KPMG

E-News from KPMG's EU Tax Centre

E-News from the EU Tax Centre

Issue 120 – August 6, 2020

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.

Latest CJEU, EFTA and ECHR

Advocate General's Opinion on the right of appeal against a request for information in tax matters

On July 2, 2020 Advocate General (AG) Kokott of the Court of Justice of the EU (CJEU) issued her opinion in joined cases C-245/19 and C-246/19 on cross-border exchange of information between tax authorities. The joined cases relate to two requests for information from the Spanish tax authorities to the Luxembourg tax authorities, based on the Spanish-Luxembourg double tax treaty and the EU Directive on administrative cooperation in the field of taxation (2011/16/EU). In order to be able to respond to the request, the Luxembourg tax authorities inquired information from a Luxembourg third-party company and a Luxembourg bank. Under the Luxembourg law in force at the time, the requirement could not be challenged in legal proceedings and failure to provide the information was subject to substantial fines in Luxembourg.

According to the AG, the decision by which an authority that was asked for support pursuant to the EU Directive on administrative cooperation, requires a person to provide information on a taxpayer or third parties can be challenged by that person, the taxpayer and concerned third parties in front of the courts of the requested Member State. The exclusion of legal protection infringes the right to an effective remedy under article 47 of the Charter of Fundamental Rights of the EU.

Please refer to the press release issued by the Court of Justice for further details.

CJEU decision on the implementation of the anti-money laundering directive by Romania and Ireland

On July 16, 2020, the CJEU upheld the actions brought by the European Commission against the failure by Romania and Ireland to transpose Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the EU Anti-Money Laundering Directive), into their national law by June 26, 2017 and to notify the Commission of the measures adopted in that regard. The Court ordered Romania and Ireland to pay the Commission a lump sum of EUR 3,000,000 and EUR 2,000,000, respectively.

For more information, please refer to the press release.

State Aid

The General Court of the EU annuls the European Commission decisions on Irish tax rulings

On July 15, 2020, the General Court of the EU issued its judgment in cases T-778/16 and T-892/16 on the European Commission's decision (EU 2017/1283) on tax rulings granted by Ireland. The decisions – adopted by the Commission in 2016, concern two tax rulings issued by the Irish tax authorities in favor of two companies incorporated in Ireland, but not tax resident in Ireland. The contested tax rulings endorsed the profit allocation methods related to the trading activity of the Irish branches of the two entities concerned. The Commission considered that the tax ruling constituted unlawful State aid, incompatible with the EU internal market.

According to the Court, the Commission did not provide proof in accordance with the required standard that there was an advantage within the meaning of EU State aid rules, under Article 107(1) of the Treaty on the Functioning of the EU (TFEU). The General Court considers that the Commission incorrectly concluded that the Irish tax authorities had granted an advantage by not allocating certain group intellectual property licenses to the Irish branches. According to the General Court, the Commission should have demonstrated that that income represented the value of the activities carried out by the Irish branches, in light of – among others, the activities and functions actually performed by those branches and the strategic decisions taken and implemented outside of those branches. However, the General Court endorsed the Commission's assessments of normal taxation under the Irish tax law, having regard to the tools developed within the OECD, such as the arm's length principle.

Regarding the European Commission's alternative line or reasoning, the Court noted that the EC did not prove that the contested tax rulings were the result of discretion exercised by the Irish tax authorities.

For more information, please refer to the press release.

European Commission (re)approves Italian tonnage tax

On June 11, 2020, the European Commission approved under EU State aid rules the prolongation until the end of 2023 of various Italian support measures for maritime transport under Italy's "International Registry" scheme, which is envisaged to encourage shipping companies to register their ships in Europe. Under the scheme, shipping companies are granted a corporate tax reduction and other benefits.

Italy has committed to several changes to its scheme to avoid undue distortion of competition and to prevent any discrimination between shipping companies and registries of different European Economic Area (EEA) States. The Italian authorities have committed, among others, to extend the benefits of the scheme to all eligible ships that fly an EEA flag.

For more information, please refer to the press release.

European Commission approves modification to French risk investment scheme

On June 26, 2020, the EC approved a modification to a French tax scheme aimed at encouraging direct or indirect risk investment in certain local small and medium-sized enterprises (SMEs). The scheme allowed for a tax reduction for individuals subscribing to capital of specific innovative SMEs.

Following the modifications, income tax is considered as the tax base for the reduction (previously wealth tax) and the scope is broadened to include certain socially responsible enterprises (*Entreprises Solidaires d'Utilité Sociale* or ESUS).

For more information, please refer to the press release.

