E-News from KPMG's EU Tax Centre

Key Insights of E-News Issue 197

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:

- Council of the EU: Programme and priorities of the Hungarian Presidency of the Council of the European Union released
- OECD: Release of fourth tranche of Administrative Guidance (Pillar Two)
- OECD: Qualified status under Pillar Two
- United Nations: Zero draft terms of reference for framework convention on international tax cooperation
- Finland: Implementation of the EU Public Country-by-Country Reporting Directive
- Germany: Final guidance on defensive measures against non-cooperative jurisdictions
- Italy: Draft legislation to implement the EU Public Country-by-Country Reporting Directive
- Luxembourg: Proposed amendments to Minimum Tax law
- Malta: Implementation of the EU Public Country-by-Country Reporting Directive
- Norway: Consultation on the implementation of the UTPR (under Pillar Two)

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Latest CJEU, EFTA, ECHR

Key Insights

- CJEU dismisses referral on amicable procedure under a double tax treaty in the context of dual residence of an individual

CJEU

CJEU dismisses referral on amicable procedure under a double tax treaty in the context of dual residence of an individual

On June 13, 2023, the Court of Justice of the European Union (CJEU or the Court) issued a decision in case C-380/23. The case concerned the practice of conditioning the restitution of taxes paid in one Member State, as part of an amicable procedure, on the taxpayer's withdrawal of appeals filed in the courts of another Member State.

The plaintiff was a Belgian individual domiciled in France who carried out activities as an employee in Belgium between 2008 and 2014. During this period, the plaintiff paid taxes on his Belgian income to France under a specific regime for cross-border workers outlined in the Franco-Belgian double tax treaty. However, the Belgian tax authorities later determined that the plaintiff had maintained his permanent home in Belgium. This assessment made him ineligible for the cross-border worker benefits, prompting Belgian authorities to retroactively impose taxes for those seven years, along with a 50 percent penalty. The individual challenged the assessment in front of a Belgian Court and in parallel requested the Belgian tax administration to initiate the amicable procedure under Article 24 of the Franco-Belgian double tax treaty. By August 2017, the Belgian tax authorities, with the agreement of their French counterparts, offered to refund the taxes paid in France on the condition that the plaintiff withdrew all his appeals against the Belgian taxes. The plaintiff rejected this proposal, arguing that it infringed on his defense rights and fundamental freedoms guaranteed by EU law.

The Belgian Court expressed doubts on whether EU law allows a tax administration to condition the execution of an amicable agreement on the taxpayer's withdrawal of legal challenges against that administration's tax decisions. Consequently, the Belgian Court sought clarifications from the CJEU on whether the practice under dispute:

- is compatible with the free movement of workers and the right to an effective remedy under the Article 47 of the Charter of Fundamental Rights of the EU (the Charter) and Article 19 of the Treaty on the Functioning of the European Union (TFEU);
- breaches the European Convention on Human Rights, given that it would prevent the plaintiff from requesting a suspended sentence or a review of the proportionality of the sanction;
- remains lawful even when an administrative doctrine denies access to documents related to the amicable procedure.

The CJEU noted that the referring court did not explain how conditioning the amicable procedure on withdrawing appeals could conflict with the requirements of Article 19 TEU, which mandates effective judicial protection. Consequently, the CJEU dismissed this part of the request as inadmissible due to insufficient reasoning.

The CJEU continued by analyzing the compatibility of the disputed practice with the free movement of workers. The Court recalled its settled case law, which prohibits any national measures that could hinder or make the exercise of this freedom less

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attractive, including both overt and covert forms of discrimination based on nationality. The CJEU also highlighted that it had previously ruled that a disadvantage arising from the parallel exercise of tax powers by Member States does not constitute a restriction on the free movement of workers, provided there is no discriminatory exercise of tax jurisdiction by a Member State.

Returning to the facts of the case at hand, the Court found that the referring court did not clearly explain how the disputed practice infringes on the free movement of workers. Specifically, in the CJEU's view, the referring court failed to properly explain how such an administrative practice would hinder or make less attractive the freedom of movement and did not describe any discrimination that might arise from this requirement. Consequently, the CJEU held that the referring court failed to establish a clear link between the withdrawal requirement and a potential breach of the free movement of workers.

The CJEU then quoted its settled case law, which states that the Charter's provisions apply to Member States only when they implement EU law. Since the Belgian tax administration's actions did not appear to implement EU law, Article 47 of the Charter was not applicable, making this part of the request inadmissible.

In light of the above, the CJEU concluded that the request for a preliminary ruling was inadmissible due to an insufficient explanation of how EU law relates to the administrative practice under dispute.

