E-News from KPMG's EU Tax Centre

EU Institutions

OECD and other International Institutions

Local Law and Regulations

Local Courts

KPMG Insights

E-News from the EU Tax Centre

Issue 191 – February 28, 2024

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:** Member States issue formal opinions on the BEFIT Directive proposal
- **OECD:** Report on Amount B under Pillar One
- **OECD:** OECD/G20 Inclusive Framework Agreement on BEPS 2.0 – digital services taxes update
- **Greece:** Legislative proposal to implement minimum taxation under Pillar Two
- **Ireland:** Government publishes responses to public consultation on introduction of a participation exemption
- **Malta:** Legislation to implement minimum taxation under Pillar Two
- **Poland:** Bill to transpose DAC7 into domestic legislation published
- **Saudi Arabia:** Tax Incentive Rules for Regional headquarters published
- **South Africa:** Draft legislation to implement minimum taxation under Pillar Two
- **Belgium (court decision):** Supreme Court rules that a taxpayer's involvement in every legal act is not required when applying the local GAAR

EU Institutions

Council of the EU

February 2024 update of the EU list of non-cooperative jurisdictions

On February 20, 2024, the General Affairs Council adopted conclusions on the EU list of non-cooperative jurisdictions (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II – so called "grey list").

The Council agreed to remove the Bahamas, and Turks and Caicos Islands from the list of non-cooperative jurisdictions (Annex I). In addition, Belize and the Seychelles were moved from Annex I to Annex II.

Following this latest revision, Annex I of the EU list of non-cooperative jurisdictions therefore includes the following twelve jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

In addition, the Council agreed to remove six jurisdictions from Annex II (the grey list), as they had fulfilled their previous commitments (Albania, Aruba, Botswana, Dominica, Israel, and Hong Kong (SAR), China).

The grey list now includes the following ten jurisdictions: Armenia, Belize, the British Virgin Islands, Costa Rica, Curaçao, Eswatini, Malaysia, the Seychelles, Türkiye and Vietnam.

For more information, please refer to Euro Tax Flash Issue 538.

European Commission

Member States issue formal opinions on the BEFIT Directive proposal

In February 2024, several EU Member States submitted reasoned opinions to the European Commission (EC) or adopted statements raising concerns with respect to the BEFIT proposal. Key takeaways include:

- *Czech Republic*: The Czech Parliament adopted a reasoned opinion which raised various concerns linked to the principles of subsidiarity and proportionality. In particular, the opinion highlighted the Member States' competence in the field of direct taxation, and that breaching such principle can not be defended by the EC on that grounds that the political situation was changed by the agreement reached within the inclusive OECD/G20 framework. In addition, the Czech Parliament took the view that the BEFIT proposal would increase the administrative burden both for taxpayers and for tax administrations.
- *Ireland*: The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach (the Joint Committee) adopted a reasoned opinion asserting that the BEFIT proposal does not comply with the principle of subsidiarity. The opinion highlighted that proposals have to offer benefits that outweigh the cost and complexity of introducing new rules. The opinion also noted that the introduction of new rules has to be balanced with the need of preserving each Member State's authority over taxation and its tax base. The opinion reaffirmed Ireland's position that matters of direct taxation are a Member State competence under the EU Treaties. The opinion also noted that tax harmonization is contrary to that principle. The Joint Committee took the view that tax competition is an important policy tool, particularly for smaller Member States, as long as it is fair

and based on substance. Finally, the Joint Committee warned that the BEFIT proposal might add complexity, especially with the ongoing implementation of Pillar Two.

- *Germany*: The German Federal Council (Bundesrat) adopted a statement expressing concerns that the BEFIT proposal would not achieve the objectives of the initiative. The Bundesrat argued against its proposed design (mandatory rules for certain companies and optional for others). The statement highlighted that this would force companies and tax authorities to deal with two profit determination systems simultaneously, increasing compliance and creating administrative burden. In addition, the Bundesrat took the view that the rules on offsetting cross-border losses were not necessary. Finally, the Bundesrat urged the Federal Government to ensure in negotiations that the BEFIT proposal would not cause a tax base shift to the detriment of Germany.
- *Malta*: The House of Representatives of Malta adopted a reasoned opinion which raised similar concerns on the principle of subsidiarity, as previously expressed regarding the Common Consolidated Corporate Tax Base (CCCTB) proposal. The opinion questioned whether the EC had provided enough information for national parliaments to fully assess the proposal's impact. The opinion also noted that the mere finding of disparities between national laws was not sufficient to justify a harmonization in direct taxation. It further highlighted a lack of clarity regarding where these differences exist and why they necessitate EU intervention. The House of Representatives also noted that existing EU Directives - i.e., the Anti-Tax Avoidance Directive (ATAD), the Directive on Administrative Cooperation (DAC), and the EU Minimum Tax Directive, already tackle tax avoidance and base erosion and profit shifting, and questioned the need for further measures.
- *Poland*: The EU Affairs Committee of the Polish Senate (the Committee) adopted a reasoned opinion on the BEFIT proposal. While acknowledging the need to simplify and reduce administrative procedures for multinationals active on the EU internal market, the Committee expressed concerns about the proposal's impact on Member States' sovereignty in the field of direct taxation. The opinion also noted the absence of an impact assessment and warned about potential unfavorable profit and loss allocation among Member States due to the proposed cross-border loss relief mechanism. The Committee called for an in-depth analysis on how to address the above concerns.
- *Sweden:* The Swedish Parliament (Riksdag) adopted a reasoned opinion expressing the view that the BEFIT proposal contradicted the subsidiarity principle and exceeded what was necessary to achieve its objectives. The opinion emphasized the importance of tax sovereignty in direct taxation and that it was for Member States to safeguard welfare by levying and using tax revenues in an appropriate way. The opinion also highlighted the need to balance harmonized tax rules with Member States' competence to introduce and to maintain their own national rules. The Parliament also noted that existing Directives – i.e., ATAD, are already addressing the stated objective of combating tax avoidance and tax evasion.

