Latest CJEU, EFTA and ECHR

Infringement Procedures and Court Referrals

State aid

EU Institutions

OECD and other International Institutions

Local Law and Regulations

Local Courts

KPMG Insights

E-News from the EU Tax Centre

Issue 179 – June 27, 2023

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

Today's edition includes updates on:

- **CJEU:** CJEU decision on the right to receive interest on overpaid withholding taxes
- **State aid:** Advocate General opinion on Luxembourg tax rulings related to intra-group license agreement
- **European Commission:** Directive proposal for harmonized withholding tax procedures in the EU
- **European Commission:** Q&A on the Foreign Subsidies Regulation published
- **OECD:** Updated Guidelines for Multinational Enterprises
- **Denmark:** Public consultation launched on a legislative proposal to implement minimum taxation (Pillar Two)
- **France:** Implementation of the EU Public CbyC Reporting Directive
- **Luxembourg:** Guidance on reverse hybrid rules published
- **United Kingdom:** Substantive enactment of Pillar Two legislation and draft guidance issued
- **Netherlands (court decision):** AG opinion on the application of anti-abuse provision in respect of the dividend WHT exemption

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Latest CJEU, EFTA and ECHR

CJEU

CJEU decision on the treatment of portfolio dividends

On June 22, 2023, the Court of Justice of the European Union (CJEU or the Court) gave its decision in case C-258/22. The case concerns the German trade tax rules on portfolio dividends.

Under German tax law applicable at the time, when calculating the basis of assessment for a company's business tax, dividends from holdings of less than 10 percent in non-resident capital companies are to be added back to that basis of assessment, if and to the extent that those dividends were deducted from that basis of assessment at a previous stage of that calculation. On the other hand, dividends from comparable holdings in resident capital companies are included from the outset in the abovementioned basis of assessment, without being deducted from or, consequently, added back to that basis of assessment.

The Court held that the difference in treatment, during the two stages of the calculation of the basis of assessment for business tax, between dividends distributed by resident companies and those paid by non-resident companies does not lead to unfavorable treatment of the latter in comparison with the former, since all the dividends are included in that basis of assessment.

Therefore, the CJEU concluded that the German law in question was not contrary to the free movement of capital.

CJEU decision on the right to receive interest on overpaid withholding taxes

On June 8, 2023, the CJEU issued a decision in case C-322/22. The case concerns the right of taxpayers to receive interest related to overpaid withholding taxes. The plaintiff, an US fund that invested in Poland, was represented by KPMG in Poland.

Polish source dividends paid to resident investment funds operating in accordance with the Polish law on investment funds were exempt from Polish corporation tax. A similar exemption applied to EU/EEA investment funds that satisfied certain conditions regarding their formation and business. Conversely, dividends paid to a third country investment fund, such as the US claimant fund in this case, were subject to a 19 percent final withholding tax (subject to a potential double tax treaty reduction).

Following a referral made by the Polish Administrative Court, the CJEU found that such rules were precluded by the free movement of capital – for previous coverage see Euro Tax Flash Issue 223. The Polish tax authorities have not amended the withholding rules and third-country investment funds are required to submit refund requests with respect to the overpaid taxes. Under local rules, their right to receive interest for the overpaid taxes is limited or even denied, depending on the date when the taxpayer had submitted the refund claim.

The CJEU recalled its settled case-law under which any person charged with a tax levied in breach of EU regulations has the right to obtain from the respective Member State not only a refund of the amount levied, but also related interest to compensate for the unavailability of that sum. The CJEU therefore concluded that limitations or exclusions such as the ones under dispute are precluded by the principle of effectiveness and the principle of loyal cooperation.

As a result of the above, the CJEU has opened the door for foreign funds to seek compensation from Poland with respect to amounts that were unlawfully withheld in Poland.

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

State aid

Advocate General opinion on Luxembourg tax rulings related to intra-group license agreement

On June 8, 2023, Advocate General (AG) Juliane Kokott of the Court of Justice of the European Union (CJEU or the Court) rendered her opinion in case C-457/21 P. The case concerns the validity of a decision issued by the European Commission (Commission or the EC), which found a transfer pricing ruling granted by the Luxembourg tax authorities in connection with an intra-group license agreement to be incompatible with EU State aid rules.

First, the AG recalled that, based on settled case-law, an error made in determining the reference system vitiates the entire selectivity analysis. The AG continued by examining whether the reference system – used both by the Commission and the General Court in their respective analyses, was determined correctly. The AG noted that the Commission based its analysis of the appropriate royalty amount on the OECD Transfer Pricing Guidelines, notwithstanding the fact that Luxembourg law did not refer to those guidelines at the time the tax ruling was issued. As a result, in the AG's view, the EC applied a different arm's length principle from that codified in Luxembourg law.