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Infringement Procedures and CJEU Referrals

Key Insights

- Commission refers Spain to the CJEU over the local implementation of the Merger Directive

CJEU Referrals

Commission refers Spain to the CJEU over the local implementation of the Merger Directive

On May 23, 2024, the European Commission (the Commission or the EC) decided to refer Spain to the Court of Justice of the European Union (CJEU) for imposing additional conditions in Spanish law that restrict the applicability of the EU Merger Directive.

The Merger Directive aims to prevent business reorganizations, such as mergers and divisions, from being hindered by immediate taxation, by deferring capital gains tax to a later sale or disposal of the assets and shares. However, Spanish law imposes restrictive conditions on total divisions of companies. Specifically, the Spanish law denies the tax deferral if shareholders do not receive the same proportion of shares in each resulting company, unless the acquired assets are branches of activity.

The Commission had already issued a reasoned opinion to Spain on this matter in November 2019. Since the Spanish authorities failed to take appropriate action to comply, the EC deemed their efforts insufficient and decided to refer Spain to the CJEU.

For more information, please refer to the European Commission's press release.

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EU Institutions

Key Insights

- Council of the EU:
- ECOFIN Council approves report on tax matters and conclusions on progress by Code of Conduct Group
- Programme and priorities of the Hungarian Presidency of the Council of the European Union released
- European Commission: Evaluation of the Anti-Avoidance Tax Directive (ATAD)

Council of the EU

ECOFIN Council approves report on tax matters and conclusions on progress by Code of Conduct Group

On June 21, 2024, the final scheduled meeting of the Economic and Financial Affairs Council of the EU (ECOFIN Council) under the Belgian Presidency of the Council took place.

During the meeting, the ECOFIN Council approved a report to the European Council, which provides an overview of the progress achieved in the Council of the EU on a range of EU direct tax initiatives, including on Directive proposals such as FASTER, Unshell, Transfer Pricing and BEFIT.

The ECOFIN Council also approved a report by the Code of Conduct Group on its work performed during the first half of 2024 under the Belgian Presidency.

For more details, please refer to Euro Tax Flash Issue 542.

Programme and priorities of the Hungarian Presidency of the Council of the European Union released

On June 19, 2024, the Hungarian Minister of European Union Affairs and the Commissioner for the 2024 Hungarian Presidency of the Council unveiled the programme of the Hungarian Presidency of the Council of the EU for the second semester of 2024. In the field of direct taxation, priorities of the Presidency include:

- fighting tax evasion;
- ensuring legal certainty for taxpayers; and
- supporting the international engagement of the European Union.

In addition, the program mentions that Hungary sees an opportunity to enhance the competitiveness of European businesses through digitalisation, the efficient use of information, and simplification.

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European Commission

Evaluation of the Anti-Avoidance Tax Directive (ATAD)

In June 2024, the European Commission published an upcoming initiative to undertake an evaluation (call for evidence) of the ATAD within the framework of Article 10 of the Directive, which provides that the Commission shall evaluate the implementation of the Directive and report its findings to the Council.

The evaluation is planned for the third quarter of 2025 and no further details on what it will entail have been released.

For an implementation overview of the ATAD, please refer to our implementation tracker.

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OECD and other International Organisations and Research Centers

Key Insights

- OECD: Release of fourth tranche of Administrative Guidance (Pillar Two)
- OECD: Qualified status under Pillar Two
- OECD: Further information relating to Amount B of Pillar One announced
- UN: Zero draft terms of reference for framework convention on international tax cooperation
- EU Tax Observatory: Report on advancing corporate tax transparency

OECD

Release of fourth tranche of Administrative Guidance (Pillar Two)

On June 17, 2024, the OECD/G20 Inclusive Framework (IF) on BEPS released an agreed fourth tranche of Administrative Guidance (AG) that aims to clarify the interpretation and application of several elements of the GloBE Rules.

The new guidance provides detailed recapture rules for deferred tax liabilities (DTL), new rules on deferred tax assets and liabilities where there are divergences between GloBE rules and accounting carrying values, the allocation of cross-border current and deferred taxes, the allocation of profits and taxes in structures involving flow-through entities, and the treatment of securitisation vehicles.