The Netherlands and Finland have previously raised similar concerns. For more details, please refer to ETF Issue 532.

European Parliament

FISC Subcommittee on tax matters held discussion on tax avoidance and tax obstacles

On February 13, 2024, the Subcommittee on Tax Matters of the European Parliament (FISC Subcommittee) held two hearings with experts to discuss tax obstacles within the internal market and good practices in the fight against tax avoidance.

The first hearing focused on a report commissioned by the European Council on the future of the EU internal market. The report is to be finalized by April. During the hearing, Mr. Enrico Letta – the former Prime Minister of Italy and currently mandated to prepare the report, acknowledged three key challenges:

- weak enforcement of EU Directives leading to fragmentation;
- concerns regarding low-tax rates and incentives enacted by Member States;
- challenges for small and medium-sized enterprises (SMEs) facing 27 tax systems.

The second hearing was focused on a study regarding good tax practices in the fight against tax avoidance. The study was presented by Mr. Arjan Lejour, a professor of taxation and public finance at the Tilburg University in the Netherlands. The study explored how Foreign Direct Investment (FDI) in tax havens contributes to international corporate tax avoidance. As such, the study noted that despite tax havens hosting 40-45 percent of global FDI, their share in the world economy is only around 4.5 percent. The study also argued that certain EU Members could be considered tax havens based on their specific policy options (and not due to low-tax rates, as in the case of traditional tax havens).

The report mentioned possible solutions to reduce the conduit function of EU tax havens – i.e., new EU policies like the BEFIT proposal or the draft Unshell Directive. Furthermore, Mr. Lejour noted that increased tax transparency through Public Country-by-Country Reporting, as well as the EU Minimum Tax Directive, are likely to contribute to reducing tax avoidance.

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

OECD and other International Institutions and Research Centers

Organisation for Economic Cooperation and Development – OECD

Report on Amount B under Pillar One

On February 19, 2024, the OECD/G20 Inclusive Framework released a report and reader guide on Amount B—an optional simplified and streamlined approach to applying the arm's length principle (ALP) to baseline marketing and distribution activities. The guidance gives jurisdictions the option to apply the simplified and streamlined approach from January 2025, either as a taxpayer safe harbour or as a mandatory rule. The report is structured into eight chapters, as follows:

- *Considerations regarding the application of the simplified and streamlined approach:* explains how jurisdictions will implement Amount B, and that jurisdictions that do not adopt it will not be required to respect its application in other jurisdictions.
- *Transactions in scope:* defines the transactions that will be in-scope of Amount B (the "Qualifying Transactions"). The scope is the wholesale distribution of tangible goods. Distribution of digital goods, commodities, or services is specifically excluded. The scoping rules also provide that distributors should not own unique and valuable intangibles or assume certain economically significant risks. There is no size threshold linked to the revenue of a group or entity, for example, Amount B is not limited to groups with more than EUR 750 million in revenue.

- *Application of the most appropriate method principle to in-scope transactions:* provides that Qualifying Transactions will be priced using the Transactional Net Margin Method (TNMM) under the simplified and streamlined approach (referred to in this summary as "the Amount B approach"), unless an internal comparable uncontrolled price (CUP) can be identified.
- *Determining the return under the simplified and streamlined approach:* sets out how to price the returns due to in-scope distributors based on a standardized pricing matrix, and also includes a return on operating expenses crosscheck and a mechanism to adjust the returns for jurisdictions with low sovereign credit ratings and limited benchmarking data availability in the commercial database used by the OECD.
- *Documentation:* sets out the documentation requirements for businesses applying Amount B.
- *Transitional issues:* address scenarios in which business restructuring will cause a distributor to fall in or out of scope of Amount B.
- *Tax certainty and elimination of double taxation:* governs the relationship between counterparty jurisdictions, when one jurisdiction seeks to apply Amount B, to ensure tax certainty and the elimination of double taxation.

The report also includes two appendices providing updates on the benchmarking search criteria used to set the Amount B Pricing Matrix and seven worked examples illustrating the application of Amount B.

The report has been incorporated into the OECD Transfer Pricing Guidelines as an Annex to Chapter IV (Administrative approaches to avoiding and resolving transfer pricing disputes) and provides an optional simplification that jurisdictions can choose to apply to in-scope distributors, sales agents or commissionaires operating in their jurisdiction for fiscal years commencing on or after January 1, 2025.

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

Progress report on harmful tax practices

On February 6, 2024, the OECD published new conclusions reached by the Forum on Harmful Tax Practices (FHTP), as part of their on-going review of the implementation of the BEPS Action 5 minimum standard on harmful tax practices. The update includes the following assessments:

- Albania's industries incentives regime for software production / development was abolished with a grandfathering period in accordance with the FHTP timelines.
- Armenia's regime for information technology projects was abolished without providing for a grandfathering period.
- Hong Kong's profits tax concessions for family offices was concluded to be not harmful. The new regime was considered as being designed in compliance with FHTP standards.
- United Arab Emirates' free zones regime was found as not harmful and was also considered as a new regime designed in compliance with FHTP standards.

According to the release, the number of regimes reviewed by the FHTP has now reached 322 – 40 percent of which have been abolished.