The AG concluded that – given that the Commission did not use Luxembourg law and administrative practice as the relevant reference system for its review of a selective advantage, the findings in the decision at issue were vitiated by error of law.

The AG also concluded that the Commission failed to demonstrate that the tax ruling conferred an economic advantage to the taxpayer. As a result, the AG recommended that the Court upholds the General Court's judgment, which annulled the Commission's decision.

For more details, please refer to Euro Tax Flash Issue 515.

EU Institutions

Council of the EU

Conclusions of June 16 ECOFIN meeting

On June 16, 2023, the final scheduled meeting of the Economic and Financial Affairs Council of the EU (ECOFIN Council) under the Swedish Presidency of the Council took place.

During the meeting, the ECOFIN Council approved a report to the European Council, which provides updates on a range of tax measures, including

- *Status of "Unshell" Directive proposal:* The ECOFIN report notes that progress was made on several issues, such as scope, substance criteria, tax consequences, tax residency certificates and reporting deadlines, with a full compromise text reportedly circulated in March 2023. However, the ECOFIN report also notes that further discussions will be needed in order to find compromise solutions on certain outstanding issues.
- *Recent amendment to the Directive on Administrative Cooperation (DAC8):* The ECOFIN report notes that a DAC8 compromise text was agreed at ECOFIN level on May 16, 2023, with a view to adopting the Directive once the opinion of the European Parliament has been issued and legal-linguistic revisions have been completed.

The ECOFIN Council also approved a report by the Code of Conduct Group on its work performed during the term of the Swedish Presidency (first half of 2023) including a revised state of play of the implementation by Member States of defensive measures against non-cooperative jurisdictions (as at January 1, 2023). In this context, the report notes that further work is required in autumn, particularly, on how to measure the effectiveness of identified defensive measures.

For more details, please refer to Euro Tax Flash Issue 516.

Spain announces program for Council presidency

On June 14, 2023, Spain announced the priorities for the upcoming Spanish Presidency of the Council of the EU during the second half of 2023. From a direct tax perspective, key priorities include:

- advocate for the establishment of minimum and common standards on corporate taxation in all Member States;
- fight tax evasion by large multinationals, which is estimated to cost the EU Member States 1.5 GDP points each year which is considered to equal the amount that is spent on housing and environmental protection.

For more information, please refer to the dedicated website of the Spanish Presidency.

European Commission

Directive proposal for harmonized withholding tax procedures in the EU

On June 19, 2023, the European Commission issued a proposal for a Council Directive for "Faster and Safer Relief of Excess Withholding Taxes (FASTER)".

The aim of the proposal is to make withholding tax (WHT) procedures in the EU more efficient and secure for investors, financial intermediaries, and local tax authorities. Key features of the proposal include:

- A common EU digital tax residence certificate which will comprise of common content, regardless of the issuing Member State. It should be noted that, provided all information has been presented, the digital tax residence certificate should be issued by Member States within one working day after the submission of a request by a taxpayer.
- Two fast-track procedures complementing the existing standard refund procedure, including: (i) a

relief at source system, and (ii) a quick refund system. Member States will be required to implement one of the two systems (or a combination of both).

- The introduction of National Registers for financial intermediaries that will be able to facilitate the fast-track procedures. It should be noted that such financial intermediaries will be subject to additional common reporting requirements.

The Commission has launched a public consultation seeking feedback from interested stakeholders on the proposed revisions. The public consultation will run for an eight-week feedback period starting from June 19, 2023 but extended every day until the proposal is available in all EU languages.

Where the Directive is adopted by Member States, it is expected that the proposal will come into force on January 1, 2027.

For more information, please refer to the European Commission's press release and Euro Tax Flash Issue 517.

Proposal for next generation of EU own resources published

On June 20, 2023, the European Commission published proposals for a next generation of own resources. The proposal completes and updates the package for the next generation of own resources to the budget put forward in December 2021 (for previous coverage, please refer to Euro Tax Flash Issue 463).

Own resources to fund the EU budget provided under the new proposal include:

- *New temporary statistical based own resource on company profits:* The proposal provides for a new statistical own resource based on national accounts statistics, prepared under the European system of accounts (ESA). This contribution would not constitute a new tax on companies. Instead, Member States would be required to transfer to the EU budget, on a monthly basis, an amount of 0.5 percent of the gross operating surplus statistics recorded for the sector of financial and non-financial corporations.
- *Adjustment of the ETS own resource:* The European Commission acknowledges the increase in the carbon prices since the 2021 own resources proposal was published (EUR 80 per tonne in 2022 as compared to EUR 55 in 2021).
- *Adjustment of the CBAM own resource:* The December 2021 proposal remains largely unchanged. Minimal amendments were made manly to align the text with the recent CBAM Regulation.
- *Pillar One based resource:* The initiative maintains the Pillar One based own resource, that was included in the December 2021 proposal. Under this proposal, Member States would provide a national contribution to the EU budget based on the share of 15 percent of the taxable profits of multinational enterprises re-allocated to each Member State under Pillar One.