- *DTL Recapture:* the June 24 AG provides two methodologies to compute DTLs that do not reverse within five years and are subject to recapture (i.e., re-computation of the GloBE ETR excluding such DTLs) in a given year. The guidance accounts for situations where an MNE Group tracks DTLs on a General Ledger account or on Aggregate DTL Category basis (instead of item-by-item), provides for a "last-in-first-out" ("LIFO") and a "first-in-first- out" ("FIFO") methodology and prescribes rules for when each methodology may be used. The guidance also includes clarifications on the exceptions to the recapture rule.
- *Divergence between GloBE and accounting carry values:* the June 24 AG provides additional guidance on how to determine Adjusted Covered Taxes of Constituent Entities in cases where the accounting and GloBE carrying values (and the associated deferred tax assets/liabilities) diverge. It also addresses the GloBE treatment of an intercompany transaction accounted for at cost by the acquiring Constituent Entity.
- *Allocation of cross-border current taxes:* the June 24 AG outlines a four-step process to allocate current taxes under a tax system where multiple sources of income are blended and cross-crediting of foreign taxes is allowed. This relates specifically to allocations related to permanent establishments (PEs), (reverse) hybrid entities, CFC taxes (excluding blended CFC taxes), and taxes on distributions.
- *Allocation of cross-border deferred taxes:* the June 24 AG sets out a five-step process for allocation of deferred tax for PEs, tax transparent, (reverse) hybrid entities, CFC taxes. It also provides additional guidance that expands on the existing commentary regarding the "substitute loss carry-forward DTA" mechanism where a parent entity has a current year domestic tax loss that is utilized against current year foreign CFC income, with a corresponding carry forward of excess foreign tax credits.

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- *Allocation of profits and taxes in structures including flow-through entities:* the June 24 AG provides additional guidance on how to allocate profits and taxes in respect of flow-through entities in situations where a flow-through entity is held directly by another flow-through entity. The guidance clarifies the entity is to be classified for GloBE purposes from the legal perspective of the first owner in the chain that is not a Flow-through Entity or the UPE when none exists ("Reference Entity"). The June guidance further revises the definition of "Hybrid Entity" to allow for the allocation of tax paid by (i) an indirect owner of an entity that is fiscally transparent with respect to the indirect owner (but not its direct owner) and (ii) an owner in respect of the income of a Reverse Hybrid Entity.
- *Treatment of securitization vehicles:* the June 24 guidance provides options for implementing jurisdictions on how to apply a qualified domestic minimum top-up tax (QDMTT) in respect of securitisation vehicles that are considered Constituent Entities for GloBE purposes.

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

Qualified status under Pillar Two

On June 18, 2024, the IF on BEPS further released a Q&A document providing clarifications on the agreed process for conducting a common assessment of the "qualified" rules status of jurisdictions' implementation of the Domestic Minimum Top-up Tax (DMTT), Income Inclusion Rule (IIR), and Undertaxed Profits Rule (UTPR). The document also outlines the process for evaluating whether a jurisdiction's QDMTT meets the additional criteria to be eligible for the QDMTT Safe Harbour in a foreign jurisdiction.

Key takeaways include:

- *Transitional approach*: Initially, a simplified self-assessment procedure will apply, whereby an implementing jurisdiction can self-certify the status of local rules by providing information on the main features of their legislation (draft or final) to the OECD Secretariat. The transitional qualified status will be awarded where no questions arise from other jurisdictions or where those are resolved. The confirmation of the transitional qualified status will be recorded on the OECD website. Conversely, where questions cannot be resolved and a required level of opposition is reached, the jurisdiction's rules will not have transitional qualified status. If no agreement can be reached, a jurisdiction's self-certification will be respected but the implementing jurisdiction can be expected to be subject to an accelerated full legislative review.
- *Permanent approach*: The full peer review process will consist of a complete legislative review to determine if domestic legislation aligns with the Model Rules, Commentary and Agreed Administrative Guidance. This will also include ongoing monitoring to ensure that a jurisdiction's rules are consistently applied and administered in accordance with the GloBE rules.
- *Timing:* The full legislative review is expected to start no later than two years after the effective date of the legislation. The transitional qualified status of an implementing jurisdiction's legislation will end once the full legislative review is completed. The Q&A further clarify that a potential change of the qualified status (as a result of the full peer review) will only apply to accounting periods that begin after the status changes and will not be retroactive.

For more information, please refer to the OECD release.

Further information relating to Amount B of Pillar One announced

On June 17, 2024, the OECD published additional guidance on key definitions related to Amount B (Pillar One), which aims at simplifying and streamlining the application of the arm's length principle to baseline marketing and distribution activities.

Key takeaways include:

- definitions of "qualifying jurisdictions" under sections 5.2 and 5.3 of the Amount B guidance, which aim to facilitate adjustments to returns calculated under the simplified and streamlined approach for tested parties located in those qualifying jurisdictions.
- definitions of "covered jurisdictions" within the political commitment on Amount B. Inclusive Framework members commit to respecting outcomes from the simplified approach in these jurisdictions and aim to relieve double taxation

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where bilateral tax treaties exist. The list, promoting tax certainty, includes Argentina, Brazil, Costa Rica, Mexico, and South Africa, which have indicated their intention to adopt Amount B from January 1, 2025.