Finally, as part of its annual monitoring of substantial activities requirements for no or only nominal tax jurisdictions, the FHTP addressed recommendations for substantial improvement to one jurisdiction (i.e.,

Anguilla) and identified four jurisdictions which have areas that require a focused monitoring (i.e., Anguilla, the Bahamas, Barbados, and the Turks and Caicos Islands).

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

OECD/G20 Inclusive Framework Agreement on BEPS 2.0 – digital services taxes update

On February 15, 2024, Austria, France, Italy, Spain, the United Kingdom and the United States released a joint statement extending the applicability of the compromise on a transitional approach to existing unilateral measures during the interim period before Pillar One enters into force. The statement extends the validity of the previous compromise agreement until June 30, 2024.

The agreement allows the five European jurisdictions above to maintain their digital services taxes (DSTs) until Pillar One enters into force. Nevertheless, in case DST liabilities accrued exceed an amount equivalent to the tax due under Pillar One in the first full year of Pillar One implementation, the excess will be creditable against certain future Pillar One "*Amount A*" liabilities. In return, the US has terminated its trade retaliation measures in relation to the DSTs listed above. The agreement was originally due to expire on the earlier of the date the Pillar One Multilateral Convention (MLC) comes into force or December 31, 2023.

In a statement dated December 18, 2023, the Inclusive Framework indicated that they remain committed to finalize the text of the MLC by the end of March 2024, with a view to holding a signing ceremony by the end of June 2024.

For previous coverage, please refer to E-News Issue 141.

Local Law and Regulations

France

Revised list of non-cooperative jurisdictions issued

On February 17, 2024, 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 17, 2023 (please see ETF Issue 526), but applies additional local tax good governance criteria.

Accordingly, the French list includes the following jurisdictions and territories: American Samoa, American Virgin Islands, Anguilla, Antigua and Barbuda, Bahamas, Belize, Fiji, Guam, Palau, Panama, Russia, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos Islands, 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.

Greece

Legislative proposal to implement minimum taxation under Pillar Two

On February 23, 2024, the Greek Ministry of Finance launched a public consultation on a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive.

The minimum tax rules would closely follow the text of the EU Directive. Key features include:

- *IIR/UTPR:* The income inclusion rule (IIR) would be applicable for fiscal years starting after December 31, 2023. The undertaxed profits rule (UTPR) would generally be applicable one year later, i.e., for financial year starting after December 31, 2024, except where the ultimate parent entity (UPE) of an MNE group is located in a Member State that has made an election for a delayed application of the IIR and UTPR, in which case the UTRP will be applicable for fiscal years starting after December 31, 2023. The UTPR top-up tax would be collected as an additional top-up tax.
- *DMTT:* A domestic minimum top-up tax (DMTT) would apply for financial years starting after December 31, 2023. The DMTT would generally follow the regular GloBE rules for calculating the ETR and Top-up Tax liability. However, the DMTT would need to be imposed with respect to 100 percent of the Top-up Tax calculated for local Constituent Entities (i.e., it cannot be limited to the UPE's ownership percentage in the local Constituent Entities). In line with OECD Guidance on qualified DMTTs, foreign covered taxes (e.g., CFC taxes) that would be allocated to local constituent entities under the regular GloBE rules, would also need to be excluded for Greek DMTT purposes. In addition, the draft clarifies that the DMTT computation would need to be based on IFRS or local GAAP subject to the conditions outlined in the July Administrative Guidance.
- *Safe harbors:* The draft incorporates into the legislative text the agreed transitional Country by Country Reporting Safe Harbour and the transitional UTPR Safe Harbour. In addition, the draft provides for a QDMTT safe harbor rule with reference to the July Administrative Guidance (i.e., IIR and UTPR Top-up Tax are deemed to be zero in Greece in relation to other jurisdictions that apply a qualified DMTT, subject to conditions).
- *Administration:* The GIR would need to be filed within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). In addition, a supplementary local tax return would need to be filed within one month following the submission deadline for the GIR (IIR/UTPR). The payment of top-up tax would be due on month following the submission deadline for the supplementary local tax return.

The consultation period ended on March 6, 2024.

DAC7 clarifications issued

On January 26, 2024, the Independent Authority of Public Revenue (AADE) in Greece issued a decision providing clarifications on the Greek implementation law of DAC7. Key clarifications include:

- *Competent authorities:* certain departments of the AADE have been appointed as competent authority for, amongst others, receiving information reported under DAC7 and for carrying out the exchange of information with other Member States.
- *Information supporting exclusion:* platform operators requesting an exclusion from the DAC7 reporting obligation shall provide documentation supporting their eligibility, i.e., absence of reportable sellers, with respect to the next reporting period. Additionally, sufficient evidence

needs to be provided in case a platform operator requests to be exempt on the basis that the same information has already been provided by another platform operator.

- *Notification:* an in-scope platform operator selecting another Member State to comply with the DAC7 reporting obligations must notify the Greek competent authority accordingly. This must be done in writing and within one month from the date the reporting requirements are met.
- *Nil report:* a nil report must be filed in case there are no reportable sellers present for the respective platform operator to report on.
- *OECD commentaries:* the OECD commentaries on the Model Rules for Reporting Platform Operators are considered as interpretative source for the application of the Greek DAC7 transposition.
- *Deadline extension:* the first reporting deadline has been extended to February 26, 2024, instead of January 31, 2024.