Notably, an own resource based on an EU Financial Transaction Tax is missing in the package, despite being mentioned in previous communications as a potential new own resource. According to the working document accompanying the proposal, the Commission considers an FTT as unlikely to materialize in short term.

The Commission proposes that the contribution from the statistical based own resource on company profits and the existing ETS – covering stationary installations, maritime and aviation, applies as of 2024. The contribution from CBAM and the new ETS on building, road transport and other sectors is proposed to apply as of January 1, 2028.

The own resource decision has to be unanimously agreed by Member States in the Council. The European Parliament would also need to provide their non-binding opinion. The decision will enter into force once it is ratified by the Member States in accordance with their constitutional requirements.

For more details, please refer to Euro Tax Flash Issue 518 and the Commission's press release.

Consultation on CBAM draft implementing regulation

On June 13, 2023, the European Commission launched a consultation on a draft implementing regulation laying down the rules for applying the Carbon Border Adjustment Mechanism (CBAM) during its transitional phase (October 1, 2023 to December 31, 2025). During the transitional period importers of goods falling within the scope of the CBAM are only required to comply with reporting obligations, without making any payments.

The draft implementing regulation outlines the methodology to be used in the transitional period for calculating embedded emissions released during the production process of CBAM goods. In the first years in-scope companies would be allowed to choose from three reporting methods. As of January 1, 2025, the only reporting methodology would be the new EU one.

Stakeholders are invited to provide feedback until July 11, 2023. The Commission plans to officially adopt the Implementing Regulation later this summer following a vote in the CBAM Committee, which consists of representatives from EU Member States.

For more details, please refer to the Commission's release.

Q&A on the Foreign Subsidies Regulation published

On June 6, 2023, the European Commission published non-binding Questions and Answers (Q&A) in respect of the application of the EU Regulation on foreign subsidies distorting the internal markets (Foreign Subsidies Regulation – FSR).

The FSR will enter into force on July 12, 2023 and complement EU State aid rules by empowering the Commission to investigate financial contributions that are granted by a public authority in a non-EU country to undertakings operating in the EU. Under the FSR, undertakings in scope will have to notify the European Commission of certain mergers and tenders in public procurement procedures. Similar to EU State aid rules, the European Commission may impose redressive measures where it establishes that a foreign subsidy represents unlawful state aid. For more details, please refer to Euro Tax Flash Issue 495.

Key takeaways from the Commission's Q&A clarifications include:

- Notifications are not required for transactions that have been signed before July 12, 2023 or agreed on July 12, 2023 or later but implemented before October 12 2023.
- A financial contribution is deemed to have been granted from the moment the beneficiary obtains a legal entitlement to receive it, i.e. not the date when the funds are disbursed.
- Subsidies that are in scope of the WTO Agreement on Subsidies and Countervailing Measures cannot be redressed under the FSR. However, such subsidies may need to be taken into account for determining whether the notification threshold for concentrations is met.
- If the transaction has been set at market conditions, it will generally not constitute a foreign subsidy within the meaning of the FSR. However, it may be considered a foreign financial contribution for applying the notification threshold for concentrations.

- Tax exemptions and tax holidays granted by third countries should be deemed in-scope financial contributions and taken into account for applying the notification threshold.
- Financial contributions granted by European Economic Area (EEA) / European Free Trade Association (EFTA) countries (Iceland, Liechtenstein and Norway) are also relevant for determining whether the notification threshold for concentrations is met.
- The Implementing Regulation and the notification forms for concentrations and public procurement will be adopted before July 12, 2023.

For more information, please refer to the Commission's dedicated webpage.

European Parliament

Report on the lessons learnt from the Pandora Papers adopted in plenary

On June 15, 2023, the European Parliament adopted a resolution on lessons learnt from the Pandora Papers and other revelations.

The resolution calls for the adoption of measures to fight tax avoidance and money laundering. In particular, Members of the European Parliament (MEPs) request faster progress on pending files such as the SAFE initiative and the Unshell Directive proposal. In addition, the Report calls for strengthening of existing measures (e.g. mandatory disclosure rules under DAC6, the EU list of non-cooperative jurisdictions) as well as new regimes such as a common EU framework for withholding taxes.

Resolutions adopted by the European Parliament are not binding on the Council and European Commission but must be taken into account by the Commission and Member States when proposing or agreeing new rules.

For more details, please refer to Euro Tax Flash Issue 519 and the European Parliament's press release.