European Commission approves extension on Swedish Tax Exemption Schemes for Non Food-Based Biogas and Bio-Propane

On June 29, 2020, the European Commission announced that it had (conditionally) approved under EU State aid rules the extension of two Swedish schemes whereby a tax exemption from domestic energy and CO2 taxation is granted for biogas used in heat generation and for biogas used as motor fuel.

The Commission ordered Sweden to implement the following changes:

- the tax exemption must be limited to only non-food biogas; and
- the tax exemption must be extended to non-food-based bio-propane.

The tax scheme was assessed by the European Commission under the EU Guidelines on State aid for environmental protection and energy. The Commission states that these schemes will contribute to the EU-wide effort to meet the Paris agreement by 2030.

EU Institutions

EUROPEAN COMMISSION

European Commission issues Recommendation on making State financial support conditional on absence of links to non-cooperative jurisdictions

On July 14, 2020, the European Commission issued a Recommendation to EU Member States on making State financial support to undertakings in the Union conditional on the absence of links to non-cooperative jurisdictions. The EC recommendation aims to set out a coordinated approach to making the granting of financial support by Member States conditional on the absence of links between the recipient undertaking and jurisdictions which feature on the EU list of non-cooperative jurisdictions. The EC recommends that undertakings that receive financial support should not:

> (a) be resident for tax purposes in, or incorporated under the laws of, jurisdictions that feature on the EU list of non-cooperative jurisdictions;
> (b) be controlled, directly or indirectly, by shareholders in jurisdictions that feature on the EU list of non-cooperative jurisdictions;
> (c) control, directly or indirectly, subsidiaries or own permanent establishments in jurisdictions that feature on the EU list of non-cooperative jurisdictions; and
> (d) share ownership with undertakings in jurisdictions that feature on the EU list.

The EU list of non-cooperative jurisdictions only concerns countries outside of the European Union.

Further reference is made to the press briefing here.

European Commission present its new Tax Package

On July 15, 2020 the European Commission unveiled its new Tax Package focused on fairness and simplicity of tax systems within the European Union. The package contains three separate, but complementary initiatives consisting of an amendment to the Directive on Administrative Cooperation (DAC7), a Communication on Tax Good Governance, as well as a Tax Action Plan aimed at simpler, fairer and better attuned tax systems within the EU.

For further details, please refer to Euro Tax Flash issue 432.

European Commission publishes July infringement package, including tax cases

On July 2, 2020, the European Commission published its July infringement package, including tax-related infringement cases.

The Commission sent a letter of formal notice to Belgium requesting the correct implementation of the Anti-Tax Avoidance Directive (Directive 2016/1164 or ATAD I), as it deemed that the national implementation of the interest limitation rules and the CFC rules deviate too far from the provisions of ATAD I.

In addition, letters of formal notice were sent by the European Commission to Luxembourg, Slovakia and Slovenia for incorrect transposing the 4th Anti-Money Laundering Directive. The Commission assed that, inter alia, the exchange of information among Financial Intelligence Units (Luxembourg), the protection of whistle-blowers (Slovak Republic) and the measures preventing convicted people from holding management functions (Slovenia) were incorrectly transposed into national law.

A reasoned opinion was sent by the European Commission to the Czech Republic, Denmark and Italy for failing to fully transpose the 4th Anti-Money Laundering Directive into national law.

The European Commission has referred Austria, Belgium and the Netherlands to the CJEU for not properly transposing the 4th Anti-Money Laundering Directive into national law.

For more information, please refer to the press release.

Brexit update – Round six of negotiations for a new partnership between the EU and the United Kingdom

On July 23, 2020, the European Commission published remarks by Michel Barnier following round six of negotiations for a new partnership between the EU and the United Kingdom. The discussions clarified a number of issues such as social security coordination and Union programmes, comprehensive and single institutional framework, as well as police and judicial cooperation.

No progress has been made on two essential topics of the economy partnership:

- robust guarantees for a level playing field – including on State aid and standards – to ensure open and fair competition.
- a balanced, sustainable and long-term solution for fisheries need to be made.

According to Barnier, over the past few weeks, the UK has not shown the same level of engagement and readiness to find solutions respecting the EU's fundamental principles and interests.

For more information, please refer to the press release.

COUNCIL OF THE EU

Member States representatives reach compromise on deferral of DAC6 and DAC2 deadlines

On June 3, 2020, the Council (formally) adopted the amendments to the DAC allowing member states an option to defer by up to 6 months the time limits for the filing and exchange of the following information:

- automatic exchanges of information on financial accounts of which the beneficiaries are tax residents in another member state (DAC2 – 3 months deferral);
- mandatory disclosure requirements (MDRs) for intermediaries and relevant taxpayers under (DAC6 – 6 months deferral).