The OECD have noted that work on an Amount B framework (i.e., political agreement on which jurisdictions will implement Amount B) remains ongoing as part of the broader work on the Pillar One package. Pending the finalization and implementation of any such agreement, Amount B remains optional for jurisdictions.

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

United Nations

Zero draft terms of reference for framework convention on international tax cooperation

On June 7, 2024, the United Nation's (UN) Ad-hoc Tax Committee published a proposal for the zero draft terms of reference for a UN framework convention on international tax cooperation, which is intended to establish a new system of governance for international tax cooperation. For previous coverage, please refer to E-News Issue 190.

The document aims to provide guidance to the negotiation of the UN Framework Convention on International Tax Cooperation by defining key objectives and guiding principles, including:

- establish fundamental principles that ensure full inclusiveness and effectiveness;
- establish system of governance for international tax cooperation;
- establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system;
- increase certainty for taxpayers and governments;
- recognize the sovereign right of Member States;
- require transparency and accountability of all taxpayers while respecting fundamental human rights.

In addition, the document highlights key areas of work identified by the UN, including:

- taxation of the digitalized and globalized economy;
- taxation of income derived from cross-border services;
- tax-related illicit financial flows;
- prevention and resolution of tax disputes; and
- taxation of high-net worth individuals.

A public consultation on the draft was open until June 21, 2024, to which KPMG was pleased to contribute.

EU Tax Observatory

Report on advancing corporate tax transparency

On June 6, 2024, the EU Tax Observatory published, together with Data for Good, a report focusing on corporate tax transparency.

Key takeaways include:

- Large multinationals that publish public CbCR account for less than 2 percent of large companies, and less than 5 percent of global revenues and global profit. However, the report highlights an upward trend in voluntary CbCR disclosures: 139 MNEs published public CbCR data in 2021, compared to only 10 in 2017.
- Whilst most of the MNEs publishing public CbCR data are European groups, the report highlights that Australia and South Africa are also among the top 10 countries when looking at the percentage of publishing MNEs. With the implementation of the EU Public CbCR Directive (Directive (EU) 2021/2101), the report expects that nearly one-third of large US MNEs will be compelled to publish more disaggregated financial information.

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- About 83 percent of MNEs that disclose public CbCR data have global revenues above EUR 750 million with the majority reporting annual global revenues between EUR 750 million and EUR 10 billion.
- Two sectors account for about 34 percent of the MNEs: business and financial services (18.3 percent) and oil, gas and mining (15.7 percent).

For more information on the Public CbCR Directive, please refer to our dedicated page and implementation tracker.

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Local Law and Regulations

Key Insights

- Austria: Q&A on the application of minimum taxation (under Pillar Two)
- Denmark: Danish Government proposes amendments to corporate income tax regime
- Denmark: Amended Pillar Two legislation gazetted
- Finland: Implementation of the EU Public Country-by-Country Reporting Directive
- Germany: Final guidance on defensive measures against non-cooperative jurisdictions
- Italy: Draft legislation to implement the EU Public Country-by-Country Reporting Directive
- Latvia: Partial transposition of minimum taxation under Pillar Two
- Lithuania: Partial transposition of minimum taxation under Pillar Two
- Luxembourg: Luxembourg Prime Minister suggests lowering corporate income tax rate as from 2025
- Luxembourg: Proposed amendments to Minimum Tax law
- Malta: Implementation of the EU Public Country-by-Country Reporting Directive
- Norway: Consultation on the implementation of the UTPR (under Pillar Two)
- Poland: DAC7 legislation enacted
- Spain: Revised draft legislation to implement minimum taxation under Pillar Two
- Sweden: Swedish Government publishes a report suggesting amendments to interest deduction limitation rules

Austria

Q&A on the application of minimum taxation (under Pillar Two)

On June 14, 2024, non-binding guidance in the form of an FAQ document was issued by the tax authorities in Austria, which provides clarification on the application of the scope, Safe Harbour and transitional provisions of the Austrian Pillar Two legislation.

Whilst it is noted that the FAQs only take into account the OECD Commentary and Administrative Guidance (AG) agreed in February and July 2023, the Austrian tax authorities will also rely on OECD guidance that is agreed on at later stages (including the December 2023 AG) to ensure a globally consistent understanding of the interpretation and application of the regulations.