ECON draft report on further reform of corporate taxation rules published

On May 16, 2023, the Committee on Economic and Monetary Affairs (ECON) of the European Parliament published a draft report on further reform of corporate taxation rules. Key takeaways include:

- The report recommends that the use of incentives should be considered in a coordinated manner to support present and future competitiveness of European businesses.
- The report calls on the Commission to consider simplification measures to reduce the burden of compliance on EU companies with a view to increasing the resilience of European companies and encouraging international investments.
- The report endorses the Commission's preparation of a new legislative proposal for a new corporate tax system referred to as "BEFIT" and calls on the Commission to introduce a one-stop-shop for the application of the BEFIT rules on a temporary testing basis before incorporating it as a permanent feature. For more details on BEFIT, please refer to Euro Tax Flash Issue 504.
- The report calls on the Council to relaunch negotiations on the Directive proposal on a debt-equity balance reduction allowance (DEBRA), which have been suspended until other proposals in the area of corporate income taxation announced by the Commission have been put forward. It is understood that this relates to the BEFIT initiative. For more details on DEBRA, please refer to Euro Tax Flash Issue 475.
- In light of the upcoming BEFIT proposal and the implementation of the OECD Pillar Two rules, the

report also notes that the Commission should sequence the implementation of new regulatory packages to allow European companies sufficient time to prepare and adapt to this changing regulatory landscape.

The ECON Committee vote is currently scheduled for September 20, 2023.

Resolutions adopted by the European Parliament are not binding on the Council and European Commission but must be taken into account by the Commission and Member States when proposing or agreeing new rules.

OECD and other International Institutions

Organisation for Economic Cooperation and Development – OECD

Updated Guidelines for Multinational Enterprises

On June 8, 2023, the OECD published the 2023 edition of Guidelines for Multinational Enterprises (MNEs) providing updated recommendations for responsible business conduct across key areas, such as climate change, biodiversity, technology, business integrity and supply chain due diligence. As a reminder, key recommendations from a tax perspective include:

- *Compliance with the spirit of legislation:* The guidelines note that "corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate". According to the guidelines, complying with the spirit of the law means taking reasonable steps to determine the intention of the legislature and interpreting tax rules consistent with that intention taking into account statutory language and legislative history. The guidelines further note that transactions should not be aimed at a certain tax outcome that is inconsistent with its underlying economic consequences unless specific legislation is designed to give that result.
- *Cooperation and tax transparency:* The guidelines further call on MNEs to cooperate with tax authorities in a timely and complete manner, which includes the provision of information that is relevant or required by law for tax liability determination purposes. In addition, the guidelines refer to BEPS transparency actions such as Country-by-Country Reporting and Mandatory Disclosure Rules for cross-border arrangement and note that MNEs should cooperate in providing that information.
- *Adoption of tax principles into risk management system*: The guidelines recommend adopting principles of tax compliance, cooperation and transparency in the group's broader risk management systems. The guidelines note that MNEs shall ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

Agreement on Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard

On June 8, 2023, the OECD published the final version of the International Standards for Automatic Exchange of Information in Tax Matters which includes (i) a new Crypto-Asset Reporting Framework (CARF), and (ii) amendments to the Common Reporting Standard (CRS) such as the extension of its scope to bring indirect investments in crypto-assets within same.

Crypto-Asset Reporting Framework (CARF)

- Provides for a common approach to the automatic exchange of information on crypto-asset transactions between different jurisdictions.
- Rules and related commentary for jurisdictions regarding the information to be collated from service providers.
- A Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the CARF (including associated commentary). It should also be noted that jurisdictions can establish an automatic exchange of information relationship by means of bilateral agreements or arrangements.
- Provides that an XML format is to be used by local authorities for the collection and subsequent exchange of CARF information.

Common Reporting Standard (CRS)

- Updated scope of the CRS to bring indirect investments in crypto-assets within same.
- Improvements to reporting outcomes to ensure that tax authorities have the best information available to them for due diligence purposes.
- The introduction of a carve-out for genuine non-profit organizations.

For more details, please refer to the OECD press release and E-News Issue 163 (for previous coverage).

Progress report on harmful tax practices (BEPS Action 5)

On June 21, 2023, the OECD published new conclusions reached by the Forum on Harmful Tax Practices (FHTP), as part of their on-going review of the implementation of the BEPS Action 5 minimum standard on harmful tax practices. The update includes the following assessments:

- Albania’s industries incentives regime for software production / development is in the process of being amended to address potentially harmful features.
- Aruba’s investment promotion regime was abolished without providing for any grandfathering period.
- Jordan’s special economic zone regime was concluded to be not harmful following amendments to remove ring-fencing and to put in place substance requirements.
- San Marino’s IP regime and new company regime were abolished without providing for any grandfathering period.