The amendment - Council Directive (EU) 2020/876 of June 24, 2020 (hereinafter “the DAC6 Deferral Directive”), entered into force on June 27, 2020. With respect to DAC6 (MDR), the amendments as adopted give EU Member States the option to delay the deadlines for filing information on reportable cross-border arrangements by up to six months, as follows:

- by February 28, 2021 (previously August 31, 2020) for arrangements where the first step was implemented between June 25, 2018 and June 30, 2020 (so-called “historical arrangements”).

- the start date for the 30 days reporting deadline to begin by January 1, 2021 (originally July 1, 2020). This will also apply with respect to cross-border arrangements for which the reporting trigger occurs between July 1, 2020 and December 31, 2020. The deadline for a reportable cross-border arrangement that is made available for implementation or is ready for implementation, or where the first step in its implementation has been made during the deferral period will therefore be the end of January 2021.
- April 30, 2021, for the first periodic report on marketable arrangements.

As at August 5, 2020, most Member States had opted for a six-month deferral of reporting deadlines under DAC6, with the notable exceptions of Austria (three-month extension), Finland and Germany (no deferral).

Read a TaxNewsFlash for further details.

OECD

OECD secretary-general tax report to G20 finance ministers and central bank governors

On July 18, 2020, the OECD presented its International Tax Report to G20 Finance Ministers and Central Bank Governors, also containing the OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019-July 2020.

The report provides an update on the progress made by the OECD to address the tax challenges arising from the digitalisation of the economy. In this regard, the OECD is aiming at delivering blueprints for Pillar I and Pillar II for the October meeting of G20 Finance Ministers. These blueprints would serve as the basis for a public consultation, so that all stakeholders can input and comment, and a final round of negotiations with a view to agreeing a consensus based solution.

Furthermore, the report provides an update on the work carried out in response to the Covid-19 crisis. The OECD specifically states that effective tax policy responses in the recovery phase will provide countries with essential tools to face the upcoming challenges arising from the current crisis. In this regard, the OECD stands ready to deliver tax policy recommendations by spring 2021.

The report also contains the latest progress on G20 deliverables. Notably, an update on tax transparency with the 2019 automatic exchange of information figures. Reference is also made to the new framework to require reporting by digital platform operators with respect to sellers in the sharing and gig economy. The OECD also shares the results of the implementation of the BEPS standards and finally focuses on the training and capacity building efforts for developing countries.

OECD releases stage 1 peer review reports on dispute resolution for nine additional jurisdictions

On July 27, 2020, the OECD published its ninth round of stage 1 peer review reports. Each report assesses a country's efforts to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

The reports of Andorra, the Bahamas, Bermuda, British Virgin Islands, the Cayman Islands, the Faroe Islands, Macau (SAR) China, , Morocco and Tunisia contain around 185 targeted recommendations that will be followed up in stage 2 of the peer review process.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS – MLI

Kazakhstan and Oman deposit their instruments of ratification for the OECD MLI

On June 24, 2020, Kazakhstan deposited its instrument of ratification for the Multilateral Convention. The MLI will enter into force on October 1, 2020 in respect of Kazakhstan.

On July 7, 2020, Oman deposited its instrument of ratification for the Multilateral Convention. The MLI will enter into force on November 1, 2020 in respect of Oman.

Following these ratifications, a total of 49 of the 94 signatories have ratified, accepted or approved the MLI. The text of the Multilateral Convention, the explanatory statement, background information, database, and positions of each signatory are available here.

Local Law and Regulations

Belgium

Bill implementing the Fifth Anti-Money Laundering Directive submitted to Parliament

On June 8, 2020, a bill for the transposition of the EU Fifth Anti-Money Laundering Directive was submitted to the Belgian Parliament.

Among other provisions the following items are included in the bill:

- which individuals and entities (incl. service providers) are required to report transactions involving digital currency;
- requirements for customers and beneficial owners when filing returns;
- enhanced due diligence measures for transactions with high-risk countries and improvements on the corporate-level high-risk analysis;
- procedures for the reporting of suspicious transactions to the authorities;
- a risk-based approach for the monitoring of money transfers; and
- impose penalties and fines for non-compliance.

The bill is available here (in French and Dutch).

A proposal for a Digital Services Tax in Belgium has been reintroduced

The proposal for a digital services tax (DST) was initially introduced in Belgium in January 2019, but put on hold with the general elections in May 2019. The proposal was then reintroduced in

July 2019 but was not discussed in Parliament.

In June 2020, an amended version of the initial DST proposal was added to the agenda of a parliamentary committee. The amendments to the proposal generally reflect the conclusion of the Supreme Administrative Court (May 2020) that the original DST proposal could possibly be contested as State aid in violation of the EU Treaty and possibly also interfere with the principle of equality in the Belgian constitution. The (amended) proposal is largely aligned with the European Commission proposal for a Directive introducing an EU-wide DST.