Additional takeaways include:

- *Qualified status*: the FAQs clarify the Austrian Ministry of Finance intends to publish a list of countries that fall in scope of the Austrian QDMTT Safe Harbour. According to the FAQ, the list would follow the outcome of the current peer review process at the level of the Inclusive Framework (i.e., Austria will rely on the peer review assessment of whether a jurisdiction's DMTT is to be considered "qualified" and meets the additional conditions of the QDMTT Safe Harbour guidance).
- *UTPR Safe Harbour*: the FAQs confirm that the UTPR Safe Harbour can be applied in respect of a UPE jurisdiction that has opted to defer the application of the IIR and UTPR up to December 31, 2029 (subject to the UTPR Safe Harbour conditions). According to the FAQs, the UTPR Safe Harbour applies for fiscal years starting on or after December 31, 2023 and end before December 31, 2026.

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- *Disclosure of deferred tax*: the FAQs clarify that pre-regime deferred tax assets (DTAs) and liabilities (DTLs) that relate to the transition year can be reflected (i.e., booked) in the financial statements or disclosed in the notes to the financial statements. The FAQs confirm that the disclosure of such DTAs/DTLs can be made in the annual financial statements of the Constituent Entity, and/or in the Consolidated Financial Statements of the UPE. If the DTAs/DTLs are disclosed in the consolidated accounts, they would need to be reliably and consistently traceable to the Austrian Constituent Entity. The FAQ further advise that all DTAs/DTLs should generally be reflected or disclosed in the accounts for the year preceding the transition year (e.g., December 31, 2023, for groups with a financial year starting from January 1, 2024). In exceptional cases, it is also possible to rely on the data reflected or disclosed in the accounts for the transition year (e.g., December 31, 2024).
- *Prior-year adjustments*: the FAQs clarify that current tax revenue that relates to periods before the minimum taxation rules came into force (e.g., tax refund due to an external audit relating to pre-regime assessment periods) does not have an impact on the calculation of the effective tax rate. According to the FAQs, the corresponding amounts are not to be taken into account as a reduction of the adjusted recorded taxes of the current financial year. Likewise, no adjustment is required for previous year for which the minimum taxation rules do not apply.
- *Other clarifications*: the FAQs provide additional clarifications in respect of the application of the permanent Safe Harbour for Non-Material Constituent Entities, the definition of 'ancillary activities' in the context of Excluded Entities and the threshold of exempt income to qualify as a Non-profit Organisation.

It is noted that the FAQ reflect the current legal opinion of the Ministry of Finance and are therefore subject to the reservation of a potential different interpretation by the OECD/G20 Inclusive Framework.

Denmark

Danish Government proposes amendments to corporate income tax regime

On June 12, 2024, the government of Denmark released a new plan to foster an attractive economic environment for entrepreneurial companies. From a direct tax perspective, key proposals include:

- Repealing the taxation on dividends from unlisted portfolio shares.
- Providing the option to defer the tax payment where the sale price of a company is paid as an ongoing payment, for example in the form of milestone payments.
- Introducing a five-year period for the realization of tax on newly listed portfolio shares (i.e., companies with a stake of less than 10 percent in newly listed companies). This would entail the application of capital gains tax in the event of a sale but allows companies to defer taxation upon accrual for a certain period of time, in an effort to alleviate pressure on cash flow.
- Increasing the possibility to fully deduct losses carried forward from DKK 9.5 million (approximately EUR 1.27 million) to DKK 20 million (approximately EUR 2.7 million).

According to the strategy plan, these reliefs would be introduced as from 2025.

In addition, the Danish government proposed on June 20, 2024, that the super deduction for R&D expenses, would be increased from 108 percent to 110 percent by 2026 and to 120 percent (up to a ceiling of DKK 1 billion – around EUR 135 million) by 2028. In the meantime, the possibility to immediately deduct acquisition costs for patents, know-how and software would be repealed as from January 1, 2025.

Amended Pillar Two legislation gazetted

On June 12, 2024, the government of Denmark gazetted a bill amending the Minimum Taxation Act and the Tax Assessment Act (*Ligningloven*), which was adopted in December 2023 to implement the EU Minimum Tax Directive.

The adopted bill implements elements of the OECD Administrative Guidance and closely corresponds to the draft bill published in April 2024 (please refer to E-News Issue 195). Additional clarifications that were added relate to the July 2023 QDMTT Safe Harbour guidance, including the treatment of Stateless Entities.

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The bill will enter into effect on July 1, 2024, and will apply retroactively to fiscal years starting on or after December 31, 2023.

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

Finland

Implementation of the EU Public Country-by-Country Reporting Directive

On May 4, 2024, Finland adopted a bill to transpose the EU Public Country-by-Country (CbyC) Reporting Directive (Directive) into domestic law. Key takeaways include:

- The provisions of the Finnish bill are largely aligned with the text of the Directive.
- Finland adopted the "safeguard clause", allowing 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.
- Finland did not adopt the website publication exemption, which would 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 Finnish commercial register.
- Penalties for non-compliance include a fine as well as potential removal of the Finnish ultimate parent or the Finnish subsidiary from the Trade Register or placing it into liquidation, or removing the Finnish branch from the Trade Register.