In addition, the release notes that the FHTP will soon start its annual monitoring of substantial activities requirements for no or only nominal tax jurisdictions and review any new and outstanding regimes of Inclusive Framework members. The release also notes that the FHTP is currently working on the seventh annual peer review report on the exchange of information on tax rulings.

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

Uzbekistan joins OECD Inclusive Framework

On June 9, 2023, the OECD announced that Uzbekistan joined the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting as its 143rd member.

By joining the Inclusive Framework, Uzbekistan has committed to complying with the BEPS minimum standards and to participating in the two-pillar solution to address the tax challenges arising from the digitalization of the economy. This brings the total number of jurisdictions committing to Pillar One (reallocation of profits to market jurisdictions) and Pillar Two (introduction of a global minimum taxation) to 139 jurisdictions.

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

Local Law and Regulations

Cyprus

Consent to OECD/G20 Inclusive Framework agreement on transitional safe harbor (Pillar Two)

On June 22, 2023, the government in Cyprus announced that it consents to the design and application of the transitional safe harbor based on data reported under country-by-country (CbyC) reporting requirements that was agreed by the OECD/G20 Inclusive Framework as part of the GloBE Implementation Framework release on December 20, 2022. For more details, please refer to E-News Issue 168.

Under Article 32 of the EU Minimum Tax Directive (2022/2523) the top-up tax due by a group in a jurisdiction shall be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of an international set of rules and conditions which all Member States have consented to.

Given the fact that Cyprus is not a member of the OECD/G20 Inclusive Framework, a separate statement was required in order to enable Article 32 of the EU Minimum Tax Directive to come into effect.

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

Denmark

Public consultation launched on a legislative proposal to implement minimum taxation (Pillar Two)

On June 26, 2023, the Danish Ministry of Finance launched a consultation on a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive (2022/2523).

The proposal generally closely follows the text of the EU Directive (for more details, please refer to Euro Tax Flash Issue 500) and also incorporates certain items that were subsequently released by the OECD Inclusive Framework (including the transitional CbCR Safe Harbor). Key features of the proposal include:

- The Domestic Minimum Top-up Tax (DMTT) and the Income Inclusion Rule (IIR) would apply for financial years starting on or after December 31, 2023.
- The Undertaxed Profits Rule (UTPR) would generally be applicable one year later, i.e. for financial year starting on or after December 31, 2024. However, the UTPR would apply for financial years starting on or after December 31, 2023 where the UPE of the group is located in an EU Member States that opted for the IIR and UTPR deferral (Article 50 of the Directive).
- The draft provides for a QDMTT safe harbor rule that would deem Danish top-up tax to be zero where a QDMTT is applied in another EU Member State that is computed in accordance with the UPE's acceptable financial accounting standard or IFRS as adopted by the EU.
- While the GloBE Information Return must be filed within 15 months after the end of the fiscal year (18 months for the first reporting year), any top-up tax due must be paid within 16 months after the end of the fiscal year (19 months for the first reporting year).

Comments on the draft bill are requested by August 18, 2023.

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

Implementation of the EU Public CbyC Reporting Directive

On June 1, 2023, the Danish Parliament passed a bill to transpose the EU Public CbyC Reporting Directive (the Directive) into domestic legislation. Key takeaways include:

- The provisions of the transposing bill are closely aligned with the text of the Directive.
- Adoption of the "safeguard clause", i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission.
- From a Danish perspective, the public CbyC report should be submitted to the Danish company registry (Erhvervsstyrelsen) and be made available on the company's corporate website.

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

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

Estonia

Increase of corporate income tax rates adopted by Parliament

On June 20, 2023, the Estonian Parliament passed a law providing for corporate tax amendments, including:

- increase of the corporate income tax rate[1] to 22 percent (currently 20 percent);
- increase of the corporate income tax rate for credit institutions to 18 percent (currently 14 percent);
- eliminating the reduced corporate income tax rate of 14 percent for regularly distributed profits (calculated as 14/86 of the net distribution).

The amendments will enter into force on January 1, 2025 subject to the legislation being signed by the President and published in the Official Gazette.

France

Implementation of the EU Public CbyC Reporting Directive

On June 21 and 22, 2023, France published an implementing ordinance and decree to transpose the EU Public CbyC Reporting Directive (Directive) into domestic law. Key takeaways include:

- The provisions of the French bill are largely aligned with the text of the Directive.
- Adoption of the "safeguard clause", i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission.
- The provisions applicable to companies established in an EU Member State are extended to cover companies established in the European Economic Area (EEA)[2]. Among others, country-by-country disclosure is required for all EEA states (the Directive only requires country-by-country disclosure for EU Member States and countries on the EU list of non-cooperative jurisdictions, provided certain conditions are met).
- The public CbyC report needs to be translated into French.
- The threshold applicable to branches caught by the provisions of the bill is a net turnover of EUR 12 million.
- The bill introduces the possibility for any person to ask for a court ruling that would order non-complying companies to publish or make available the CbyC report.