For further details, read a July 2020 report prepared by the KPMG member firm in Belgium.

Tax administration issues guidance on interest deduction limitation rules

On July 10, 2020, the Belgian tax administration issued guidance on the new interest deduction limitation (EBITDA) rule applicable from January 1, 2019, following the implementation of ATAD I.

The guidance is available here (in Dutch) and here (in French).

Bulgaria

DAC6 deferral formalized

On August 4, 2020, the Act introducing, inter alia, a six-month deferral of the DAC6 reporting deadlines was published in the Bulgarian State Gazette.

Cyprus

Tax Department formally announces DAC6 deferral

On July 27, 2020, the Tax Department of the Cypriot Ministry of Finance published an official announcement on the option to defer DAC6 reporting deadlines by six months. The announcement also notes that further guidance on the implementation of DAC6 and on how to submit the required information will be provided by the Tax Department in a future Communication.

The text of the DAC6 transposition law is subject to formal approval by Cypriot Parliament, which is expected in September 2020.

For more details, read a tax alert published by KPMG in Cyprus.

Cypriot Notional Interest Deduction rules amended.

On June 16, 2020, the Notional Interest Deduction (NID) rules in the Cypriot Income Tax Law were amended to define the reference rate for the notional interest deduction as the interest rate of the 10-year government bond yield of the country where the new equity is invested (as published annually), increased by five percentage points (previously three). The interest rate of the Cyprus 10-year government bond will no longer be used as a comparison but will only apply if the country in which the new equity is invested has not issued any government bonds up to December 31 of the year prior to the year in question.

The amendment is effective retroactively as of January 1, 2020.

Read the June 2020 report prepared by the KPMG member firm in Cyprus and that includes a table of reference rates.

Remaining ATAD provisions published in Cypriot Official Gazette

On July 3, 2020, the exit taxation rules (ATAD I) and the rules regarding hybrid mismatches with third countries (ATAD II) were published in the Official Gazette of Cyprus. The provisions on exit taxation and hybrid mismatches apply retroactively from January 1, 2020, excluding the provisions targeting reverse hybrid mismatches, which will apply from January 1, 2022.

Czech Republic

DAC6 law approved and 6-month deferral of reporting deadlines confirmed

On July 22, 2020, the Czech Parliament approved the DAC6 transposition law. The law was signed by the President of the Czech Republic and should become effective during August or September 2020, depending on the date of its publication in the Czech Collection of Law. Furthermore, the Czech government issued a decree extending the DAC6 reporting deadline by six months, thus exercising the option given under the DAC6 Deferral Directive.

Please refer to the KPMG's DAC6 country summary for the Czech Republic.

Draft bill on Digital Service Tax – reduced tax rate

On June 10, 2020, the governing coalition in the Czech Republic approved the reduction of the proposed DST rate from 7% to 5%. The bill is still undergoing the necessary legislative process and if approved, is expected to apply as of January 1, 2020.

Bill on amending the Tax Administration code approved by Parliament

On June 10, 2020, a bill amending the Czech Tax Administrative code was approved by Parliament.

The following amendments are included in the bill:

- support for the electronic administration of taxes (e.g. introduction of an online tax office);
- simplification of tax audit procedures;
- a revised system of sanctions; and
- simplifying the procedures for the repayment of excess VAT.

The bill was published in the Official Gazette on June 26, 2020 and will enter into force on January 1, 2021.

Denmark

Introduction of Danish CO2 tax

On June 22, 2020, the Danish Parliament approved the introduction of a CO2 tax as part of the goal of reducing greenhouse gas emission in Denmark by 70% by 2030. The tax, together with other instruments, is mentioned in Denmark's climate action plan (Danish only).

Finland

Finnish tax administration issues opinion on OECD Transfer Pricing Guidance on financial transactions

On July 1, 2020, the Finnish tax administration published its opinion (Finnish only) on the OECD Transfer Pricing Guidance on financial transactions of February 11, 2020. According to the Finnish tax administration, the guidance only provides a new interpretation for determining the credit worthiness of a company. In this regard, the Finnish tax administration is of the opinion that a group's credit rating may be used for evaluating the credit worthiness of a related-party company in so far as no trustworthy method to determine the credit worthiness of solely the related company is available and if other facts support such an approach.

Tax authorities issue guidance on hybrid mismatch rules

On July 3, 2020, the Finnish tax administration published guidance (Finnish only) on the cross-border hybrid mismatches provisions – following the implementation of article 9 of ATAD I into national legislation.

