E-News from the EU Tax Centre

Issue 183 – September 18, 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:** Directive proposals for Business in Europe: Framework for Income Taxation (BEFIT) and Transfer Pricing
- **European Commission:** Directive proposal for Head Office Tax system for SMEs
- **Germany:** Government issues updated draft tax reform bill
- **Greece:** Implementation of DAC7
- **Ireland:** Amendments to patent box regime in response to Pillar Two implementation
- **Italy:** Legislative developments regarding the implementation of minimum taxation (Pillar Two)
- **Sweden:** Legislative proposal to implement minimum taxation (Pillar Two)
- **Ukraine:** Proposed windfall tax on banks
- **Belgium (court decision):** Belgian Constitutional Court invalidates certain DAC6 provisions for intermediaries benefiting from legal professional privilege
- **Italy (court decision):** Supreme Court decision on the applicability of domestic participation exemption for non-resident companies

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EU Institutions

European Commission

Directive proposal for Business in Europe: Framework for Income Taxation (BEFIT)

On September 12, 2023, the European Commission (EC) issued a proposal for a Council Directive on Business in Europe: Framework for Income Taxation. The proposal aims at providing rules for a common EU corporate tax system replacing the EC's previous proposal for a common (consolidated) corporate tax base (CCTB and CCCTB) under consideration of principles agreed upon under the OECD Pillar One and Pillar Two solutions. Key aspects include:

- *Scope:* The rules would apply to EU-based entities that are part of a domestic or multinational group in scope of Pillar Two (i.e. revenue threshold of EUR 750 million). In addition, there would be an opt-in option for SMEs to enable them to benefit from the framework as well. While the proposal does not exclude any sectors from the scope of BEFIT, sector-specific characteristics are reflected in relevant parts of the proposal (e.g. adjustments for international transport and extractive industries).
- *Tax base calculation and consolidation:* BEFIT would provide common rules for determining the corporate tax base for EU-based entities. The rules would require the calculation of a 'preliminary tax result' (PTR) by each member of a group by using a 'simplified method' (which will include less adjustments to financial statements than the GloBE Model Rules). The PTRs of group members would then be aggregated to form a single BEFIT tax base. The aggregation of PTRs would allow in-scope groups to (i) offset cross-border losses, (ii) avoid paying withholding taxes on certain transactions (e.g. interest and royalty payments within the group), and (iii) simplify transfer pricing compliance in intra-group transactions.
- *Allocation of profits:* The rules would require the BEFIT tax base to be allocated to Member States. The allocation to the eligible group members would be based on their percentage of the aggregated tax base (calculated as the average of the taxable results in the three prior fiscal years). Once allocated, Member States may apply any further base increases, tax incentives, or deductions to the company's allocated part as long as they comply with the Pillar Two requirements. The adjusted allocated profits would then be subject to the corporate income tax rate of the respective Member State. In addition, a traffic light system is proposed to measure transfer pricing compliance of entities outside of the BEFIT group. This system would apply to low-risk activities in which the distributor uses a method based on OECD transfer pricing guidelines.
- *Administration:* BEFIT would establish a one-stop shop as a central authority to administer the regime. The ultimate parent entity (UPE) of the group would generally be required to submit an information return for the entire group with its local tax authority no later than four months after the end of the fiscal year. In addition, each individual BEFIT group member would also be required to file an individual tax return to their local tax administration. The procedural rules in respect of tax return filling, audits and appeals would generally be governed by national law.

The EC proposes that Member States should transpose the BEFIT proposal into domestic law by January 1, 2028, and that the provisions of the Directive should apply as of July 1, 2028.

For more information, please see a press release by the EC and Euro Tax Flash Issue 521.

Proposal for Transfer Pricing Directive

On September 12, 2023, the European Commission (EC) issued a proposal for a Council Directive on transfer pricing.

The proposal relates to the implementation of common rules for determining the transfer pricing approach for EU-based entities, based on OECD principles. In brief, the EC proposes to incorporate the OECD arm's length principle and 'OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations' in EU law, alongside the gradual development of common approaches in the EU to the practice of applying transfer pricing. The rules would apply to all EU-based companies and permanent establishments.

The EC proposes that Member States should transpose the TP proposal by December 31, 2025 at the latest and that the provisions of the Directive should apply from January 1, 2026.

For more information, please see a press release by the EC and Euro Tax Flash Issue 521.

Directive proposal for Head Office Tax system for SMEs

On September 12, 2023, the European Commission (EC) issued a proposal for a Council Directive on establishing a Head Office Tax (HOT) system for micro, small and medium sized enterprises (SME) and amending the Directive on Administrative Cooperation (2011/16/EU).

The Directive proposal allows certain standalone SME entities with permanent establishments in other EU Member States (host Member State) to calculate their tax liability based only on the tax rules of the Member State of their head office. Qualifying SMEs would also only need to file a single tax return with the tax administration of their head office. This return would then be shared with other host Member States, with any resulting tax revenues also transferred from the head office Member State to the host Member State(s).

The EC proposes that Member States should transpose the proposal by December 31, 2025 at the latest and that the provisions of the Directive should apply from January 1, 2026.

For more information, please see a press release by the EC and Euro Tax Flash Issue 522.

European Parliament

Background document on FASTER published

On August 30, 2023, the European Parliamentary Research Service (EPRS) published a document including background material on the Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER). This document outlines further context regarding the background of FASTER and the changes that the proposal would introduce including (i) the introduction of a common digital residency certificate for the EU, (ii) Two fast-track procedures complementing the existing standard refund, and (iii) reporting requirements for financial intermediaries.

The document also includes details regarding the expected impact of the FASTER proposal which includes approximately EUR 5.2 billion in cost savings per year for EU and non-EU investors, a reduced cost of capital, and the foreseen net loss in tax revenue being offset by the strengthened provisions against fraud.

For more information regarding FASTER, please see Euro Tax Flash Issue 517 and E-News Issue 179.

Report on DAC8 proposal adopted

On September 13, 2023, the European Parliament adopted a Report on the proposal for a Council directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8). While the report is supportive of the text proposed by the Commission, a few amendments are recommended, including:

- enhancing the requirements for member states to engage with the Commission regarding the effectiveness of the Directive's measures; and
- placing greater emphasis on addressing harmful tax practices and potential abuse related to crypto-assets.

Members of the European Parliament called on the Council to consult with the Parliament in case of revisions to the recently approved text or significant changes to the Commission's proposal.

Resolutions adopted by the European Parliament are not binding on the Council and European Commission but must be taken into account by the Commission and Member States when proposing or agreeing new rules. We note that the Council has already agreed on the final text and it is expected that the Directive will now be formally adopted.

For previous coverage, please refer to Euro Tax Flash Issue 512 and E-News Issue 177.

Local Law and Regulations

Czech Republic

Amendments to tax reform bill

The Czech government agreed on amendments to the tax reform bill (for previous coverage, please refer to E-News Issue 178). Key takeaways from a direct tax perspective include:

- increase of the standard corporate income tax rate from 19 percent to 21 percent;
- possibility to keep accounts in foreign currency;
- taxation of realized exchange rate transactions only.

The rules are expected to apply from January 1, 2024.

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

Finland

Separate legislative proposal for Finnish domestic minimum top-up tax (Pillar Two)

On September 1, 2023, the Finnish Ministry of Finance updated the draft legislation to implement the EU Minimum Tax Directive with a separate proposal for the introduction of a Finnish domestic minimum top-up tax (DMTT). Key takeaways include:

- The DMTT would apply for financial years starting on or after December 31, 2023.
- The DMTT would generally be calculated in accordance with the general GloBE rules, i.e. the draft does not make use of variations/modifications allowed by the Administrative Guidance (e.g. lower revenue threshold, stricter blending rules, etc.).
- However, the DMTT would include the mandatory deviations from the GloBE rules as provided by the Administrative Guidance. As such, the DMTT would need to be imposed with respect to 100 percent of the Top-up Tax calculated for local constituent entities (CEs), i.e. it cannot be limited to a UPE's ownership percentage in the local CEs. In addition, foreign covered taxes (e.g. CFC taxes) that would be allocated to Finnish CEs under the regular GloBE rules would need to be excluded for Finnish DMTT purposes.
- The draft further provides for special DMTT allocation rules for joint ventures, investment entities and hybrid entities.
- The July 2023 Administrative Guidance provisions for a QDMTT Safe Harbour have not yet been taken into account.

For previous coverage on the draft legislation issued on August 15, 2023, please refer to E-News Issue 182.

For a state of play of the implementation of Pillar Two, please refer to KPMG's dedicated implementation tracker.