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

For more details, please refer to a report (in French) prepared by KPMG in France.

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[1] Corporate income tax in Estonia is not levied when profit is earned but when it is distributed.

[2] The EEA includes EU Member States, plus Iceland, Liechtenstein, and Norway.

Germany

Implementation of the EU Public CbyC Reporting Directive

On June 21, 2023, Germany published the law to transpose the EU Public CbyC Reporting Directive (the Directive) into domestic law following its approval by the German Parliament and Federal Council. Key takeaways include:

- The provisions of the German bill are closely aligned with the text of the Directive.
- Adoption of the "safeguard clause", i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission.
- Failures to comply with the disclosure obligations may be sanctioned with an administrative penalty of EUR 250,000.

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

Hungary

Implementation of EU Public CbyC Reporting Directive

In May 2023, Hungary adopted a law to transpose the EU Public CbyC Reporting Directive into domestic law.

The law is in line with the draft legislation submitted on October 18, 2022 to the Hungarian National Assembly – for previous coverage please refer to E-News Issue 164.

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

Amendments to extra profit surtaxes published

On May 31, 2023, amendments to the decree on "extra profit" taxes were published in the Hungarian Official Gazette. The updated decree provides for an extension of the application of extra profit taxes until end of 2024 (previously introduced temporarily for 2022 and 2023 – see E-News Issue 156). In addition, the decree provides for tax rate changes to the following extra profit taxes:

- Surtax on credit institutions and financial enterprises
- Insurance tax
- Retail tax
- Pharmaceutical producers' extra profit tax
- Pharmaceutical surtax
- Electricity companies' extra profit tax
- Extra profit tax on manufacturers of bioethanol, amylum and amylum products, and sunflower oil.

The amendments are effective from June 1, 2023.

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

Ireland

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

On June 23, 2023, Ireland published a law to transpose the EU Public CbyC Reporting Directive (the Directive) into domestic law. Key takeaways include:

- The provisions of the Irish public CbyC bill are closely aligned with the text of the Directive.
- Adoption of the "safeguard clause", i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission.
- The threshold applicable to branches caught by the provisions of the bill is a net turnover of EUR 12 million.

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

Luxembourg

Guidance on reverse hybrid rules published

On June 9, 2023, the Luxembourg tax authorities issued a first circular that includes clarifications on the application of the reverse hybrid mismatch rules. In particular, the circular provides clarifications on the tax status of a hybrid entity in Luxembourg, the calculation of taxable result and the tax compliance obligations. Key takeaways include:

- the taxable income of hybrid entities, that is subject to corporate income tax in Luxembourg, includes income from movable property, rental income, and miscellaneous income and is determined under the cash accounting method;
- under certain conditions, qualifying dividends received by the reverse hybrid may benefit from a 50 percent exemption;
- distributions of dividends by a reverse hybrid do not attract the withholding tax;
- foreign tax credits, attached to income that is taxable in Luxembourg, may be deduced in determining the taxable result of a reverse hybrid entity;
- the first tax return for reverse hybrids needs to filed by December 31, 2023.

For more information, please refer to E-News Issue 168.

Guidance on DAC7 published

On June 12, 2023, the Luxembourg tax authorities issued a clarifications on the registration and declaration obligations of platform operators under the DAC7 law. Key clarifications include:

- platform operators are required to register with the tax administration via the MyGuichet website by December 31, 2023;
- platform operators are required to submit electronically the income received by sellers using their platform related to covered activities under DAC7 on an annual basis;
- the information are to be declared by January 31 of the following year, i.e. the first declaration is required by January 31, 2024 in respect of information concerning 2023.

For more information on the implementation of DAC7, please refer to Euro Tax Flash Issue 513.

Norway

Consultation launched on draft legislation for regulating minimum taxation in Norway (Pillar Two)

On June 6, 2023, the Norwegian Ministry of Finance launched a public consultation for draft regulation for the implementation of the OECD's Pillar Two Model Rules. Key features include:

- The Norwegian proposed rules closely follow the OECD Model Rules and it is outlined that the Norwegian implementation is to be interpreted according to the commentary, rules and standards of the OECD/G20 Inclusive Framework.
- One exemption from the OECD Model Rules, and in line with the EU Directive, would be that the rules will also apply to purely Norwegian based MNE's, in order to avoid issues regarding unequal treatment.
- The DMTT and the IIR would apply for financial years starting on January 1, 2024.
- The consultation paper does not provide for any draft legislation nor any date from which the UTPR may apply. However, it appears that the Norwegian Government is in favor of applying the UTPR from 2025, in line with the European Union.
- The consultation paper outlines that the Norwegian ultimate parent in the group would be liable for the IIR. Also, that Norwegian intermediary holding companies can, under certain conditions, be liable for the IIR.