France

DAC6 deferral formalized

The third Amending Finance Act for 2020 (*Loi de finances rectificative pour 2020*, LFR) was published in the French Official Journal on July 31, 2020 and includes – among other emergency tax measures, the deferral of DAC6 reporting deadlines by six months.

Updated list of cooperating jurisdictions – Country-by-Country reporting

On July 22, 2020, France published an updated list of jurisdictions that have Country-by-Country reporting rules similar to France and that have concluded with an agreement on the automatic exchange of CbC reports with France.

The following countries are relevant for tax years starting on or after January 1, 2018: Andorra, Colombia, Cayman Islands, Curaçao, Monaco, Nigeria, Pakistan, Peru, Qatar, United Kingdom and Switzerland.

Greece

Ministry of Finance clarifies tax exemption on investment plans

On July 1, 2020, the Greek Ministry of Finance issued two ministerial decisions related to the corporate income tax exemption for investment plans. The scheme allows in-scope companies to claim an exemption on their profit before tax in case their filed investment plan is approved by the competent authorities.

The ministerial decisions clarify the following points:

- the data declared by a company in its corporate income tax is the starting point for determining the amount of tax exemption;
- the tax is determined via the applicable income tax rate of the year in which the benefit is granted; and
- the right for the exemption can be claimed during the year in which the decision that certifies the completion of 50% of the investment plan or the decision of the completion of the plan and the initiation of the productive operation of the investment, is published.

Bill amending Tax Procedural Code and Uniform Tax on Ownership of Real Estate Property (ENFIA) legislation adopted by Parliament

On July 6, 2020, a bill amending the Tax Procedural Code and Uniform Tax on Ownership of Real Estate Property (ENFIA) legislation was adopted by Parliament.

The amendments include a.o. the possibility for cancellation or amendment of a tax assessment, an administrative correction or the imposition of a fine issued as of 1 January 2020. These cancellations or amendments are considered upon taxpayers' request.

The bill is available here (in Greek only).

Law implementing various provisions of EU law published

Law no. 4714/2020 transposing various provision of EU law into Greek legislation was recently published and refers to, inter alia, the following provisions:

- exit taxation and anti-hybrid mismatches rules (ATAD I and II),
- reporting obligations on cross-border arrangements (DAC6) and
- the provisions of the Directive 2017/1852 on tax dispute resolution mechanisms in the European Union.

As regards DAC6, the law confirms the six-month deferral of reporting deadlines.

For further details, read a tax alert published by KPMG in Greece.

Hungary

DAC6 guidance published

On July 20, 2020, the Hungarian tax authorities published guidelines on the reporting obligations of intermediaries and relevant taxpayers under DAC6. The guidelines provide further guidance on what intermediaries and relevant taxpayer are required to report and reinforces the deferred reporting deadlines (by six months). The guidelines also clarify that DAC6 disclosures must be submitted electronically to the tax authority using a specific form and according to the instructions available on the website of the tax authority.

Italy

Legislative decree implementing DAC6 approved

A legislative decree transposing the provisions of DAC6 into Italian law was approved by the Italian Council of Ministers and confirms that Italy has opted for a six-month deferral of DAC6 reporting deadlines. The DAC6 transposition process will be formally finalized once the decree is published in the Italian Official Gazette. Implementation guidance is expected in the form of a separate decree.

Legislative decree implementing the Directive on Tax Dispute Resolution Mechanisms published in the Italian Official Gazette

On June 10, 2020, Legislative Decree No. 49 of June 10, 2020 implementing the EU Directive on tax dispute resolution mechanisms (2017/1852) was published in the Italian Official Gazette. The Decree entered into force on June 25, 2020 and applies to complaints submitted as from July 1, 2019 in regard to disputes on income or capital earned in fiscal years as of January 1, 2018.

Italy revises R&D tax credit system

The 2020 Budget Law revised the Italian research and development (R&D) tax credit system. The new system applies to the fiscal year following that in progress on December 31, 2019 (which is 2020 for calendar-year taxpayers). Note that the previous R&D tax credit system has ended one year early.

Taxpayers eligible for the R&D tax credit system are enterprises that are resident in Italy and Italian permanent establishments of foreign enterprises, provided they are not involved in insolvency proceedings and have not been placed under any “bans.”

Read a July 2020 report prepared by the KPMG member firm in Italy for further details on eligible activities and expenses.

Luxembourg

Deferral of reporting deadlines formalized

On July 24, 2020, the Luxembourg government formalized the extension of reporting deadlines under for DAC2 (CRS), DAC6 and FATCA reporting purposes with the publication of the relevant law in the Luxembourg Official Gazette. The law entered into force on June 30, 2020.