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

Germany

Final guidance on defensive measures against non-cooperative jurisdictions

On June 14, 2024, the German Ministry of Finance published final guidance on the application of defensive measures against non-cooperative jurisdictions – for previous coverage, please refer to E-News Issue 187.

The final guidance provides clarifications on various elements of the German Tax Haven Defence Act, including:

- clarifications on the process for updating the list of non-cooperative jurisdictions subject to the German defensive measures, which will be revised at the end of each calendar year to reflect the Council conclusions on the EU list of non-cooperative jurisdictions;
- clarifications on the concept of 'residency' in a non-cooperative jurisdiction;
- clarifications on the type of taxes, taxpayers and transactions impacted by the German defensive measures;
- clarifications on the (temporal) application of the different applicable German defensive measures;
- clarifications on the relationship to other regulations (e.g. provisions in the German Foreign Tax Act, interest and royalty deduction limitation provisions).

Compared to the draft version, the final guidance provides for expanded clarifications in respect of the affected transactions (section 7 of the German Tax Haven Defense Act) as well as the denial of deduction for business expenses (section 8 of the German Tax Haven Defense Act). In addition, a reference to the guidance on German CFC rules was included that was previously published in December 2023 (please refer to E-News Issue 190).

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.

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Italy

Draft legislation to implement the EU Public Country-by-Country Reporting Directive

On June 11, 2024, Italy issued draft legislation to transpose the EU Public CbyC Reporting Directive (Directive) into domestic law. Key takeaways include:

- The provisions of the draft Italian bill are largely aligned with the text of the Directive.
- Italy does not intend to adopt the "safeguard clause", which would 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.
- Italy does not intend to opt for the website publication exemption, which would 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 Italian commercial register.

Once adopted, the public disclosure rules would apply to financial years starting on or after June 22, 2024.

Latvia

Partial transposition of minimum taxation under Pillar Two

On June 20, 2024, Latvia gazetted the Law on Ensuring the Minimum Level of Taxation for MNE Groups implementing the EU Minimum Tax Directive into national law.

The Law provides for only partial implementation of the GloBE Rules, in alignment with Latvia's use of the option to defer the application of the IIR and UTPR – as per Article 50 of the EU Minimum Tax Directive. The law entered into force on June 21, 2024. For our previous coverage, please refer to E-News Issue 190.

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

Lithuania

Partial transposition of minimum taxation under Pillar Two

On June 19, 2024, Lithuania gazetted a Law on Ensuring the Minimum Level of Taxation for Entity Groups implementing the EU Minimum Tax Directive. Following the previous draft published in October 27, 2023, the legislation provides for only partial implementation of the GloBE Rules, in alignment with Lithuania's use of the option to defer the application of the IIR and UTPR – as per Article 50 of the EU Minimum Tax Directive (for our previous coverage, please refer to E-News Issue 186).

In addition, the adopted law provides for some clarifications, including on the calculation of the EUR 750 million threshold when the financial year is shorter than 12 months, and on a transitional penalty relief.

The law will enter into force on July 1, 2024.

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

Luxembourg

Luxembourg Prime Minister suggests lowering corporate income tax rate as from 2025

On June 11, 2024, the Luxembourg Government published the State of the Nation Address from Prime Minister Luc Frieden.

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As regards direct taxation, the Government proposes to decrease the corporate income tax (CIT) rate from 17 percent to 16 percent as from January 1, 2025.

According to the Prime Minister, this would align the Luxembourg CIT rate with the international average and foster an attractive tax framework for companies.

Proposed amendments to Minimum Tax law

On June 12, 2024, a draft law amending the minimum tax law (enacted in December 2023) was submitted to the Luxembourg Parliament. the draft law incorporates the OECD Administrative Guidance published in February, July and December 2023 and provides clarifications on some technical aspects.

Key takeaways include:

- *Transitional Country-by-Country Reporting ('CbCR') Safe Harbour:* the draft law incorporates the elements of the December 2023 Administrative Guidance that relate to the application of the transitional CbCR Safe Harbour. This includes the anti-hybrid arbitrage rules that would apply to transactions entered into after December 18, 2023.
- *QDMTT design:* the draft extends the application of the exclusion for the initial phase of international activity to apply also for QDMTT purposes (currently only available for UTPR and domestic IIR purposes). It also provides guidance on the currency that should be used for QDMTT purposes, as per the Administrative Guidance from July 2023.
- *QDMTT Safe Harbour*: whilst the current legislation provides for a QDMTT Safe Harbour in accordance with Article 11(2) of the EU Directive as well as one in line with the July 2023 OECD guidance, the draft only provides for the QDMTT Safe Harbour as provided by the OECD guidance (i.e., the bill proposes to remove the QDMTT Safe Harbour as per the EU Directive).
- *Additional clarifications*: The commentary to the draft bill provides further clarifications on the application of the Luxembourg minimum tax rules, including on the scope and operation of the deemed consolidation rule as well as the impact of voluntary consolidation. In addition, the commentary clarifies the application of the transition rules for pre-regime deferred tax assets in cases where groups have made use of the Equity Investment Inclusion Election and the application of the recapture mechanism for deferred tax liabilities in relation to the Luxembourg equalization provision for reinsurance companies.

Please note that the draft law might be amended before being formally adopted (e.g., it could include the administrative guidance released by the OECD on June 17, 2024).

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

Malta

Implementation of the EU Public Country-by-Country Reporting Directive

On May 17, 2024, Malta adopted a bill to transpose the EU Public (CbyC) Reporting Directive (Directive) into domestic law. Key takeaways include:

- The provisions of the Maltese bill are largely aligned with the text of the Directive.
- Malta adopted the "safeguard clause", allowing 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.
- Malta introduced the website publication exemption, whereby companies are exempt 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 Italian commercial register.

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

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

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Norway

Consultation on the implementation of the UTPR (under Pillar Two)

On June 19, 2024, the Norwegian Ministry of Finance initiated a consultation on the introduction of the UTPR within the framework of the GloBE rules, which were implemented in January 2024 (for previous coverage, please refer to E-News Issue 187 and to a report prepared by KPMG in Norway).

Key takeaways include:

- it is suggested that the UTPR would apply to financial years starting after December 31, 2024, and would be collected in the form of an additional top-up tax;
- the proposal provides for a mechanism to allocate the UTPR among local constituent entities, based on the number of employees and tangible fixed assets of those entities;
- a local group member can be designated to pay the top-up tax on behalf of all minimum tax group members. In this situation, the local entity must file a local tax return in addition to the GloBE Information Return ('GIR') to provide the information that is not available in the GIR;
- the proposal also provides for the UTPR Safe Harbour (i.e., top-up tax deemed to be zero for fiscal years which run no longer than 12 months and begin on or before December 31, 2025, and end before December 31, 2026, if the UPE jurisdiction has a CIT rate of at least 20 percent).

Responses to the consultation are expected by September 2, 2024, at the latest.

Poland

DAC7 legislation enacted

On June 17, 2024, the law transposing Council Directive 2021/514 (DAC7) into domestic legislation was published in the Polish Official Gazette.

The published legislation will enter into force on July 1, 2024 and generally follows the draft that was previously adopted by the Council of Ministers (please refer to E-News Issue 194).

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

Spain

Revised draft legislation to implement minimum taxation under Pillar Two

On June 14, 2024, following a public consultation, the Spanish Parliament published a revised version of the draft law published in December 2023 to transpose the EU Minimum Tax Directive, with no major changes compared to the initial proposal (please refer to E-News Issue 190 and Issue 196).

However, the text may still undergo further modifications during the parliamentary process and was subject to another public consultation which ended on June 24, 2024.

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

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Sweden

Swedish Government publishes a report suggesting amendments to interest deduction limitation rules

On June 3, 2024, the Swedish Government published a report on its two-year study of the domestic interest deduction limitation rules, which was launched in 2021. The report aims at reviewing certain issues with the current rules and proposing changes to improve them. Key proposed amendments include:

- Interest deduction limitation rules stemming from ATAD:
    - Introduction of a new system to calculate exceeding borrowing costs and tax EBITDA on group basis for companies, with the possibility to equalize profits.
    - Abolition of the six-year time-limit for the possibility to carry-forward any remaining non-deductible interest.
    - De minimis threshold increased from SEK 5 million (approximately EUR 445,000) to SEK 25 million (approximately EUR 2.23 million), which would still be lower than the EUR 3 million de-minimis threshold provided for in the Anti-Tax Avoidance Directive.
- Specific interest deduction limitation rules:
    - Introduction of a partial exemption from the interest deduction limitation rules for intragroup debts. This would be conditioned, among other things, on the fact that the borrower and the lender are part of a same tax group.
    - Introduction of a new anti-abuse rule under which tax authorities can disallow interest deduction when they can demonstrate that the debt relationship is part of a wholly artificial arrangement exclusively or almost exclusively put in place to obtain a substantial tax advantage.
    - Introduction of a full denial of interest deduction in cases where the debt relates to an internal acquisition of shares. Exceptions would apply where such internal acquisition is directly related to and caused by an external acquisition or where the debt was incurred as part of an intra-group restructuring in preparation for an external share sale, and there is a need for temporary financing.