The consultation period ends on August 1, 2023. The ambition is to send the final legislation to the Norwegian Parliament before year-end.

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

Switzerland

Pillar Two implementation approved by public vote

On June 18, 2023, the Swiss voters approved an amendment of the constitution that empowers the government to release a (temporary) ordinance for the implementation of the OECD's Pillar Two Model Rules.

Based on the current draft implementing ordinance, Switzerland would apply a DMTT and IIR for financial years starting on January 1, 2024. The draft does not provide for the date from which UTPR may apply, however, based on the explanatory notes, it appears that the Swiss Government is in favor of applying the UTPR from 2025, in line with the European Union.

For more information, please refer to E-News Issue 178 and a report prepared by KPMG in Switzerland.

United Kingdom

Substantive enactment of Pillar Two legislation and draft guidance issued

Substantive enactment of Pillar Two legislation

On June 20, 2023, the Spring Finance Bill completed the passage through the House of Commons and the House of Lords (for previous coverage, please refer to E-News Issue 177). As a result, the Bill is considered to be final and it is not possible to make any changes to it. As such, for UK GAAP and IFRS purposes the Spring Finance Bill (including the UK implementation of the IIR and DMTT) is now "substantively enacted".

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

Consultation on Pillar Two draft guidance

In addition, on June 15, 2023, HMRC published draft guidance regarding the multinational top-up tax and domestic top-up tax. The aim of this guidance is to provide additional information regarding which groups will be in scope and how the taxes will be administered and charged. Key features include:

- It is confirmed that a UTPR is expected to be implemented at a later date, but that it will not apply to periods beginning before December 31, 2024.
- A map between the UK legislation and the OECD Model Rules is also provided in same.

HMRC has launched a public consultation seeking feedback from interested stakeholders on the draft guidance. Comments are invited by September 12, 2023.

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

UK law reform in transfer pricing, permanent establishment and diverted profits tax

On June 19, 2023, HMRC launched a public consultation regarding the tax regime for transfer pricing, permanent establishments and diverted profits tax. The key proposals include:

- Updating transfer pricing provisions to ensure continued consistency with the international transfer pricing frameworks developed by the OECD (including the 2017 OECD Model Tax Convention on Income and Capital and the OECD Transfer Pricing Guidelines).
- Updating UK domestic legislation on permanent establishments to ensure that it remains aligned with the developing international framework around the prevention of double taxation.
- In respect of diverted profits tax (DPT), HRMC is considering (i) clarifications regarding the relationship between DPT and transfer pricing, and regarding access to treaty benefits while maintaining key features of the regime, (ii) the application of Effective Tax Mismatch Outcome for arrangements increase expenses or reduce income and (iii) amending of the Relevant Alternative Provision to ensure that this part of the legislation is aligned more closely with the UK's tax treaties.

The public consultation will run for 8 weeks until August 14, 2023.

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

Extension of energy profits levy including mechanism to remove it at normal prices

On June 9, 2023, the UK Treasury announced changes to the Energy Profits Levy (EPL), which imposes a marginal tax rate of 75 percent on North Sea oil and gas production (for previous coverage, please refer to E-News Issue 158). Key features of the updates include:

- the EPL will remain effective until March 2028;
- a new Energy Security Investment Mechanism will be introduced to remove the EPL if oil and gas prices return to historically normal levels for a sustained period (typically six months).

It should be noted that the rate of the EPL is 35 percent, resulting in a marginal tax rate of 75 percent. If it is discontinued, the usual 40 percent rate (ring fence corporation tax and supplementary charge) to oil and gas profits will still apply.

For further information, please see the press release by the UK Treasury.

Local Courts

Netherlands

AG opinion on the application of anti-abuse provision in respect of the dividend WHT exemption

On June 9, 2023, two conclusions (with a combined appendix) were published in two cases in which the dividend withholding tax exemption of Section 4 of the Dutch Dividend Withholding Tax Act was refused by invoking the anti-abuse provision contained therein. In these conclusions, Advocate General Wattel (the AG) advises the Supreme Court to dismiss the taxpayers' appeals in cassation.

These cases concerned dividends distributed by companies established in the Netherlands to Belgian holding companies, of which the (direct or indirect) shareholders in Belgium are resident members of the same family. In one of the cases, the holding company did not carry on a business of substance. In the other case, the holding company did carry on a business of substance in connection with the holding of shares in other companies, but the shares in the company that distributed the dividend could not be functionally attributed to that business. In both cases, the Court of Appeals Amsterdam ruled that there was abuse, so that the dividend withholding tax exemption could not be applied. According to the AG, the appeal in cassation in both cases must be rejected, because the Court of Appeals Amsterdam has established the correct legal standard and the actual conclusions are not incomprehensible.