Netherlands

Guidelines on Mandatory Disclosure Rules (DAC6) published and six-month deferral confirmed

Guidelines on reportable cross-border arrangements for the purposes of implementation of the provisions of DAC6 in the Netherlands ((hereinafter: Guidelines) were published on June 30, 2020, and provide further details on the reporting obligation for ‘Dutch’ intermediaries or ‘relevant taxpayers’. The Guidelines may be updated in the future. Read the related report from KPMG in the Netherlands for further details.

Via a policy statement, dated June 26, 2020, the Deputy Minister has granted a postponement of 6 months in the Netherlands for notifying reportable cross-border arrangements to the Dutch tax authorities under the Mandatory Disclosure Rules (DAC6). Read the related report from KPMG in the Netherlands for further details.

Bill to tax "excessive borrowing" of company's substantial interest holders

On June 17, 2020, the Dutch Deputy Minister of Finance presented to the Lower House a bill referred to as the "Excessive Borrowing from Own Companies Act." The measure, which was previously announced in September 2018 on "Budget Day" and subject to public consultation in March 2019, concerns substantial interest holders and proposed that borrowings from their own company in excess of EUR 500,000 should be subject to tax as income derived from a substantial interest. Home acquisition debt would be excluded. The measure would be effective for the calendar year 2023, one year later than originally planned.

Read a June 2020 report prepared by KPMG in the Netherlands for further details.

Proposal for conditional final settlement of dividend withholding tax

On July 10, 2020, private members presented in the Dutch lower house of Parliament a bill introducing a final settlement requirement to resolve dividend withholding tax obligations for certain a cross-border reorganization operations by companies resident in the Netherlands that are members of certain defined corporate groups.

The current dividend withholding tax rules do not include a final settlement requirement if the withholding obligation ends because a company is no longer a resident of the Netherlands. In most situations, the Netherlands is not able to levy dividend withholding tax on the (deferred) profit reserves present at that time because the company no longer has a withholding obligation for Dutch dividend tax purposes or because a treaty for the avoidance of double taxation prevents the taxation.

The bill aims to secure the dividend withholding tax in the event that, as a result of a reorganization, the (deferred) profit reserves are transferred to a jurisdiction that does not "take over" the Dutch dividend withholding tax claim – for example withholding tax on intra-group dividends distributed to countries that are included on a 'blacklist'.

Read a July 2020 report prepared by KPMG in the Netherlands for further details.

Updated Decree on Mutual Agreement Procedures

On June 22, 2020, the Deputy Minister of Finance updated the Decree on Mutual Agreement Procedures (Besluit Onderlinge overlegprocedures). The Decree entered into force on June 23, 2020 and has retroactive effect to June 11, 2020. The old Decree from 2008 has thus been canceled.

The Decree provides, from a Dutch perspective, a detailed explanation and interpretation of the implementation of mutual agreement procedures (MAP's) as regulated in the Tax Dispute Resolution Mechanisms Act (Wet fiscale arbitrage; WFA), the bilateral tax treaties and the EU Arbitration Convention.

Read a tax alert prepared by KPMG in the Netherlands, for further details.

Poland

Proposal for new corporate income tax regime, the "Estonian solution"

On June 17, 2020, a proposal for a new corporate income tax regime – referred to as the "Estonian solution", was presented by the Polish Prime Minister. Under the new regime, corporate taxpayers that satisfy certain conditions and that have an annual turnover below PLN 50 million (approximately EUR 11 million) would not be required to pay income tax until such time that the company's earnings are distributed.

Read a June 2020 report by KPMG in Poland for further details.

Act implementing ATAD II and DAC6 approved by Parliament

On June 22, 2020, the Polish President signed an Act implementing ATAD II (tax treatment of hybrid transactions and hybrid entities) and introducing further changes to the Polish MDRs. Mandatory disclosure rules entered into effect in Poland on January 1, 2019.In addition to introducing a series of technical amendments to the Polish MDRs, the new Act provided the legal basis for the deferral of MDR reporting obligations. Changes introduced by the act include, inter alia, the requirement to:

- re-submit all DAC6 arrangements for which the first step in implementation occurred between June 26, 2018 and June 30, 2020. This obligation is a result of amendments to the MDR-1 and MDR-3 reporting forms, which have been updated for consistency with the EU exchange of information schema. All previously assigned tax arrangement numbers (NSP) will become void and new NSPs will be issued;
- report arrangements that qualify under the amended version of hallmark C1b)ii (on deductible payments to non-cooperative jurisdictions), which was amended (with retroactive effect) to include both the Polish as well as the EU lists. As a result, any arrangements that could potentially qualify under this hallmark (entered into during the relevant period) should be re-assessed in light of this change;
- for secondary intermediaries, report retroactive period arrangement, i.e. between June 26, 2018 and December 31, 2018.