Germany

Government issues updated draft tax reform bill

On August 17, 2023, the German government approved an updated draft bill aimed at strengthening growth opportunities, investment and innovation as well as tax simplification and tax fairness (for previous coverage, please refer to E-News Issue 181). Key amendments compared to the ministerial draft bill issued in July include:

- *Reform of interest deduction limitation rule (ILR):* The stand-alone clause and the equity escape clause would remain available (not to be abolished as originally proposed) but with some adjustments to their application requirements. In addition, the exemption limit of EUR 3 million would also remain (instead of converting the de minimis threshold of EUR 3 million into an allowance, as originally proposed).
- *Introduction of interest rate barrier rule:* The proposal to deny the deduction of interest expenses where they relate to intra-group interest payments that are subject to a rate that exceeds a legally defined maximum rate would generally remain unchanged. However, the government draft clarifies that a new deduction limit (triggered by a base rate change) would not apply until one month after the date of the effective adjustment of the base rate in the German Civil Code.

- *Introduction of an investment premium:* The proposal to introduce a 15 percent investment premium in relation to the costs of investment in certain defined assets that serve to improve energy efficiency in the company remains generally unchanged. However, the government draft provides for an extended funding period from the date the law becomes effective and January 1, 2030 (instead of January 1, 2028 as proposed in the previous proposal).
- *Expansion of R&D tax incentive:* The previous proposal remains generally unchanged, however, the draft provides for the option for small and medium-sized enterprises to apply for an increased allowance rate of 35 percent (currently 25 percent).
- *Amendments to tax loss deduction rules:* The draft proposes to temporarily allow losses to be offset up to EUR 1 million plus 80 percent (currently 60 percent) of current income in the years 2024 to 2027. The previous proposal was rejected, which provided for a temporarily suspension of the current loss carry forward limitations in the year 2024 to 2027 and increased threshold of EUR 10 million after 2027.
- *Amendments to depreciation rules:* Introduction of a temporary declining-balance depreciation of up to 25 percent (capped at 2.5 times straight-line depreciation), for movable fixed assets acquired after September 30, 2023 and before January 1, 2025, and introduction of declining-balance depreciation of 6 percent for residential buildings whose construction begins after September 30, 2023 and before October 1, 2029 or whose acquisition falls within this period.
- *Introduction of mandatory disclosure rules for domestic arrangements:* the previous proposal to expand the German mandatory disclosure rules for cross-border tax arrangements (DAC6) to cover also domestic arrangements remains generally unchanged. However, the German Ministry of Finance would be authorized to determine the effective date at least 12 months in advance (December 31 of the fourth year following the date the law becomes effective at the latest).

As a next step in the legislative process, the German Federal Council will have the chance to comment on the bill. Subsequently, the draft bill will be subject to approval by both the Parliament and Federal Council. As such, amendments may still occur in the course of the legislative procedure.

Greece

Implementation of DAC7

On September 7, 2023, Greece published the law to transpose Council Directive (EU) 2021/514 (DAC7) into domestic law. Key takeaways include:

- The provisions of the Greek DAC7 law are closely aligned with the text of the Directive.
- Failures to comply with the obligations (i.e. no reporting, delayed reporting as well as incomplete or inaccurate reporting) may generally be sanctioned with an administrative penalty of up to EUR 500,000 per audit. However, in the case of late submission of sellers' data, the total amount of the fine may not exceed the amount of EUR 10,000 for each reportable year.
- The rules apply from January 1, 2023, and initial reporting will be required by January 31, 2024.

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

Ireland

Amendments to patent box regime in response to Pillar Two implementation

On September 5, 2023, the Irish Minister for Finance signed a commencement order which provides for an increase in the effective tax rate of its knowledge development box (KDB) to 10 percent (effective from October 1, 2023). It is understood that this amendment is another step in the implementation of the Pillar Two regime by Ireland.

For more information, please see a press release from the Department of Finance and a previous report prepared by KPMG in Ireland.

Guidance on interest limitation rules updated

On August 25, 2023, Irish Revenue Commissioners published eBrief No. 189/23 regarding updates to Tax and Duty Manual (TDM) Part 12-03-04 which relates to company reconstructions without change of ownership. The TDM has been updated as a result of the introduction of the Interest Limitation Rules in Finance Act 2021. The amendments provide that where at the time of a transfer of a trade from one company to another company, the predecessor is entitled to carry forward an amount of deemed borrowing costs or spare capacity to future periods, the successor will be entitled to carry forward that amount and make the necessary claims for relief where appropriate (subject to certain conditions).

For more information on the operation of the Interest Limitation Rules in Ireland (including deemed borrowing costs and total spare capacity), please see TDM Part 35D-01-01.

Italy

Legislative developments regarding the implementation of minimum taxation (Pillar Two)

On September 11, 2023, the Italian government published a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive.

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:

- *IIR / UTPR:* 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 year 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.
- *DMTT:* A DMTT would apply for financial years starting on or after December 31, 2023. According to the explanatory notes, the Italian DMTT is designed to satisfy the conditions of the QDMTT Safe Harbour guidance. As such, the DMTT would need to be imposed with respect to 100 percent of the Top-up Tax calculated for local CEs (i.e. it cannot be limited to a UPE's ownership percentage in the local CEs). Foreign covered taxes (e.g. CFC taxes) that would be allocated to Italian CEs under the regular GloBE rules would need to be excluded for Italian DMTT purposes.

- *QDMTT safe harbor*: The draft provides for a QDMTT safe harbor rule (i.e. IIR and UTPR Top-up Tax is deemed to be zero in Italy in relation to other jurisdictions that apply a QDMTT). The QDMTT safe harbor would require a QDMTT to be computed in accordance with the UPE's acceptable financial accounting standard or IFRS as adopted by the EU.
- *OECD Guidance:* The draft incorporates into the legislative text certain items of the OECD Commentary and Administrative Guidance (for example, the treatment of marketable transferable tax credits). Further elements of the the OECD Commentary and Administrative Guidance as well as the OECD Safe Harbour provisions (including the transitional Country-by-Country (CbyC) Reporting Safe Harbour and the UTPR Safe Harbour) will be implemented by a separate decree to be adopted by the Ministry of Economy and Finance.
- *Administration:* Each Constituent Entity would be required to file a GloBE Information Return within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). The draft provides for the option to identify a local group member that is the sole tax debtor, with all local group members being jointly and severally liable. It is further clarified that compensation payments between the group members for settling the top-up tax or QDMTT liability would need to be disregarded for income tax purposes. Further administrative requirements (including the filing of local tax returns as well as the submission of the GloBE Information Return) will be implemented by a separate decree.
- *Penalties:* Where the filing of the GloBE Information Return is delayed by at least three months, a penalty of EUR 100,000 may apply. Where a filing is delayed by less than three months or is deemed inaccurate, penalties from EUR 10,000 to EUR 50,000 may apply. The draft also includes reference to the transitional penalty regime for the first three years of application of the GloBE rules.

Comments on the draft legislative decree are requested by October 1, 2023.

Prior to that, Italy published a delegation law in the Official Gazette that empowers the Italian government to implement the EU Minimum Tax Directive including amendments to the Italian Controlled Foreign Company (CFC) regime with a view to reviewing the criteria for calculating the CFC tax base and coordinating with the minimum tax rules. The Italian government will be required to adopt the Pillar Two implementing decrees and accompanying measures within 24 months from the date when the legislation becomes effective (August 29, 2023).

Lithuania

Considerations regarding the implementation of minimum taxation (Pillar Two)

On September 8, 2023, the Lithuanian Ministry of Finance published a press release announcing current considerations on how to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive. Key takeaways include:

- making use of the option under the EU Directive to defer the application of the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR) until December 31, 2029;
- introduction of a Domestic Minimum Top-up Tax (DMTT) that would apply for financial years starting January 1, 2025;
- it is envisioned to launch a public consultation on draft legislation before submitting the implementation bill to the government for approval.

Clarifications on the application of the solidarity contribution on banks and credit institutions

On August 28, 2023, the Lithuanian tax authorities published guidance on the application of the temporary solidarity contribution on banks and credit institutions. Key features include:

- clarifications on the scope of the contribution by providing that the term "credit agreement" is to be understood as defined in the Lithuanian Civil Code;
- clarifications regarding the application of a special coefficient to limit the tax base to the share of deposits, funds and loans relating to Lithuanian residents.

For more information on the contribution, please refer to E-News Issue 180 and a report prepared by KPMG in Lithuania.

DAC7 transposition law amended

On August 10, 2023, Lithuania further amended the law transposing DAC7 into domestic law, which was prompted by a letter of formal notice by the European Commission finding that Lithuania had only partially implemented the DAC7 reporting rules (for previous coverage, please refer to E-News Issue 176).

To align with the Directive, the amended rules provide clarifications on certain information that must be reported by platform operators. In addition, the rules require domestic and foreign reporting platform operators to register with the Lithuanian authorities within 5 working days from the start of the platform operator's activities.

For more information on the DAC7 transposition across the EU, please refer to Euro Tax Flash Issue 503.

Malta

DAC7 guidelines updated

On August 31, 2023, the Maltese tax authorities published updated guidance on the Maltese DAC7 reporting framework for platform operators.

The amendments concern changes to the date by which a platform operator must register with the Maltese authorities. These were extended from August 31, 2023 to October 31, 2023.

For previous coverage, please refer to E-News Issue 180.

Netherlands

Responses to parliamentary questions regarding bill on the Minimum Profit Tax Act 2024 (Pillar Two)

On September 11, 2023, the Dutch Ministry of Finance issued a memorandum to the Lower House of Parliament in respect of the bill on the Minimum Profit Tax Act 2024 that was published on May 31, 2023 (for previous coverage, please see E-News Issue 178). The memorandum provides answers to questions posed by the members of the Parliament, including:

- impact of certain domestic corporate tax rules on the GloBE ETR (e.g., interest limitation rule,

withholding tax on interest and royalties, CFC rules, anti-hybrid rules, liquidation loss deduction);
- application of the de minimis exclusion when transitioning into the GloBE regime;
- application of the arm's length principle and treatment of transfer pricing mismatches;
- application of transitional CbCR Safe Harbour where CbCR reporting is not required;
- filing of GloBE Information Return and local tax return;
- application of new OECD clarifications and supplementary rules;
- potential liability of foreign group entities for top-up tax in the Netherlands.

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

Poland

Solidarity contribution for coal companies adopted

On August 21, 2023, the Polish President signed a bill providing for the introduction of a solidarity contribution on taxable surplus profits generated by companies in the coal sector. For previous coverage, please refer to E-News Issue 180.

The bill will come into effect 14 days after being published in the Official Journal.

Sweden

Legislative proposal to implement minimum taxation (Pillar Two)

On August 31, 2023, the Swedish Ministry of Finance released a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive.

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:

- A DMTT 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 year 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 draft incorporates into the legislative text the transitional Country-by-Country (CbyC) Reporting Safe Harbour agreed as part of the GloBE Implementation Framework. In addition, the explanatory notes make reference to the OECD Commentary. The elements of the February and July Administrative Guidance are not yet reflected (for example, the special allocation rules in respect of blended CFC regimes and the UTPR Safe Harbour are not included).
- Each Constituent Entity would be required to file a GloBE Information Return as well as a local tax return within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). However, the draft also provides the option to transfer the obligation to another Constituent Entity.
- If the GloBE Information Return contains serious deficiencies, a report fee between SEK 250,000 (approximately EUR 21,000) and SEK 5,000,000 (approximately EUR 420,000) may apply (in

exceptional cases also higher) in proportion to the deemed Top-up Tax. In addition, a late fee of SEK 25,000 (approximately EUR 2,100) may apply where the GloBE Information Return or the local tax return is not submitted on time.

For more information, please refer to a report (in Swedish) prepared by KPMG in Sweden.

Switzerland

Constitutional amendment empowering Swiss government to enact minimum taxation (Pillar Two)

On September 4, 2023, Switzerland published the constitutional amendment required to authorize the Swiss government to release (temporary) ordinances for the implementation of the OECD's Pillar Two Model Rule. Key takeaways include:

- the decree requires the government to adhere to the general principles as provided under the OECD's GloBE Model Rules (scope, ETR calculation, Top-up Tax calculation, minimum tax rate, Top-up Tax collection mechanisms);
- the decree allows the government to issue additional implementing rules to regulate specific circumstances of a group, the deductibility of the Top-up Tax as an expense for federal and cantonal profit taxes, the administrative procedure, penalty provisions for non-compliance in accordance with other criminal tax law and transitional aspects;
- the decree further allows the government to deviate from the general principles by declaring internationally agreed model rules and frameworks to be applicable.

The decree enters into force on January 1, 2024.

For previous coverage, please refer to E-News Issue 178.

Ukraine

Proposed windfall tax on banks

On August 28, 2023, a bill was submitted to the Ukrainian Parliament proposing the introduction of a 5 percent windfall tax on the amount of net interest income generated by banks.

The tax would apply from January 1, 2024 until December 31, 2026 in addition to the general corporate income tax, which is levied at a rate of 18 percent.

For more information, please refer to the government's explanatory notes.

Local Courts

Belgium

Belgian Constitutional Court invalidates certain DAC6 provisions for intermediaries benefiting from legal professional privilege

On July 20, 2023, the Belgian Constitutional Court (Constitutional Court) published a decision no. (111/2023) in relation to the notification requirements for intermediaries, who are subject to legal professional privilege (LLP), to notify other intermediaries of their reporting obligation under DAC6. The ruling follows the Court of Justice of the European Union (CJEU) decision in case C-694/20 (for previous coverage, please refer to Euro Tax Flash Issue 497).

The Constitutional Court confirmed the CJEU decision and held that the domestic provisions implementing Article 8ab(5) of DAC6 are invalid in so far as they require intermediaries subject to LPP to notify other intermediaries who are not their clients. This obligation is considered to infringe upon the taxpayers' right to confidentiality with their lawyers (to which they are entitled based on Article 7 of the Charter of Fundamental Rights of the European Union and article 8 of the European Convention on Human Rights).

Italy

Supreme Court decision on the applicability of domestic participation exemption for non-resident companies

On July 19, 2023, the Italian Supreme Court (Court) ruled that a non-resident company is eligible for the domestic participation exemption regime for capital gains when selling a substantial participation in an Italian company.

The plaintiff was a French company that sold its participation in an Italian company. The related gains were taxed at a rate of 13.673 percent. The company argued that, based on EU law arguments, it should have been eligible for the participation exemption (which would have exempted 95 percent of the gains from taxation).

In line with settled case-law, the Court held that resident and non-resident companies were in an objectively comparable situation regarding the risk of double taxation on capital gains. Therefore, applying a different tax regime would infringe on the freedom of establishment and the free movement of capital. The Court also held that there were no overriding public interest reasons justifying the discrimination. Moreover, in the Court's view, a tax credit in France did not fully compensate for the differential treatment under Italian domestic law.

United Kingdom

Upper Tribunal decision on unallowable purpose for loans

On August 7, 2023, the Upper Tribunal (the Court) upheld the First-tier Tribunal's decision that intra-group borrowing to fund a share acquisition had an unallowable purpose.

The plaintiff was a UK holding company, member of a US-parented group, that was used as an acquisition vehicle to acquire another US-headed group. The acquisition was part-funded by intra group borrowing, at an arm's length interest rate. The plaintiff ought to apply debits in respect of the loan interest and surrender the consequent losses to other group companies by way of group relief – reducing their UK corporation tax liabilities. The HMRC denied the deduction of the related interest expenses on the grounds that the loan was contracted for an unallowable purpose.

Under UK tax law, the provisions on unallowable purposes apply when a company becomes a party to a loan relationship and where its main or one of its main purposes for being a party to the loan relationship is to secure a tax advantage, either for itself or someone else. In such cases the debtor is not entitled to deduct interest expenses, but only to the extent that the interest is it is attributable to the unallowable purpose on a just and reasonable basis

The Upper Tribunal recalled its settled case-law based on which whether there is an unallowable purpose needs to be determined on a full consideration of all facts and circumstances. In the Upper Tribunal's view, the arm's length nature of the borrowings is relevant, but not determinative. The Court then noted that the real decision makers were at plaintiff's parent company level and that a main purpose of the loan relationship was to secure a tax advantage for the UK members of the group. As a result, the Court dismissed the plaintiff's appeal.

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

KPMG Insights

EU Financial Services Tax Perspectives

On September 27, 2023, KPMG will hold its next EU financial services tax perspectives session as part of the Future 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:

- Update on European tax legislation enactment as it pertains to Financial Services groups including Pillar Two implementation survey and proposed Italian "windfall" bank tax.
- EU FASTER proposal, busting the myths – practical issues and challenges (including Beneficial Ownership concerns).
- Detail and insight on the expected EU BEFIT proposal to be released in September 2023.

Please access the event page to register.

EU tax perspectives session

On October 4, 2023, KPMG will hold its next EU tax perspectives session as part of the Future of Tax & Legal webcast series.

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 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)
- Business in Europe: Framework for Income Taxation (BEFIT): Commission’s proposal and the way forward
- Unshell (ATAD 3): state of discussions and what can be expected in the future
- Navigating the EU Public Country-by-Country Reporting Directive: implementation across the EU and practical insights
- Looking ahead: state of play and updates on other EU tax initiatives.

Please access the event page to register.

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