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

Hungary

DAC7 Guidance published

On January 24, 2024, the Hungarian tax authorities published guidance providing clarifications on the Hungarian DAC7 implementation law (i.e., clarifications on the term platform operator, notification of changes in the reported data, registration procedure and data provision). More specifically, the guidance provides clarifications on, for example:

- *Reference to EU Directive*: The guidance makes reference to several Directive provisions (i.e., defined terms such as (reporting) platform operator, seller and relevant activities).
- *Registration:* on the obligation that platform operators must register within 15 days of fulfilling the reporting requirements. Also, changes to the reported data must be reported within 15 days from the day the change in circumstances occurred.
- *Nil report:* a report must also be filed in case there are no reportable sellers present for the respective platform operator to report on.
- *Sanctions:* fines with respect to failures to notify, which can be imposed up to the amount of HUF 2 million (approximately EUR 5,100). A fine may be waived in case the platform operator has acted as it is normally expected to in the given situation.

For more information on DAC7, please refer to Euro Tax Flash Issue 532.

Isle of Man

2024 budget includes proposed changes to corporate income tax

On February 20, 2024, the Treasury Minister of the Isle of Man presented the Budget 2024, which includes several amendments to the corporate income tax regime ("zero/ten" system – i.e. standard corporate income tax rate of zero, with the exception of certain sectors where the rate is set at 10 percent). Key takeaways include:

- For the tax year 2024/2025 only, the tax rate applicable to profits from banking businesses and from “large” retail operations will increase from 10 percent to 15 percent. The measure is intended to apply only in situations where these profits would otherwise be subject to a top-up tax under Pillar 2.
- Profits derived from petroleum extraction activities will be subject to a special tax rate of 20 percent.

The Treasury Minister also made a reference in his Budget speech to a newly released document 2024-26 Tax Strategy, which will be presented to the Parliament next month. Amongst others, the document sets out a clear intention to retain the zero/ten system as well as a commitment to not introducing any new taxes on capital gains or wealth. For more details, please refer to a report prepared by KPMG in the Isle of Man.

Ireland

Government publishes responses to public consultation on introduction of a participation exemption

On February 7, 2024, the Irish government published responses to its public consultation on the introduction of a participation exemption for foreign dividends income in the Irish corporate tax system.

The public consultation was open from September 14to December 13, 2023. The Irish government will consider the responses with a view to introduce the participation exemption as from January 1, 2025 (for more details, please refer to the Irish government’s roadmap). KPMG in Ireland also responded to the public consultation.

For previous coverage, please refer to E-News Issue 184.

Malta

Legislation to implement minimum taxation under Pillar Two

On February 20, 2024, the regulation to implement the EU Minimum Tax Directive was published in the Official Gazette. Key takeaways include:

- Malta is making use of the option to defer the application of the Income Inclusion Rule (IIR) and UTPR for six years, with application start date of the IIR and UTPR on or after December 31, 2029 (in accordance with Article 50 of the EU Directive).
- Malta does not transpose the entire EU Directive at this stage but only those administrative aspects that are required for the application of Article 50. As such, the regulation includes an obligation for Maltese UPEs to designate a foreign constituent entity that would be required to submit the GloBE Information Return.
- Provisions on IIR and UTPR are not included in the regulation. In addition, it has not been clarified whether the government plans to also apply a DMTT at a later stage.

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

Netherlands

Public consultation on draft decree on comparison of foreign legal forms

On February 5, 2024, a consultation on a draft decree on the comparison of foreign legal forms was launched. This draft decree is a part of "The Legal Forms Tax Qualification Policy Act," included in the 2024 Tax Plan package and set to take effect on January 1, 2025.

In general, the Legal Forms Tax Qualification Policy Act in the Netherlands aims to align the country internationally and eliminate qualification differences for legal forms. The process for determining qualification is outlined as follows:

- If a foreign legal form is comparable to a Dutch legal form, it follows the tax qualification of the comparable Dutch legal form.
- If there's no comparable Dutch legal form:
    a. If established in the Netherlands, it is considered non-transparent and independently taxable (fixed method).
    b. If not established in the Netherlands, the qualification in the country of establishment applies (symmetrical method).

Compared to the existing legislation, the new policy is based on a more substantive assessment, considering the foreign legislator's intent with the legal form and its position in foreign law. However, in certain cases, this new policy may result in a qualification comparable to the one under the current rules.

The draft decree, subject to the consultation, contains two main features for the determination of comparability:

- A new assessment framework mainly based on the hallmarks of various Dutch legal forms (e.g., whether there is capital divided into shares, the liability members/partners have toward third parties, and the management of the legal form).
- A list of legal forms that qualify different foreign legal forms as comparable or non-comparable with Dutch legal forms. This list serves as primary guidance, in contrast to the current policy, which contains a similar list that is merely indicative.

The consultation will close on March 18, 2024. Therefore, the draft decree might still be subject to changes.

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

Poland

Bill to transpose DAC7 into domestic legislation published

On February 13, 2024, the Polish Council of Ministers published a draft bill to transpose DAC7 into domestic law. Key takeaways include:

- The provisions of the Polish DAC7 draft bill are closely aligned with the text of the Directive.

- Operators of digital platforms are required to collect, verify, and report information on sellers engaged in commercial activities such as the rental of property, personal services, sales of goods, and rental of transport modes.
- The reporting obligation is set to commence by December 31, 2024, for sellers registered on the platforms as of the law's effective date.
- The requirement also extends to entities identified as reporting platform operators from January 1, 2023, until the day before the law becomes effective.
- Non-compliance with the reporting obligations could result in financial penalties up to PLN 1 million (approximately EUR 230,000).

The draft DAC7 bill is expected to be adopted in the first quarter of 2024 and the rules would enter into force starting July 1, 2024.

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

Saudi Arabia

Tax Incentive Rules for Regional headquarters published

On February 16, 2024, the ministerial resolution outlining new tax regulations for regional headquarters (RHQ) was published in the Official Gazette of the Kingdom of Saudi Arabia, and entered into force. Tax incentives available for eligible RHQs include:

- *Zero percent corporate income tax:* applicable to eligible income.
- *Zero percent withholding tax:* applicable to dividend payments to non-residents, related persons, and third-party service providers necessary for RHQ activities.

To qualify for these incentives, RHQ entities must meet specific economic substance requirements:

- Possession of a valid license for designated activities.
- Restriction of activities to those within the licensed scope.
- Adequate premises in Saudi Arabia suitable for business activities.
- Directing and managing activities within Saudi Arabia, including holding strategic board meetings.
- Incurring operational expenditures in Saudi Arabia proportional to RHQ activities.
- Generating revenues from eligible activities in Saudi Arabia.
- Presence of at least one director residing in Saudi Arabia.
- Ensuring RHQ employees possess the required knowledge and expertise.

The tax incentives are applicable to qualifying activities for a renewable 30-year period from the RHQ license issuance date. However, the incentives will terminate earlier if the entity no longer qualifies as an RHQ for any reason.

RHQs benefiting from these new rules must still file annual tax returns in accordance with the requirements of the corporate income tax law. In addition, in-scope RHQs must submit an annual report to ensure and

validate compliance with the economic substance requirements. In case of non-compliance with the new tax rules, the RHQ can be fined up to SAR 400,000 (approximately EUR 98,500) and the applicability of tax incentives can be suspended if the non-compliance persists after a second fine.

Sierra Leone

Finance Act 2024 including several direct tax measures enacted

On January 10, 2024, the Finance Act 2024, was enacted in Sierra Leone by presidential assent and introduces several direct tax measures that may impact businesses. Key takeaways include:

- *Digital products and services taxation:* The act mandates taxation on income derived from the provision of digital products and services by both resident and non-resident entities at a rate of 1.5 percent on the turnover from digital and electronic transactions.
- *Withholding tax adjustments:* The act increases withholding tax rates from 10 percent to 15 percent for dividends, management/professional fees, and lottery winnings for both residents and non-residents.
- *Minimum tax.* The act reduces the minimum tax from 3 percent to 2 percent.

The Finance Act is deemed to come into effect retroactively from January 1, 2024.

Slovenia

Legislative Act amending corporate tax law published

On February 9, 2024, a bill amending the Slovenian corporate income tax rules was published in the Official Gazette (for previous coverage, please refer to E-News Issue 186). Key measures include:

- *Permanent establishments (PE):* the bill introduces provisions to prevent circumventing the PE status, including addressing commissionaire agreements and reducing the construction site time threshold from 12 to 6 months.
- *Interest deduction limitation:* the bill limits the deductibility of excess borrowing costs to 30 percent of EBITDA or EUR 1 million (in line with Anti-Tax Avoidance Directive).

The law entered into force fifteen days after its publication and became retroactively applicable from January 1, 2024.

South Africa

Draft legislation to implement minimum taxation under Pillar Two

On February 21, 2024, the South African Government published the draft Global Minimum Tax Bill and the draft Global Minimum Tax Administration Bill to implement the OECD's Pillar Two Model Rules. Key features include:

- *General:* The bill only includes basic provisions regarding the scope, top-up tax collection methods as well as filing and administrative procedures. Otherwise, the draft bills rely on a direct

reference to the OECD Model Rules, OECD Commentary and Administrative Guidance (including Safe Harbour provisions).

- *IIR / UTPR:* While the QDMTT and IIR would generally apply (retroactively) for financial years starting on or after January 1, 2024, UTPR provisions have not been included in the draft bill.
- *DMTT*: The draft bill makes reference to the OECD Model Rules for the purpose of definition of the domestic minimum top-up tax (DMTT).
- *Administration:* Each Constituent Entity would be required to file a GloBE Information Return (GIR) within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year), subject to certain exceptions. An option is provided to transfer the obligation to file the GIR to another Constituent Entity. The Top-Up Tax must be paid on or before the due date for submitting the GIR.
- *Penalties:* Penalties of ZAR 50,000 (approximately EUR 3,400) shall apply where taxpayers fail to comply with the GIR filing obligations.

Public comments on both drafts are requested by March 31, 2024.

United Kingdom

Amendments to the R&D tax reliefs and consultation on corresponding draft guidance

On February 5, 2024, the Finance Bill 2023-2024 became subject to the report stage as well as to the third reading in the House of Commons. Government amendments were passed in respect to tax reliefs for the creative industries as well as a new clause to introduce the new investment exemption for the electricity generator levy. Also, government amendments were made in respect to the newly merged Research and Development (R&D) tax relief scheme.

For accounting periods beginning on or after April 1, 2024, the merged R&D tax relief scheme foresees, amongst others, an above the line credit for claiming qualified R&D costs, including contracted-out R&D. Also, restrictions on the tax reliefs for overseas R&D expenditures and more generous Pay As You Earn (PAYE) tax caps and national insurance rate caps are part of the new scheme.

Currently, there are two separate R&D tax relief schemes in place, i.e., research and development expenditure credit (“RDEC”) and the small or medium enterprise R&D relief. The merged scheme aims at ensuring the competitiveness of the UK as research location and to maintain the suitability of the R&D tax reliefs. The recent amendments concern the R&D intensity ratio (i.e., the ratio between a companies’ qualifying R&D expenditures and the total expenditures in the same period) aiming to prevent double counting and a transitional provision to prevent dual claims or gaps in the entitlement for credits.

The Finance Bill 2023-2024 has now moved to the House of Lords, where, however, no further changes can be made since the bill constitutes a ‘Money Bill’. For UK GAAP and IFRS purposes, this means that the bill is to be considered substantively enacted.

For more information on the Finance Bill 2023-2024, please refer to E-News Issue 187.

On February 9, 2024, the HMRC launched a consultation on the draft guidance to the changes to the R&D tax reliefs.

The draft guidance on R&D tax reliefs, referring to what has been outlined above, includes:

- *Contractor payments and externally provided workers*: The deductibility of contractor payments for R&D will be restricted by taking account of the location of the activity. In this respect, only under certain conditions contractor payments for activities conducted outside of the UK can be subject to a tax relief. Also, the deductibility of payments for externally provided workers is restricted where the activity takes place overseas. In cases where the activity must necessarily take place abroad, an exception to this rule might apply.
- *Contracted-out R&D*: New rules regarding contracted-out R&D foresee tax reliefs for a customer, to whom a R&D related project was assigned, in case s/he intended, or contemplated this sort of R&D would be done. Such reliefs may be granted for entire commercial projects, including R&D and other activities, entire R&D projects, and certain aspects of R&D projects.

The consultation on the draft guidance runs until March 1, 2024, while the full guidance is expected to be published later this year.

For more information on the status of the Finance Bill 2023-2024, please refer to a report prepared by KPMG in the UK.

Ukraine

Release of the Tax Service on CFC reporting

On February 6, 2024, the State Tax Service of Ukraine issued a release on the required reporting of controlled foreign companies (CFC). The release is overall a duplication of the major provisions of the Tax Code of Ukraine, which are important for the CFC reporting campaign.

The Tax Service notes that the first reporting (tax) year for submission of the CFC report is FY 2022 (if the reporting year does not correspond with a calendar year – the reporting period starting in 2022). The CFC report must be submitted simultaneously with the annual tax return on property and income (for individuals) until May 1, 2024, or with the CIT declaration (for legal entities) until March 1, 2024[1].

The CFC reports must be accompanied by the duly certified copies of the financial statements of the CFCs.

In case the legal entity or an individual failed to submit the CFC report for FY 2022, reports may be submitted simultaneously for two years: FY 2022 and FY 2023, which is a one-time option for the first-time introduction of the CFC rules in Ukraine.

The fines for not submitting the CFC report amount for UAH 302,800 (in 2024) which is approximately EUR 7,300, for the late submission of the CFC report – up to UAH 151,400 (in 2024) which is approximately EUR 3,650.

It is noted that for FY 2022 and FY 2023 the penalties for violating the requirements of the Tax Code of Ukraine connected with determination and calculation of the CFC's profit are not applied.

[1] In Ukraine the CFC rules and reporting obligations apply both to legal entities and individuals.

Zimbabwe

Finance Act 2023 introduces domestic minimum Top-up Tax

On December 29, 2023, the Finance Act 2023 (the Act) was published in the Official Gazette of Zimbabwe and applies with effect from January 1, 2024. The Act introduces a domestic minimum top-up tax (DMTT) at a minimum corporate income tax rate of 15 percent.

Local Courts

Belgium

Supreme Court rules that a taxpayer's involvement in every legal act is not required when applying the local GAAR

On February 6, 2024, the Belgian Supreme Court (the Supreme Court) issued a decision in a case concerning the applicability the local general anti-abuse provision (GAAR) (case no. F.23.0008.N).

The case concerned an individual, who sold his shares in a company that indirectly held significant reserves. The resulting capital gains were not taxable in the hands of the individual. Subsequently, the purchasing company undertook a series of complex financial transactions, which resulted in a tax-free payment of the reserves to the seller. If the reserves had been distributed directly to the individual, the income would have represented a taxable dividend. Based on these facts, the Belgian tax authorities considered that the series of transactions represented an abuse of law and assessed additional individual income tax liabilities.

The Supreme Court rejected the taxpayer's plea that the construction was not abusive since he was not involved in all stages (or legal acts) of these transactions. Instead, the Supreme Court upheld the Court of Appeal's decision, confirming that the anti-abuse provision does not necessitate the taxpayer's direct involvement in all legal acts or stages of a transaction, as long as there is a unified intention behind the actions.

The Supreme Court also clarified that if such unity exists, there is no requirement to investigate whether each separate transaction represents abuse. This enables the tax authorities to reclassify a sequence of transactions as a taxable event, such as a dividend distribution, whilst leaving the legal aspects (e.g., transfer or property rights) of the transactions unchanged.

Czech Republic

Court judgments on direct link between expenses and income

Two Czech courts have recently issued judgements concerning a domestic rule limiting the deductibility of expenses. Under Czech law, otherwise non-deductible expenses can be considered deductible up to the amount of the related taxable income. The same rule also allows income to be treated as non-taxable if it is related to non-deductible expenses.

The Municipal Court in Prague (the Municipal Court) issued a judgment with respect to the rule above (case 3 Af 4/2020 48). The plaintiff was a company operating in the pharmaceutical distribution sector. The plaintiff's pricing model consisted of the sum of its direct and indirect operating expenses plus a margin of five percent. The plaintiff treated expenses typically considered as non-deductible (such as entertainment costs, non-deductible gifts) as deductible for corporate income tax purposes on the grounds that these expenses were directly included in the calculation of its income.

In its judgement, the Municipal Court took the view that the existence of a direct link between income and expenses cannot be inferred from a direct inclusion in the pricing model. Rather, the Municipal Court focused on whether the expense in question could have influenced the amount of income not only by being incurred and recharged to other entities, but also by contributing to the generation of income in a way other than solely by automatically increasing it. In this respect, the Municipal Court noted that it is necessary to establish that the expenses incurred actually benefit the customer and not only the company itself. Consequently, the Municipal Court rejected the deductibility of the expenses under dispute.

On February 1, 2024, the Supreme Administrative Court (Supreme Court) issued a judgment for the mirror scenario, i.e., income which is considered non-taxable on the basis that it relates to non-deductible expenses (case 10 Afs 221/2022 - 70). In this case, the plaintiff was a company, which incurred non-deductible interest expenses related to issued bonds (non-deductible as they failed the thin capitalization test). At the same time, the company also derived interest income from a loan agreement. The company took the view that there was an immediate link between the bonds and the loan agreement and therefore also between the related interest. Based on these grounds, the company argued that the interest income was non-taxable.

However, the Supreme Court disagreed with this approach. In the Supreme Court's view, although interest is an accessory to a receivable, that does not necessarily mean that a direct link between receivables will always lead to a direct link between their interest. In the Supreme Court's view, that relationship must always be examined individually. The Supreme Court noted that it is not appropriate to assess the direct link solely based on whether the income and expense arise from the same legal title without considering the other circumstances of the case. The Supreme Court also observed that in assessing the direct link, it is always relevant to consider whether the taxpayer would have received the income without incurring the non-deductible expense. In doing so, the purpose of the income and expenses, the motives behind their creation, and their interdependence or interrelatedness may be considered.

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

United Kingdom

Upper Tribunal ruling on procedural aspects related to withholding tax claims made based on EU-law arguments'

On January 25, 2024, the UK Upper Tribunal (UT) rendered its decision in a case concerning procedural issues arising with respect to claims for relief and claims for repayment of overpaid dividend withholding tax covering accounting periods between 1991 and 2010. The Court of Justice of the EU already established in the decisions issued in FII Group Litigation 1 (C-446/04) and FII Group Litigation 2 (C-35/11) that the UK withholding tax rules applicable at that time were in breach of EU law.

Various questions were raised as part of an appeal before the Upper Tribunal, involving numerous taxpayers.

The appeal followed the December 2021 ruling of the First-Tier Tribunal (FTT), which predominantly favored the taxpayers on issues such as procedural aspects for the recovery of withholding tax levied in breach of EU law, the extended time limit for double tax relief claims, tax return amendments performed after an HMRC enquiry had already been opened , and the interaction between double tax relief and the rules for offsetting management expenses against profit chargeable to corporate income tax.

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

KPMG Insights

Implementation of Pillar Two – State of play and observations on domestic implementation

On February 22, 2024, a panel of KPMG tax specialists discussed their observations on local implementation, practical tax and accounting considerations that in-scope groups should keep in mind when preparing for compliance with Pillar Two, as well as what more we can expected from the OECD Inclusive Framework going forward. For more details on that topic, please refer to KPMG's dedicated Pillar Two State of Play tracker.

Pillar Two is happening. More than 30 jurisdictions around the world have either implemented the Global Anti-Base Erosion (GloBE) rules or have published draft legislation, with more expected to follow in 2024. While implementing legislation generally closely follows the OECD Model Rules, Commentary and subsequent Administrative Guidance, important variations arise with respect to:

- the timing of application of the three charging mechanisms: Domestic Minimum Top-up Tax (DMTT), Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UTPR);
- whether jurisdictions opt to implement a DMTT, the timing of its application, the accounting standard the DMTT is based on, and the related administrative details (filing, allocation of liability, etc.);
- the extent to which OECD Administrative Guidance is reflected in domestic legislation; and
- administration, including filling requirements and deadlines, other than those related to the GloBE Information Return.

For a review of the session, please access the event page.

Beneficial ownership, governance and substance trends across the EU

The fight against tax avoidance and profit base erosion has been high on the agenda of international bodies – including the Organisation for Economic Co-operation and Development and the European Commission, as well as local tax authorities for the last decade. At EU level, approaches to abuse of double tax treaties and EU Directives have also been influenced by the decisions of the Court of Justice of the EU in the so-called "Danish cases". The Commission is also attempting to take steps towards establishing a common

minimum standard on criteria for denying treaty or EU Directive benefits to companies lacking economic substance and which are at risk of being misused for the purpose gaining tax advantages through the Unshell proposal.

With these developments in mind, KPMG's EU Tax Centre conducted an internal survey across the network of KPMG firms based in Europe to identify common trends and key challenges for taxpayers in four main areas:

- beneficial ownership;
- substance;
- corporate governance;
- the wider anti-treaty shopping and anti-tax abuse frameworks applicable at a local level, with a particular - focus on WHT-related measures; and
- the practice of the tax authorities in BO and substance matters, and level of certainty taxpayers can obtain.

The survey covered responses from 27 European jurisdictions and includes survey information valid as at September 2023. A recent blog post outlines key findings and trends identified as a result of the survey.

Tax Reimagined – Pillar 2 readiness

On February 27, 2024 KPMG held a webcast on Pillar 2 readiness as part of the Future of Tax & Legal webcast series.

As companies are getting ready for the impact of Pillar 2, the focus has been on data readiness and understanding how the companies' group structure will drive Pillar 2 outcomes. Groups are now turning their attention to technology readiness for year-end processes, processing GloBE computations, preparing and filing GloBE information returns and Qualifying Domestic Minimum Top up Tax (QDMTT) preparation.

In this instalment of the KPMG Future of Tax webcast series, you can hear from KPMG professionals on Pillar 2 readiness journey as well as see how technology can support the Pillar 2 process.

For a review of the session, please access the event page to register.