The Act entered into force on July 1, 2020. However, please note that:

- the provisions on hybrid transactions and hybrid entities will enter into force on January 1, 2021;
- MDR deferral rules for which the legal basis was partly provided under the, Act have been regulated as follows:
    - reporting of cross-border arrangements reportable under the DAC6 regime (i.e. not under the domestic Polish rules) will be required in accordance with the new reporting deadlines (six-month deferral);
    - re-submission of disclosures of DAC6 arrangements for which the first step in implementation occurred between June 26, 2018 and June 30, 2020 has been deferred until:
        - December 31, 2020 for intermediaries that qualify as primary intermediaries (referred to as "promoters" under the Polish rules);
        - January 31, 2021 for relevant taxpayers (referred to as "users" under the Polish rules);
        - February 28, 2021 for secondary intermediaries (referred to as "supporters" under the Polish rules).

- for non-DAC6 arrangements that qualify as reportable arrangements under the Polish rules, deferral has been in place since March 31, 2020 under domestic regulations implemented in response to the COVID-19 pandemic. For this group of arrangements, deferral will end 30 days from the end of the State of Epidemic, which is currently in force in Poland.

Read a June 2020 report by KPMG in Poland for further details.

Mandatory withholding for companies and individuals postponed to December 31, 2020

On June 24, 2020, the Polish Ministry of Finance published two decrees postponing the entry into force of the mandatory withholding tax (WHT) requirement applicable to cross-border payments of specified income. The withholding tax was originally scheduled to be effective from January 1, 2019 but had previously been postponed and has now been deferred further from July 1, 2020 to December 31, 2020. The withholding tax mechanism that was already in place from January 1, 2020 have now also been postponed to December 31, 2020.

The decrees concern the requirement that Polish entities making payments of interest, dividends, or royalties or payments for certain intangible services to foreign taxpayers must collect withholding tax (at a standard rate of 20% or 19%) and then foreign taxpayers or the payers themselves (depending on who bears the economic burden of tax) may apply for a refund of the collected withholding tax (under the pay and refund mechanism).

Read TaxNewsFlash for further details.

Portugal

DAC6 transposition completed and six-month deferral confirmed

On July 21, 2020 the law transposing DAC6 into Portuguese domestic law was published in the Official Gazette, thus concluding the internal legislative process. Note that mandatory disclosure rules in Portugal include a requirement to report to the tax authorities certain domestic arrangements. For further details on the Portuguese regime, please refer to a report from KPMG Portugal.

On July 30, 2020, the Portuguese Council of Ministers approved the decree-law that introduces a deferral of the DAC6 reporting deadlines. The press release of the Council of Ministers is silent on the length of the deferral, it is expected that reporting deadlines will be deferred by six months, the maximum allowed under the EU DAC6 Deferral directive.

Read a TaxNewsFlash, prepared by the KPMG member firm in Portugal, for further details.

Portuguese parliament transposes ATAD II into national legislation

On July 6, 2020, the Portuguese Parliament approved a law transposing ATAD II into national legislation. The law, which follows the wording of ATAD II closely, aims to prevent the exploitation of hybrid mismatches and the non-deductibility of payments giving rise to double deduction or deduction without inclusion.

The provisions included in the law generally apply as from 1 January 2020, while the rules on reverse hybrids are only applicable as of 1 January 2022.

The law is available here (in Portuguese only).

United Kingdom

UK digital services tax adopted

Finance Act 2020 was enacted on July 22, 2020 and includes the UK digital services tax legislation. The UKS DST is in force with retroactive effect to April 1, 2020.

The UK DST is a tax at a rate of 2% imposed on revenue of certain digital income streams connected to UK users. The tax is calculated based on relevant revenue as recognised in the financial statements and applies only to a global group that exceeds the following thresholds in a 12-month period:

- GBP 500 million of worldwide revenue from digital services activities; and
- GBP 25 million of these revenues attributable to UK users (UK digital services revenues).

The legislation contains a requirement for the government to review the digital services tax in 2025 and provide a revenue assessment of its impact. However, proposals that would have required the government to report annually on the tax and include in the annual report an assessment of its revenue effect were ultimately voted down in the House of Commons.

The UK's digital services tax is still expected to be a temporary measure, pending an international consensus on the OECD's work into the taxation of the digitalised economy (or BEPS 2.0).

Read a July 2020 report prepared by the KPMG member firm in the UK.

Consultation document issued on expansion of R&D credits to include data and cloud computing costs

(HM) Treasury issued a consultation concerning whether to expand the range of qualifying expenditure for R&D tax credits to include data and cloud computing costs.