In addition, the report also suggests clarifying certain aspects of the interest definition as well as of the rules on hedging foreign currency.

Based on the proposal, the new rules would enter into force on January 1, 2026.

For more details, please refer to a report from KPMG in Sweden.

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Key Insights

- United Kingdom: Upper Tribunal rejects HMRC's appeal in alleged treaty abuse case

United Kingdom

Upper Tribunal rejects HMRC's appeal in alleged treaty abuse case

On June 14, 2024, the UK Upper Tribunal issued a decision in a case concerning the scope of double taxation treaty abuse provisions.

The plaintiff was an Irish company (the principal European fund investment corporate vehicle for a US-based asset manager) that acquired a debt claim over a UK-resident company from a company resident in the Cayman Islands. Although the principal amount of the claim had already been settled, the acquisition gave the Irish company the right to receive interest that had accrued in respect of the claim prior to its settlement. A dispute arose with HMRC on whether the Irish company was entitled under the UK-Ireland double tax treaty (DTT) to recover the UK WHT deducted from the subsequent payment of the accrued interest by the administrators. Specifically, HMRC denied treaty relief based on Article 12(5) of the DTT, which disallows the applicability of the treaty if the main purpose of the transaction is to take advantage of the withholding tax relief. HMRC argued that this anti-avoidance rule applied because the debt claim was acquired by the Irish company from a Cayman Islands company that could not recover the UK WHT. In HMRC's view, the economic effect of the transaction was to split the benefit of the UK WHT recovery between the parties.

After the plaintiff appealed, the First-tier Tribunal (FTT) concluded that this was insufficient to trigger the anti-avoidance rule. The FTT found that, while the pricing reflected expected WHT benefits, obtaining these benefits was a consequence, not the main purpose, of the assignment. Therefore, the Irish company was entitled to recover the UK WHT.

The UT upheld the FTT decision and rejected HMRC's appeal. The UP highlighted that the DTT is concerned with the allocation of taxing rights between states and that Article 12(5) should not be interpreted as if it were a UK statute aimed solely at preventing UK tax avoidance. The application of Article 12(5) must consider both contracting states. HMRC's arguments would have fundamentally altered Article 12(5) into a provision solely targeting UK tax avoidance. The UT highlighted that the issue was whether the DTT was abused. In the UT's view, the claimed existence of arbitrage was merely an element to be weighed in the balance. The UT agreed with the FTT that there was nothing abusive about the Irish company, as a long-term Irish tax resident, which beneficially owned the interest, taking the benefit of the UK-Ireland treaty.

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

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KPMG Insights

EU Tax Perspectives Webcast – June 25, 2024

With the surge in direct tax initiatives in recent years from both the Organization for Economic Co-operation and Development (OECD) and European Union (EU) institutions, businesses face a rapidly shifting regulatory landscape. Several key measures are set to take effect in 2024, while others are still being negotiated among Member States. Staying updated on these developments is crucial for informed decision-making.

The results of the June 2024 European Parliament elections, as well as the rotation in the Presidency of the Council of the EU will help influence the direction and pace of developments on EU tax policy. Meanwhile, discussions are progressing rapidly on draft terms of reference for a United Nations Framework Convention on International Tax Cooperation.

During the webcast on June 25, 2024, a panel of KPMG professionals provided a break down of the latest EU direct tax initiatives, discussed what we can expect from the next European Commission, and explored future trends in international tax cooperation. The session focused on:

- BEPS 2.0 in the EU: State of play on the implementation of the EU Minimum Tax Directive (Pillar Two) and practical issues
- UN Ad Hoc Tax Committee: Outcome of recent negotiations and next steps
- The Transfer Pricing Directive: Update on the current state of play and likely direction of travel
- The Withholding Tax Relief Framework (FASTER): Overview of the final compromise text
- State of play of other key EU direct tax initiatives: The Unshell Directive proposal, Business in Europe: Framework for Income Taxation (BEFIT), EU public country-by-country reporting and the review of the Directive for Administrative Cooperation.
- Looking ahead: The direction of EU tax policy in light of the results of the European Parliament elections and the change in the Presidency of the Council

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

Webcast on the new Administrative Guidance on the GloBE rules – July 11, 2024

The OECD has released the fourth tranche of Administrative Guidance. This covers deferred tax liability recaptures, divergences between GloBE ad accounting carrying values, allocation of Cross-border Current Taxes, Allocation of Cross-border Deferred Taxes, Allocation of profits and taxes in structures including Flow-through Entities and Treatment of Securitisation Vehicles.

On July 11, 2024, a panel of KPMG BEPS specialists will present this new guidance and assist you in your Pillar 2 projects.

Please access the event page to register.

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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.

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