BEPS 2.0 - Amount B: Will it simplify your transfer pricing?

On February 29, 2024, and on March 1, 2024 a webcast will bring together our leading global experts to speak about the new OECD guidance on Amount B which was released on February 19, 2024.

The objective of Amount B is to simplify transfer pricing rules for baseline marketing and distribution activities. Join KPMG professionals from around the world to hear their views on what Amount B will mean for you and whether it will actually make transfer pricing simpler.

Please access the event page to register.

BEPS Pillar 2 - Family Offices and private holding structures

On March 5, 2024 KPMG will hold the next webcast related to Pillar 2 as part of the Future of Tax & Legal webcast series.

KPMG family office leaders from various markets share insights and experiences on the potential impact of the global minimum tax on family offices, trusts and private structures.

Please access the event page to register.

Talking tax series

With tax-related issues rising up board level agendas and developing at pace, it's more crucial than ever to stay informed of the developments and how they may impact your business.

With each new episode, KPMG Talking Tax delves into a specific topic of interest for tax leaders, breaking down complex concepts into insights you can use, all in under five minutes. Featuring Grant Wardell-Johnson, KPMG's Global Head of Tax Policy, the bi-weekly releases are designed to keep you ahead of the curve, empowering you with the knowledge you need to make informed decisions in the ever-changing tax landscape.

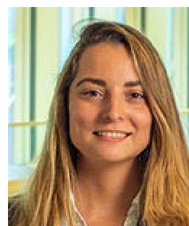
Please access the dedicated KPMG webpage to explore a wide range of subjects to help you navigate the ever-evolving world of tax.

KPMG's EU Tax Centre team

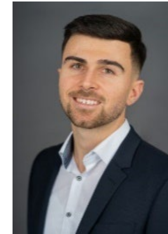
Raluca Enache
Associate Partner
Head of KPMG's EU
Tax Centre

Ana Pușcaș
Senior Manager
KPMG's EU
Tax Centre

Marco Dietrich
Senior Manager
KPMG's EU
Tax Centre



Elena Moro Fajardo
Assistant Manager
KPMG's EU
Tax Centre



Nina Matviienko
Assistant Manager
KPMG's EU
Tax Centre

Erwan Cherfaoui
Junior Associate
KPMG's EU
Tax Centre

Maximilian Frolik
Intern
KPMG's EU
Tax Centre

Felix Kohlstetter
Intern
KPMG's EU
Tax Centre

Key EMA Country contacts

Ulf Zehetner
Partner
KPMG in Austria
E: UZehetner@kpmg.at

Kris Lievens
Partner
KPMG in Belgium
E: klievens@kpmg.com

Alexander Hadjidimov
Director
KPMG in Bulgaria
E: ahadjidimov@kpmg.com

Maja Maksimovic
Partner
KPMG in Croatia
E: mmaksimovic@kpmg.com

Margarita Liasi
Principal
KPMG in Cyprus
E: Margarita.Liasi@kpmg.com.cy

Ladislav Malusek
Partner
KPMG in the Czech Republic
E: lmalusek@kpmg.cz

Stine Andersen
Partner
KPMG in Denmark
E: stine.andersen@Kpmg-law.Com

Gerrit Adrian
Partner
KPMG in Germany
E: gadrian@kpmg.com

Antonia Ariel Manika
Director
KPMG in Greece
E: amanika@cpalaw.gr

Gábor Beer
Partner
KPMG in Hungary
E: Gabor.Beer@kpmg.hu

Colm Rogers
Partner
KPMG in Ireland
E: colm.rogers@kpmg.ie

Lorenzo Bellavite
Associate Partner
KPMG in Italy
E: lbellavite@kpmg.it

Steve Austwick
Partner
KPMG in Latvia
E: saustwick@kpmg.com

Vita Sumskaite
Partner
KPMG in Lithuania
E: vsumskaite@kpmg.com

Michał Niznik
Partner
KPMG in Poland
E: mniznik@kpmg.pl

António Coelho
Partner
KPMG in Portugal
E: antoniocoelho@kpmg.com

Ionut Mastacaneanu
Director
KPMG in Romania
E: imastacaneanu@kpmg.com

Zuzana Blazejova
Executive Director
KPMG in Slovakia
E: zblazejova@kpmg.sk

Marko Mehle
Senior Partner
KPMG in Slovenia
E: marko.mehle@kpmg.si

Julio Cesar García
Partner
KPMG in Spain
E: juliocesargarcia@kpmg.es

Caroline Valjemark
Partner
KPMG in Sweden
E: caroline.valjemark@kpmg.se

Joel Zernask
Partner
KPMG in Estonia
E: jzernask@kpmg.com

Jussi Järvinen
Partner
KPMG in Finland
E: jussi.jarvinen@kpmg.fi

Patrick Seroin Joly
Partner
KPMG in France
E: pseroinjoly@kpmgavocats.fr

Olivier Schneider
Partner
KPMG in Luxembourg
E: olivier.schneider@kpmg.lu

John Ellul Sullivan
Partner
KPMG in Malta
E: johnellulsullivan@kpmg.com.mt

Robert van der Jagt
Partner
KPMG in the Netherlands
E: vanderjagt.robert@kpmg.com

Matthew Herrington
Partner
KPMG in the UK
E: Matthew.Herrington@kpmg.co.uk

Stephan Kuhn
Partner
KPMG in Switzerland
E: stefankuhn@kpmg.com

Key links

- Visit our website for earlier editions

Privacy | Legal

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

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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

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

© 2024 Copyright owned by one or more of the KPMG International entities. KPMG International entities provide no services to clients. All rights reserved.

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

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