The consultation document focuses on the important role R&D plays in a modern economy, but also highlights the importance of ensuring that the R&D tax credits regime is more reflective of modern R&D practices and delivers the policy intent of driving greater reinvestment of funds into R&D. Modern business relies increasingly on accessing cloud based services.

Read a July 2020 report prepared by the KPMG member firm in the UK.

Local Courts

France

Supreme Administrative Court rules that the beneficial ownership test is not contrary to the Parent-Subsidiary Directive – Eqiom and Enka case

On June 5, 2020, the French Supreme Administrative Court ruled that the beneficial ownership test included in the national implementation of the Parent-Subsidiary Directive is compatible with the Parent-Subsidiary Directive, even if the Directive does not explicitly mention the test.

In the cases under review, dividends were distributed by a French company towards a Luxembourg parent company with a Swiss bank account. Under the French Tax Code, dividends paid by resident subsidiaries to EU parent companies can be exempted from withholding if the receiving entity proofs to be the beneficial owner of the dividend.

Referring to the CJEU's decisions in the so-called "Danish beneficial ownership cases" (Case C-116/16 and C-117/6), the French Supreme Court ruled that the status of beneficial ownership is a condition under article 5 of the Parent-Subsidiary Directive. Since the Luxembourg parent company was unable to proof ownership of the bank account, the withholding tax exemption on the dividends was refused.

The case follows the prior decision of the CJEU of September 7, 2017 in the Eqiom and Eka case. Under French law, the withholding tax exemption provided by the Parent-Subsidiary Directive is also denied when the EU recipient is directly or indirectly controlled by one or more non-EU residents, unless proof is given that the structure was not established in order to benefit from the withholding tax exemption. The CJEU concluded that refusing the exemption on the basis of this condition is contrary to Article 1(2) of the Parent-Subsidiary Directive and the EU freedom of establishment.

Following the judgment of the CJEU, the French tax authorities relied on the alternative ground (i.e. beneficial ownership) to maintain their reassessment – which resulted in the abovementioned decision of the French Supreme Administrative Court of June 5, 2020.

Italy

Supreme Administrative Court decision on beneficial ownership under the Interest-Royalties Directive

On July 10, 2020, the Italian Supreme Court denied the application of the Interest and Royalties Directive, with regard to interest payments by an Italian company to a Luxembourg sub-holding, on the basis of the beneficial owner condition.

The loan granted to the Italian company was part of a broader (group) transaction (acquisitions of target companies in Italy and Sweden). According to the Italian tax authorities, the Luxembourg company performed a conduit role. The Italian authorities' assessment was that:

- the Luxembourg company solely performed holding functions;
- a similar loan was granted to the Luxembourg company by its controlling shareholders; and
- the interest received by the Luxembourg company from Italy was transferred to the

controlling shareholders, with a maximum mark-up of 0,125% applied by the Luxembourg company.

The Supreme Court made reference in its decision to the CJEU's decisions in the so-called "Danish beneficial ownership cases" (Case C-116/16 and C-117/6) and stressed that the direct receipt of the interest is not the beneficial owner when that recipient's right to use and enjoy the interest is constrained by a contractual or legal obligation (which may result either from a legal document, or from the actual behavior of the parties) to pass on the income received to another person. The Court noted that in the disputed case, there was no contractual or legal obligation for the Luxembourg company to pass on the income to another entity. Furthermore, the fact that the Luxembourg entity acted as a financial and treasury holding company is not in itself sufficient evidence to qualify it as a conduit company, noting also that the margin applied was adequate and that the loan provided to the Italian entity was one of a number of intra-group loans granted in connection to the acquisition transactions. The Italian Supreme Court therefore concluded that the Luxembourg entity should be regarded as the beneficial owner of the interest.

KPMG Insights

COVID-19 Resources

An overview of tax developments being reported globally by KPMG member firms in response to the Novel Coronavirus (COVID-19) is available here. For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated KPMG page.

In addition, KPMG Global is hosting a regular webcast series – Keeping Connected Globally Series – Global perspectives on the Future of Tax, Legal and Mobility. Registration for the webcast sessions is available here.

DAC6 Resources

An overview of latest developments and country summaries on the implementation of the Mandatory Disclosure Requirements (MDR of DAC6) by KPMG's EU Tax Centre is available here. For further information on how KPMG can assist you in meeting the demands of the EU MDR regime, please refer to the dedicated KPMG page.

Raluca Enache
Director, KPMG's EU Tax Centre

Key links

- Visit our website for earlier editions

---

kpmg.com/socialmedia

kpmg.com/app

Privacy | Legal

If you have any questions, please send an e-mail to eutax@kpmg.com.

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands