement of upcoming EU-specific proposals.

Against this backdrop, we are delighted to invite you to the June 28, 2023 session of the "EU tax perspectives" webcast series, during which 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 session will focus on:

- BEPS 2.0 in the EU: State of play on the implementation of the EU Minimum Tax Directive (Pillar Two).
- European Withholding Tax Framework (FASTER): What to expect and the impact on cross-border dividend payments.
- Navigating the EU Green Deal: The revised EU Emissions Trading System (EU ETS) and the new Carbon Border Adjustment Mechanism (CBAM).
- Looking ahead: State of play and updates on other EU direct tax initiatives, including the Unshell Directive proposal (ATAD 3), SAFE, BEFIT and DAC8.

Please access the event page to register.

Navigating BEPS 2.0 - Key considerations for Asset Managers and sovereign wealth funds as they get ready for Pillar Two.

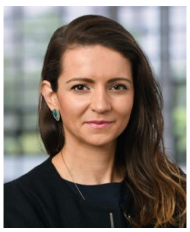
The OECD's Pillar Two global anti-base erosion ("GloBE") rules, which were agreed to by the OECD/G20 Inclusive Framework on BEPS ("F") in December 2021, are beginning to be enacted into law now. In December 2022, South Korea enacted legislation applying the GloBE rules from 2024, while the European Union ("EU") agreed a Directive committing EU member states to implement to a similar timeline. In the past couple of months we have seen similar announcements from other jurisdictions, including Hong Kong (SAR), China, Japan, Singapore, and the UK.

A common misconception is that asset managers and sovereign wealth funds ("SWFs") are automatically "excluded" from Pillar Two. Like everything Pillar Two related, the rules are not quite that simple.

For asset managers or SWFs that are potentially in-scope of Pillar Two, or where the application of the scope rules outlined below are uncertain, now is the time to think about next steps. The OECD is still seeking to issue clarificatory guidance and this could help to address areas where the Pillar Two rules have unintended consequences. Seeking an external review of how the rules apply could help groups identify these scenarios, and quantify their potential Pillar Two exposure, but also design and develop the processes they will likely need to introduce to manage their compliance and reporting obligations. For a three-year transition period, an external review may also help to protect against penalties.

For more details, please refer to the article prepared by KPMG in the US.

KPMG's EU Tax Centre team



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