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E-News from KPMG's EU Tax Centre

Key Insights of this E-News edition Issue 194

KPMG's EU Tax Centre compiles a regular update of EU and international tax developments that can have both a domestic and a cross-border impact, with the aim of helping you keep track of and understand these developments and how they can impact your business. Today's edition includes updates on:

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- **European Parliament:** Resolution on Transfer Pricing Directive adopted
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State Aid

Key Insights

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- AG Collins gave his opinion on a case concerning the compatibility of a tax exemption for the use of display panels with EU State rules, in which he recommended that the CJEU dismiss the plaintiff's appeal.

AG opinion on the UK tax treatment of multinational groups under the CFC regime

On April 11, 2024, Advocate General (AG) Laila Medina of the Court of Justice of the European Union (CJEU) rendered her opinion in joined cases C-555/22 P, C-556/22 P, C-564/22 P. The cases concern the compatibility of the UK Controlled Foreign Companies Group Finance Company Partial Exemption Rules ("Finco Exemption") with EU State aid rules.

The UK Controlled Foreign Company (CFC) regime aims at ensuring that the UK corporate tax base is not inappropriately reduced by transactions undertaken by non-UK subsidiaries of UK companies. This is achieved by allowing the UK to tax profits of foreign subsidiaries, at the level of the controlling UK shareholder, in cases where the profits are considered to be 'artificially diverted' from the UK. For non-trading finance profits, the rules outline several situations in which the foreign profit has to be taxed in the UK, including where one of the following tests are met:

- a 'UK activities' test, focused on whether the profits are arising from lending activities where the significant people functions are carried out in the UK, or
- a 'UK connected capital' test, met if the offshore profits stem from injections of capital from the UK.

The Finco Exemption under dispute provided a derogation from the general CFC rules for non-trading financing profits derived by a CFC in circumstances where the profits arose from lending activities performed in the UK. In short, the regime, which was in place between 2013 and 2018, allowed for either a 75 percent or a full exemption from UK CFC taxation for profits arising from qualifying loans. Qualifying loans were considered to be intra-group loans granted by the CFC to companies which were not resident in the UK. The Finco Exemption was applicable even in cases where the two tests set out to identify situations in which the foreign profit had to be taxed in the UK were met.

The plaintiffs were three UK-based groups which applied the FinCo Exemption. Following an in-depth State aid investigation, the European Commission (EC or the Commission) found on April 2, 2019, that the exemption from the 'UK connected capital' test was justified and did not constitute illegal State aid under EU rules. However, the Commission found that multinationals claiming the Finco Exemption while meeting the 'UK activities test' received an unjustified preferential tax treatment that was unlawful under EU State aid rules.

It should be noted that the EC relied on the UK CFC rules as the appropriate reference system for determining the existence of a selective advantage[1]. In the subsequent appeal, the General Court of the EU (the General Court) confirmed that the

[1] It is settled CJEU case-law that the analysis of whether a national measure constitutes unlawful State aid requires several steps, including for the EC to demonstrate that the measure conferred a selective advantage on the beneficiary. For this purpose, the Commission is tasked with (i) identifying the reference system, i.e. the ordinary tax system applicable in that Member State in a factually comparable situation (by reference to the objectives of that regime), and (ii) demonstrating that the disputed tax measure – in this case the tax rulings – is a derogation from that 'normal' system.

regime under dispute represented unlawful State aid and upheld the Commission's decision, including the determination of the relevant reference system (for more information, please refer to Euro Tax Flash Issue 477).

AG Medina highlighted that, in cases involving tax measures, the determination of the reference framework is of particular importance since the existence of an economic advantage may be established only when compared with 'normal' taxation. The AG repeated that an error made in determining the reference system vitiates the entire selectivity analysis.

The AG then recalled that is settled CJEU case-law that only the national law applicable in the Member State concerned should be considered when identifying the reference system in direct taxation matters. Additionally, the AG noted that, for this purpose, the Commission is required, in principle, to accept the interpretation of the relevant provisions of national law provided by the Member State concerned, during an exchange of arguments. The Commission's interpretation will prevail over that of the Member State only if it can demonstrate that the latter interpretation is manifestly incompatible with the wording and objectives of the national provisions in question.

The AG then concluded that the General Court and the Commission erred in law when selecting the UK CFC rules as the reference framework. Instead, the AG took the view that the general UK corporate tax system constitutes the correct reference framework, since the CFC rules are part of that system and cannot be viewed in isolation or abstracted from it. The AG substantiated this conclusion by *inter alia* analyzing the territorial effects of the CFC rules in the context of the broader corporate income tax system, the exceptional character of the CFC rules, and the structural connection of the CFC rules and the general corporate income tax framework in the UK.

Consequently, the AG recommended the CJEU to set aside the General Court's judgment in its entirety and to also annul the EC's decision. It should be noted that AG opinions are not binding on the CJEU. Therefore, it remains to be seen whether the CJEU follows the AG's opinion.

AG opinion on tax exemption for street advertisement

On April 11, 2024, AG Anthony Michael Collins rendered his opinion in case C-710/22 P. The case concerned the compatibility of a tax exemption for the use of display panels in the City of Brussels with EU State rules.

The plaintiff is a Belgian company that entered into a contract with the City of Brussels to provide street furniture. Upon expiration of this contract, a new agreement was signed between the plaintiff and the City of Brussels regarding passenger shelters and display panels. This new contract included a provision allowing the plaintiff to use certain display panels without paying rent or city taxes. Subsequently, a competitor of the plaintiff lodged a complaint with the Commission, contesting the free use of display panels and alleging it conferred an economic advantage incompatible with EU State aid rules. In 2019, following an investigation, the Commission concluded that the plaintiff received economic benefits incompatible with the internal market. The plaintiff appealed this decision, leading to the General Court upholding the EC's State aid assessment on September 7, 2024. Dissatisfied with the judgment, the plaintiff appealed to the CJEU, arguing that the Commission misconstrued the concept of an economic advantage and that the benefits received were part of a contractual agreement.

In his opinion, AG Collins noted that, whilst the continued use of displays may have been part of an agreement, such permission would still be outside the deemed normal conduct of a market operator. The AG took the view that an economic advantage under EU State aid rules arose, as the plaintiff was able to mitigate charges which would have otherwise been included in its marketing budget.

Moreover, the AG concluded that both the Commission and the General Court were correct in determining that the tax-free use of the display panels constituted an economic advantage for State aid purposes. In this regard, AG Collins endorsed the tax regulations of the City of Brussels as the appropriate reference system. Furthermore, the AG rejected the plaintiff's argument that its tax exemption for using display panels could not be seen as a selective advantage because its competitor, who lodged the complaint, also enjoyed a similar tax exemption in other Belgian municipalities. In this respect, the AG highlighted that the tax exemption granted to the plaintiff should be assessed independently of whether other entities benefit from a similar exemption in other municipalities.

In the light of these conclusions, AG Collins recommended that the CJEU dismisses the plaintiff's appeal. As noted above, AG opinions are not binding on the CJEU. Therefore, it remains to be seen whether the CJEU follows the AG's opinion.

EU Institutions

Key Insights

– European Commission publishes Updated Q&A on the Foreign Subsidies Regulation

– European Parliament adopts resolutions on the proposed TP and HOT Directives

European Commission

Updated Q&A on the Foreign Subsidies Regulation published

On April 9, 2024, the European Commission published updated non-binding Questions and Answers (Q&A) in respect of the application of the EU Regulation on foreign subsidies distorting the internal markets (Foreign Subsidies Regulation – FSR) – for more details on the FSR, please refer to Euro Tax Flash Issue 532.

The updated FAQs provide guidance on procedural and jurisdictional issues, including:

– clarification that certain foreign financial contributions that may not need to be included in the notification still need to be included when calculating whether a concentration meets the notification threshold;

– clarification that financial contributions made within three years prior to a concentration to a company or business that has been divested or closed should be considered when determining if the notification threshold is met and are also reportable in line with the rules set out in the Form FS-CO;

– details on what information investment companies need to provide to demonstrate that their funds comply with "equivalent third-country legislation in terms of prudential, organizational and conduct rules";

– clarification that Article 5(1)(d) captures only foreign subsidies directly facilitating the notified concentration, i.e., a potential foreign subsidy directly facilitating a different concentration will fall outside the scope of the investigation of the notified concentration.

For previous coverage, please refer to E-News Issue 187, and, for more information, please refer to the Commission's dedicated webpage.

European Parliament

Resolution on Transfer Pricing Directive adopted

On April 10, 2024, Members of the European Parliament (MEPs) adopted a resolution on the proposal for a Council Directive on Transfer Pricing (TP Directive).

The resolution is generally supportive of the Commission's initial proposal and follows the previous draft report of the Committee on Economic and Monetary Affairs (ECON) of the European Parliament (covered in E-News Issue 192). Key amendments compared to the draft report include:

- *Omission of dynamic reference to OECD TP Guidelines:* the adopted resolution refrains from proposing a dynamic reference to align the TP Directive with the latest version of the OECD TP Guidelines. Therefore, the resolution maintains the reference to the 2022 version of the OECD TP Guidelines, as initially proposed by the Commission. However, the resolution proposes to empower the Commission to adopt delegated acts to incorporate future changes of the OECD TP guidelines which were either approved by the Member States or by the EU through the adoption of a Union position. Unlike the draft report, the resolution proposes to retain provisions of the Commission's initial proposal concerning TP related definitions, applicable TP methods and TP assessments.

- *Reference to the Directive on Administrative Cooperation (DAC):* with respect to Member States making corresponding adjustments to prevent double taxation, the resolution suggests enshrining into the TP Directive that Member States shall make use of all procedures and arrangements provided by the DAC.
- *Re-establishment of EU Joint Transfer Pricing Forum (JTPF):* the resolution suggests re-establishing the forum under the name European Forum on Transfer Pricing (EFTP), to be chaired by the European Commission. According to the proposed new Article in the TP Directive, the EFTP shall provide advice and assistance to assess the need for any adjustment of the TP Directive. In this context, the resolution particularly refers to the aim of guaranteeing the continuous uniformity of the transfer pricing methodologies within the EU under consideration of developments at OECD or UN level.
- *Review clause:* instead of including a sunset clause in respect to the application of the TP Directive for prospective BEFIT groups, the resolution now foresees a review of the TP Directive for BEFIT groups, once the BEFIT Directive enters into force.

The resolution suggests that the provisions of the TP Directive should start applying as of January 1, 2025. Member States would be required to transpose same by December 31, 2024 (i.e., one year earlier than proposed by the EC).

Resolutions adopted by the European Parliament with regard to proposals based on Article 115 of the Treaty on the Functioning of the European Union (TFEU) do not have a binding effect on the Council. However, EP resolutions must be taken into account by the EC and Member States when proposing or agreeing to new rules.

For more information on the TP Directive proposal, please refer to Euro Tax Flash Issue 532.

Resolution on HOT Directive proposal adopted

On April 10, 2024, MEPs adopted a resolution on the proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium sized enterprises (HOT Directive). The resolution is generally supportive of the European Commission's initial proposal and follows the previous draft report of the European Parliament's ECON Committee (covered in E-News Issue 190). Key amendments compared to the draft report include:

- *Extension to subsidiaries:* the resolution suggests extending the scope of the HOT Directive to also cover situations in which in-scope small and medium-sized enterprises (SMEs) operate in other Member States with up to two subsidiaries. The initial Directive proposal, as well as the ECON's draft report, only covered SMEs operating in another Member State with one or more permanent establishments (PEs). The resolution proposes to define in-scope subsidiaries in accordance with Council Directive 2011/96/EU (Parent-Subsidiary-Directive).
- *Eligibility:* the resolution proposes to retain the comparison test of joined turnovers of the PE and/or the subsidiary to the head office's turnover for the eligibility to the HOT Directive, but to extend the period of review to three years (two years in the EC's proposal). This contrasts with the ECON's draft report which suggested to delete this test. Beyond this, the resolution maintains that the other eligibility requirements should be tested for a one-year period (two-year period in the EC's proposal), as suggested in the ECON's draft report.
- *Limited duration of the application of the HOT rules:* the resolution suggests that if an SME opts to apply the HOT regime, the rules shall apply for a renewable period of seven fiscal years (renewable five-year period in the EC's proposal). In contrast, the draft report foresaw an indefinite duration of the application of the HOT rules.

The resolution recommends shortening the deadline for the transposition of the proposed Directive from January 1, 2026, to January 1, 2025.

Resolutions adopted by the European Parliament with regard to proposals based on Article 115 of the Treaty on the Functioning of the European Union (TFEU) do not have a binding effect on the Council. However, EP resolutions must be taken into account by the EC and Member States when proposing or agreeing to new rules.

For more information on the HOT Directive proposal, please refer to Euro Tax Flash Issue 532.

Local Law and Regulations

Key Insights

- Recent announcements regarding Pillar Two implementation (Estonia, Greece, Iceland)
- Transposition of the EU Public Country-by-Country Reporting Directive into local law (Austria, Estonia)
- Poland moves forward with DAC7 implementation
- First steps taken to transpose DAC8 into national law (the Czechia, Slovakia)
- Recent developments in respect of local CFC regimes (France, Ireland)

Austria

Draft bill to transpose EU Public Country-by-Country Reporting Directive into local law

On April 4, 2024, the Austrian Ministry of Justice issued draft legislation to transpose the EU Public Country-by-Country (CbyC) Reporting Directive (Directive) into domestic law. Key takeaways include:

- The provisions of the draft Austrian bill are largely aligned with the text of the Directive.
- Adoption of the "safeguard clause", i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission. Based on the draft bill the Austrian Commercial Registry Court has the authority to scrutinize the use of the omission (procedural costs and a fee up to EUR 20,000 could apply). If it determines that the MNE was not entitled to omit information, the court can request the representatives of the Austrian company / branch to publish the complete CbyC report.
- The threshold applicable to branches subject to the provisions of the bill is a net turnover of EUR 10 million in the last two reporting years.
- Austrian subsidiaries or branches of groups headquartered outside the EU/EEA are exempt from the CbyC disclosure requirement in Austria if the ultimate parent company prepares and publishes the report on its website, and assigns another EU/EEA subsidiary or branch to file the report locally (the Directive only prescribes this exemption for reports filed in an EU Member State). However, Austrian subsidiary / branches must notify the Austrian Commercial Registry Court of their use of this exemption.
- Austria opted for the website publication exemption, i.e. to exempt companies from publishing the report on their websites, if the report is already made publicly available to any third party located in the EU, free of charge, on the website of the Austrian Commercial Registry Court.
- Failure to publish public CbyC reports or submitting them incorrectly or late may result in penalties of up to EUR 10,000. Furthermore, representatives of non-compliant companies could face fines of up to EUR 100,000.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

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

Czechia

Draft bill to transpose DAC8 into national law

On March 25, 2024, the government of the Czechia published a draft bill to transpose Council Directive (EU) 2023/2226 (DAC8) into domestic law. Key takeaways include:

- In accordance with DAC8, the bill would introduce rules on due diligence procedures and reporting requirements for crypto assets service providers. In-scope crypto-asset service providers would be required to collect and verify information from EU clients, in line with specific due diligence procedures. Subsequently, certain information would be reported to the relevant competent authorities. This information would then be exchanged by the tax authorities of the recipient Member State with the tax authorities of the Member State where the reportable user is tax resident.
- In accordance with DAC8, the bill would expand the scope of the automatic exchange of advanced cross-border rulings issued to individuals (DAC3).
- In accordance with DAC8, the bill would require disclosures of cross-border arrangements (DAC6) to include a description of the relevant arrangements and any other information that could assist the competent authority in assessing a potential tax risk.
- The bill would also increase penalties for failures to comply with reporting and notification requirements under DAC6 from CZK 500,000 (approximately EUR 19,800) to CZK 1,500,000 (approximately EUR 59,400).

Please note that further amendments to the Czech DAC6 rules (as required under DAC8) are part of another draft bill, which is currently pending at the Lower House of Parliament of the Czechia. These amendments include:

- Requirement for intermediaries, who are subject to legal professional privilege, to notify other intermediaries only where services are provided to the latter (the current legislation includes notification obligation in respect of all known intermediaries).
- The elimination of the requirement to identify legal professional privilege intermediaries as one of the items to be submitted to the tax authorities in the DAC6 report.

To comply with DAC8, the domestic legislation must be implemented by December 31, 2025, and the rules should be applied from January 1, 2026 (with some exceptions).

For more information about DAC8, please refer to Euro Tax Flash Issue 532.

Estonia

Legislation approved to implement minimum taxation under Pillar Two

On April 10, 2024, the Estonian Parliament approved the legislation to partially implement the EU Minimum Tax Directive. Key takeaways include:

– Estonia is making use of the option to defer the application of the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (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).

– Estonia 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 legislation includes an obligation for Estonian UPEs to designate a foreign constituent entity that would be required to submit the GloBE Information Return (GIR). In addition, local Constituent Entities are required to exchange necessary information within the group to enable the filing of the GIR.

– Provisions on IIR and UTPR are not included in the legislation. It has not been clarified whether the government plans to also apply a domestic minimum top-up tax (DMTT) at a later stage.

For our previous coverage, please refer to E-News Issue 186.

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

Legislation approved to transpose EU Public Country-by-Country Reporting Directive into local law

On April 10, 2024, the Estonian Parliament approved a bill implementing into Estonian law the provisions of the EU Public CbyC Reporting Directive.

The related explanatory memorandum noted that due to the limited number of companies falling in scope of the EU Public CbyC Reporting Directive in Estonia, and in light of the existing requirements for in-scope groups to file CbyC reports with the tax administration , the legislative body opted for a different solution. In this respect, instead of creating additional reporting obligations, the bill empowers the Estonian tax authorities to publish the private CbyC reports, which have already been received based on the Estonian implementation of Directive 2016/881 (DAC4).

For more information on Estonian Public CbyC Reporting, please refer to E-News Issue 192.

For a state of play of the implementation of the EU Public CbyC Reporting Directive, please refer to KPMG's dedicated implementation tracker.

France

New rules to avoid double-taxation arising from the sale of a CFC

On March 27, 2024, the French Government published a Decree supplementing the corrective measures to eliminate double taxation arising from the application of the CFC rules in order to bring them into line with the Anti-Tax Avoidance Directive (ATAD). Key takeaways include:

- To avoid double-taxation arising from the application of the CFC rules, when a CFC distributes profits to its French shareholders, these dividends are exempt from French CIT if they were deemed to be distributed under the CFC rules. The decree clarifies that these profits are deducted from net profit (i.e., irrespective of whether the company is in a profit or a loss position).
- When a French company disposes of its participation in the entity or of the business carried out by the permanent establishment, a new CIT exemption applies if any of the capital gains arising from this disposal has already been taxed at the shareholder level under the CFC rules (i.e., the income is still invested in the CFC). The shareholder bears the burden to prove the income has already been taxed under the CFC rules.
- These rules apply from March 30, 2024.

Germany

Parliamentary query on withholding tax relief and refund procedures

On April 8, 2024, the German government responded to parliamentary questions concerning the current status of dividend withholding tax (WHT) reliefs and refund procedures in respect to foreign investors. Key takeaways include:

- *WHT exemption certificate:* Between 2020 and 2023, on average 2,870 applications for dividend WHT exemption certificates were filed per year. On average, 2,981 applications were processed per year, of which 483 were rejected. There are currently 2,666 applications pending with the German Federal Tax Office (BZSt) for a dividend WHT exemption certificate. The responds notes that it takes on average 480 days to obtain a dividend WHT exemption certificate.
- *WHT refund:* Between 2020 and 2023, on average 25,849 applications for dividend WHT refunds were filed per year. On average, 16,198 applications were processed per year, of which 2,200 were rejected. There are currently 61,341

registered applications for dividend WHT refunds pending. In addition, there are between 17,000 and 27,000 paper-based applications for WHT relief pending. The response notes that it takes on average 615 days to complete the WHT refund procedure.

Greece

Legislation enacted to implement minimum taxation under Pillar Two

On April 5, 2024, Law No. 5100/2024 to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive was published in the Official Gazette. Key takeaways include:

- The legislation mirrors the draft law that was released in February 2024 and closely follows the text of the EU Minimum Tax Directive, whilst also incorporating into the legislative text the agreed transitional Country by Country Reporting Safe Harbour, the UTPR Safe Harbour and the permanent QDMTT Safe Harbour (for previous coverage, please refer to E-News Issue 191).
- The Law does not provide for further elements of the OECD Administrative Guidance that adapt the OECD Model Rules / EU Directive rules. Nevertheless, the explanatory notes explicitly refer to OECD Administrative Guidance.

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

Iceland

Fiscal Strategy Plan for 2025-2029 confirms intention to implement Pillar Two

On April 16, 2024, the Icelandic Fiscal Strategy Plan for 2025-2029 was published.

According to the plan, Iceland has agreed to implement a global minimum tax and will complete the implementation in the second half of this year with a planned entry into force in 2025. The plan further notes that it is expected that the implementation will bring increased tax revenue to the Icelandic treasury a year later.

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

New disclosure rules on income derived from digital platforms

On December 16, 2023, the Icelandic Parliament adopted an amendment to Income Tax Act No. 90/2003, implementing new disclosure rules on income derived from digital platform. The amendment is in line with the OECD's Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Information on Income Derived through Digital Platforms (DPI-MCAA) signed by Iceland in November 2022 (for previous coverage, please refer to E-News Issue 165).

Key takeaways include:

- Iceland will exchange information on income derived from digital platforms bilaterally with jurisdictions that have implemented the DPI-MCAA in their legislation.
- The obligation came into force on January 1, 2024.
- The Minister of Finance and Economic Affairs will issue a regulation defining, in particular, which digital platform operators are required to register, what information must be disclosed and how, and the procedure for the exchange of information between tax authorities.

Disclosure requirements for platform operators were introduced in the EU through an amendment to the Directive on Administrative Cooperation (DAC7), which provides for relief from the reporting obligations in the EU for non-EU platform operators that report outside the EU. Such relief is available where the European Commission has determined that Member States receive equivalent information from that non-EU jurisdiction that applies similar reporting regimes (e.g., under the OECD's MCAA).

For a state of play of the implementation of the DAC7, please refer to Euro Tax Flash Issue 532.

Ireland

Revenue amends Tax & Duty Manuals on outbound payments defensive measures

On April 11, 2024, Revenue issued eBrief No. 119/24 regarding the revision of several Tax and Duty Manuals on the new outbound payment defensive measures introduced by the Finance Act 2023. The following guidance has now been amended to reflect the new measures:

- *Part 02-02-01*: Corporation Tax: General Background - Dividends and Portfolio Investors
- *Part 06-04-02*: Distributions out of certain exempt profits or gains or out of certain relieved income
- *Part 06-08A-01*: Dividend Withholding Tax (DWT) – Details of Scheme
- *Part 06-08B-01*: Technical Guidance notes in relation to the operation of Dividend Withholding Tax
- *Part 08-01-04*: Treatment of Certain Patent Royalties Paid to Companies Resident Outside the State
- *Part 08-03-11*: Interest in respect of wholesale debt instruments

Earlier in March 2024, Revenue had already issued eBrief No. 096/24 on a new Tax and Duty Manual on the new outbound payments defensive measures introduced by the Finance Act 2023, confirming the implementation of a withholding tax on certain payments (20 percent for payments of interest and royalties / 25 percent for distributions) made to associated entities established in jurisdictions on the EU list of non-cooperative jurisdictions or in "*no-tax*" and "*zero-tax*" jurisdictions.

For more details, please refer to E-News Issue 189.

Revenue amends CFC guidance on defensive measures for non-cooperative jurisdictions

On March 27, 2024, Revenue updated Tax and Duty Manual Part 35b-01-01 – CFC Rules (the Manual) to reflect changes introduced by the Finance Act 2023 in relation to the EU list of non-cooperative jurisdictions in October 2023.

In accordance with this update, Antigua and Barbuda, Belize, Russia and Seychelles have been added to the list included in the Manual (please refer to Euro Tax Flash Issue 526). As such, for accounting periods beginning on or after January 1, 2024, CFC taxation is applied as a defensive measure (without application of certain exemptions) to CFCs established in one of the following 16 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Belize, Fiji, Guam, Palau, Panama, Russia, Samoa, Seychelles, the Bahamas, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

Please note that the EU list of non-cooperative jurisdictions is generally updated on a bi-annual basis (February and October). The abovementioned list in the Manual does not take into account the latest update of the EU list adopted in February 2024 (please refer to Euro Tax Flash Issue 538).

Finally, the release clarifies that further updates will be made to reflect changes to the CFC rules enacted in the Finance Act 2023 because of Pillar Two implementation.

For more information, please refer to eBrief No. 099/24.

Netherlands

Cross-border pension rules amended further to CJEU Decisions

On April 4, 2024, Decree No. 2024-6955 of March 21, 2024 (the Decree) was published in the Official Gazette, amending the Dutch cross-border pension rules. This measure follows two decisions of the CJEU issued on November 16, 2023, in cases concerning international individual value transfer of pensions when changing jobs (C-360/22 and C-459/22).

The CJEU ruled that the following two of the conditions for entitlement to value transfer of the accrued pension were incompatible with the free movement of workers:

- the redemption options in the other country could not be wider than the redemption options permitted in the Netherlands; and
- the foreign receiving pension provider had to enter into an agreement with the Dutch Tax Administration under which the pension provider accepted liability for the tax and penalty interest owed by the entitled employee regarding taxable events related to the transferred pension. Alternatively, the employee could provide security for these liabilities.

The above conditions are no longer applicable for a cross-border pension transfer as from November 16, 2023.

Poland

DAC7 draft legislation adopted by Council of Ministers

On April 9, 2024, the Council of Ministers adopted draft legislation to transpose Council Directive 2021/514 (DAC7) into domestic legislation (for previous coverage, please refer to E-News Issue 191). Key takeaways include:

- The provisions of the draft legislation are closely aligned with the text of the Directive.
- The draft legislation requires digital platform operators to collect, verify and report information regarding sellers using their platform for commercial activities. Relevant activities which are required to be reported include the rental of immovable property, the performance of personal services, the sale of goods, and the rental of any mode of transport.
- 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.
- Failure to report may result in a fine up to PLN 1 million (approximately EUR 230,000).
- Small and occasional sellers of goods who carry out fewer than 30 transactions per year will not be required to report annually, provided their total remuneration in a given year does not exceed the equivalent of EUR 2,000 in PLN.

The legislation will enter into force on July 1, 2024 subject to approval by the Parliament and signature by the President.

For more information, please refer to a report prepared by KPMG in Poland. For a state of play of the implementation of the DAC7, please refer to Euro Tax Flash Issue 532.

Portugal

Program of new government proposes reduction of the corporate income tax rate to 15 percent

On April 10, 2024, the new Portuguese government approved its program for the next four years and submitted it to the Portuguese Parliament for discussion. Amongst the actions proposed to the Parliament, several tax measures aiming at tax reduction are included.

From a business tax perspective, the key measures relate to a reduction of the corporate income tax rate from 21 percent to 15 percent, to take place at a rate of two percentage points over three years. According to the program, the revision would be compatible with the OECD's Pillar Two initiative to ensure a minimum level of taxation of 15 percent for large multinational enterprises.

The implementation of these tax measure will depend on the Government obtaining sufficient support from the opposition, so the evolution of the discussions and consequences for the taxpayers should be monitored going forward.

Slovakia

Public consultation on DAC8 transposition launched

On March 21, 2024, the Slovakian Ministry of Finance launched a public consultation on the transposition of Council Directive 2023/2226 (DAC8) into domestic law.

DAC8 introduces, amongst others, provisions for the exchange of information on crypto assets, as well as amendments to the rules for the exchange of information on tax rulings for individuals. As regards the rules on the exchange of information on crypto-assets, DAC8 introduces due diligence procedures and reporting requirements for crypto asset service providers. In-scope crypto-asset service providers would be required to collect and verify information from EU clients, based on specific due diligence procedures. Certain information would subsequently be reported to the relevant competent authorities. This information would then be exchanged amongst the different tax authorities of the Member concerned.

During the consultation period, which closed on April 5, 2024, stakeholders were invited to submit their initial input on the transposition of DAC8. The actual draft legislation is expected to be published in November 2024. Stakeholders will have another opportunity to comment on the draft legislation once it has been published.

To comply with DAC8, the domestic legislation must be implemented by December 31, 2025, and the rules should be applied from January 1, 2026 (with some exceptions).

For more information about DAC8, please refer to Euro Tax Flash Issue 532.

United Kingdom

Updated draft guidance on R&D tax reliefs

On March 27, 2024, HMRC published the outcome of the consultation and the resulting updated draft guidance to the changes to the R&D tax reliefs regarding contracted out R&D and overseas R&D expenditure (for previous coverage, please refer to E-News Issue 191). In addition to new examples and scenarios, key takeaways include:

- *Statements of Work:* HMRC will consider not only the overarching Master Service Agreements (MSAs) when assessing whether R&D activity has been contracted out, but also subsequent Statements of Works (SOWs). Any amendments or addendums to the original contact would also be considered where the original contract had been renegotiated or extended.
- *Form of the contract:* it may be written, verbal or implied.
- *Sensitive information:* when supporting an R&D tax relief claim, companies may need to provide evidence to support overseas aspects on request. In this regard, HMRC recognizes that third parties may consider some information to be sensitive and may not share it.

According to HMRC, the guidance will be incorporated into the Corporate Intangibles Research and Development Manual in due course.

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

Local Courts

Key Insights

- The Czech Supreme Administrative Court rejected the deductibility of increased interest expenses arising from an amendment of the underlying loan agreement.
- The Czech Supreme Administrative Court ruled that interest income should be recognized for accounting purposes and taxed until the borrower repays the amount to the principal granting the loan.

Czechia

Court judgments on tax treatment of interest income and expenses

The Czech Supreme Administrative Court (SAC) issued two judgments concerning the corporate income tax treatment of interest income and interest expenses. The judgments address, on the one hand, the deductibility of costs connected with a contractual increase in interest rates, and, on the other hand, the accounting and tax treatment of interest accrued after the due date of the corresponding debt.

SAC judgment on deductibility in case of contractual increase of interest expenses

The SAC's judgment in case 4 Afs 119/2022 – 47 concerned a plaintiff involved in building a solar power plant, financed through loans contracted from a bank and from investors. As the plaintiff's financial situation deteriorated, the bank demanded additional equity to secure the remaining loan amount. The plaintiff argued that the required funds could only be sourced from investors, who demanded an increase in their interest rate (19 percent instead of the previous six percent). The existing loan agreements were amended accordingly, despite the investors previously committing to providing the plaintiff with additional funds necessary for carrying out the project, even if the relevant costs increased. The Czech tax authorities did not recognize this additional interest expense on the grounds that the plaintiff did not sufficiently prove that those additional expenses were incurred to generate, secure, and maintain taxable income. This view was based on the fact that the investors had previously signed the letter of comfort mentioned above.

After an appeal in front of the regional court, the SAC upheld that the plaintiff was already in the possession of the right to obtain additional funds based on the letter of comfort. Therefore, in the SAC's view, it was not necessary to amend the loan agreements with the investors. The SAC then upheld the rejection of the increased interest deduction on the grounds that the increased interest rate did not contribute to generating, securing and maintaining the taxable income due to a lack of business reason.

SAC judgment on accounting and tax treatment of interest income after maturity date

The second judgment (case 2 Afs 79/2023-62) concerned a revenue recognition correction made by the tax authorities with respect to interest income based on incorrect accounting. The plaintiff wrote off outstanding interest receivables deeming them uncollectible. Subsequent interest receivables were not recorded for accounting purposes.

In its judgement, the SAC ruled that interest income should be recognized for accounting purposes and taxed until the borrower repays the amount to the principal granting the loan. This applies irrespective of whether the borrower pays the connected interests or not. In the SAC's view, the plaintiff did not provide sufficient proof for the receivables to be considered uncollectable. In this respect, the SAC highlighted that the subjective decision for an accounting adjustment does not serve as evidence for collectability.

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

KPMG Insights

EU Tax Perspectives webcast – April 9, 2024

On April 9, 2024, KPMG held a new EU tax perspectives session as part of the Future of Tax & Legal webcast series.

During the session, KPMG speakers provided insights into the state of play of implementation for recently adopted measures and delve into pressing issues arising from these initiatives, offering practical guidance for businesses navigating the changing tax environment.

Moreover, this webcast touched upon the anticipated direction of travel of pending files, assessing the likelihood of adoption before the term of the current European Commission ends. Additionally, KPMG professionals shared insights into what multinational companies operating within the EU should be mindful of in light of these developments.

The session focused on:

- *BEPS 2.0 in the EU*: state of play on the implementation of the EU Minimum Tax Directive (Pillar Two), practical issues and spotlight on offshore jurisdictions;
- *The February update of the EU list of non-cooperative jurisdictions;*
- *The EU Foreign Subsidies Regulation*: general trends observed in the first notified cases and the EC's feedback after the first 100 days;
- *The Withholding Tax Relief Framework (FASTER)*: state of discussions, practical challenges and what can be expected in the future;
- *Looking ahead*: state of play and updates on other key EU direct tax initiatives, including the Unshell Directive proposal, BEFIT, the Transfer Pricing Directive, EU public country-by-country reporting and the review of the Directive for Administrative Cooperation.

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

Global minimum top-up taxes in financial reports - FAQs

Many countries have amended their local laws to introduce a global minimum top-up tax under the new OECD rules known as 'Pillar Two'.

To help you in preparing your financial statements, a dedicated KPMG web article and accompanying video answer your questions on the following key issues.

- *Disclosures*: To compensate for the potential loss of information resulting from the mandatory deferred tax accounting relief, companies are required to provide relevant disclosures in their financial statements from 31 December 2023 onwards.
- *Impairment assessment*: Companies may need to reflect the impact of upcoming changes in tax laws in their impairment assessments.
- *Interim reporting*: To determine how to reflect the current top-up tax and what information to disclose, companies need to consider the status of Pillar Two implementation in the countries where the group operates at the interim reporting date. This is because different countries are at different stages of implementing the legislation.

- *Recharges of Pillar Two taxes*: Companies within a group may enter into 'recharge arrangements' for Pillar Two taxes that are levied on one company, but triggered by another company. IFRS® Accounting Standards do not specifically address the accounting for these recharge arrangements in a company's separate financial statements, and companies will need to develop an accounting policy, to be applied consistently.

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.

European Union – EU task force considers tax implications of remote work

It is reasonable to expect that future discussions on the topic of remote working will focus on the issue of when a home office might trigger PE and thereby attract liability to corporate taxation in the jurisdiction where that home office is located.

EU member states have different perspectives on how to address the impact of remote working on taxation. Finding solutions in this area is a difficult and sensitive balancing act. Various stakeholders, including international companies, unions, and interest organizations may have a stake in developments taking place in this area and may wish to take an active part in the discussions.

The current Belgian Presidency of the EU announced their commitment to work with, among other things, taxation rules for cross-border teleworking. A task force has been looking into the taxation of remote worker and a meeting is expected to take place at the end of April.

For insights into the discussions of the EU task force, please refer to a GMS Flash Alert prepared by KPMG in the Netherlands.

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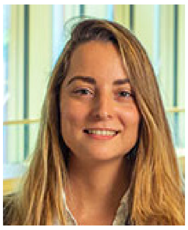

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