If the Supreme Court will follow the Opinion of the AG, such judgment may lead the tax authorities to challenge other similar structures.

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

Spain

Ruling on capital gains tax exemption

On May 24, 2023, the Spanish National Court (the Court) issued a decision regarding whether an Icelandic company, was eligible for a tax exemption on capital gains from selling its Spanish subsidiary. In 2016, the subsidiary was sold to an unrelated Icelandic company. Initially, the seller declared the capital gain and paid the Non-resident Income Tax amounting to approximately EUR 2.5 million. However, in March 2017, the company requested a refund of the tax based on an exemption prescribed by the Spanish Non-Resident Income Tax Act. The claim was rejected because the exemption was only applicable to companies resident in EU Member States at the time.

Following the rejection, the Icelandic company appealed on the grounds that the exemption violated the freedom of establishment and the free movement of capital as regulated in the Agreement on the European Economic Area. The company also lodged a complaint with the European Commission, which initiated an infringement procedure against Spain. Spain amended the law in 2021 and extended the exemption to EEA countries. However, an additional condition was added, requiring an effective exchange of information between Spain and the respective EEA country.

The tax administration argued that despite the infringement procedure and change in the law, the infringement was justified because Iceland is not covered by EU Directive 77/779/EEC, which concerns mutual assistance in direct taxation among Member States.

The Court concluded that there was no valid reason to exclude EEA residents who are not EU members from the exemption based on the fight against tax fraud. The Court rejected the tax administration's argument that the exchange of tax information should be equivalent to EU Law, citing the Iceland-Spain tax treaty and the OECD-Council of Europe Convention on Mutual Administrative Assistance in tax matters as fulfilling the exchange of information requirement for the exemption.

KPMG Insights

EU tax perspectives session

European Union (EU) Member States and institutions continue to have full agendas that include the implementation of international initiatives and the advancement of upcoming EU-specific proposals.

Against this backdrop, we are delighted to invite you to the June 28, 2023 session of the "EU tax perspectives" webcast series, during which a panel of KPMG specialists will share their insights on some of the latest developments from across the EU affecting multinational groups operating in Europe.

The session will focus on:

- BEPS 2.0 in the EU: State of play on the implementation of the EU Minimum Tax Directive (Pillar Two).
- European Withholding Tax Framework (FASTER): What to expect and the impact on cross-border dividend payments.

- Navigating the EU Green Deal: The revised EU Emissions Trading System (EU ETS) and the new Carbon Border Adjustment Mechanism (CBAM).
- Looking ahead: State of play and updates on other EU direct tax initiatives, including the Unshell Directive proposal (ATAD 3), SAFE, BEFIT and DAC8.

Please access the event page to register.

Revisiting the fundamentals of Pillar Two

The Pillar Two rules have developed from December 2021, with multiple releases from the OECD.

On June 8, 2023, KPMG will hold a webcast that brings those releases together as a coherent whole and not as a series of updates. This will allow multinational enterprises to revisit the fundamentals as we know them today.

Please access the event page to watch a replay of the session.

EU Financial Services Tax Perspectives

On June 13, 2023, KPMG will hold its next EU financial services tax perspectives session as part of the Future of Tax & Legal webcast series.

Countries and territories across the European Union (EU) and Europe continue to operate in a significantly unsettled environment. As geopolitical tensions persist, together with rising interest rates and spiraling inflation, there is a great need for financial stability and operational resilience. Coupled with the continuing rapid digital transformation and increasing compliance challenges financial services institutions should remain competitive in an ever-changing environment.

So, what is on the horizon? Will the tax landscape in Europe become even more volatile in the future? And what does this mean for financial services institutions?

A panel of KPMG tax specialists will share their insights on some of the latest developments impacting the financial services industry including:

- European Withholding Tax Framework
- SAFE initiative update- Includes ATAD 3 (the EU Unshell Directive) and potential implications for financial services institutions
- Controversy – An update on the dividend withholding tax reassessment on certain equity transactions with a spotlight on Germany and France

Please access the event page to watch a replay of the session.

Navigating BEPS 2.0 - Key considerations for Asset Managers and sovereign wealth funds as they get ready for Pillar Two.

The OECD’s Pillar Two global anti-base erosion ("GloBE") rules, which were agreed to by the OECD/G20 Inclusive Framework on BEPS ("F") in December 2021, are beginning to be enacted into law now. In December 2022, South Korea enacted legislation applying the GloBE rules from 2024, while the European Union ("EU") agreed a Directive committing EU member states to implement to a similar timeline. In the past couple of

months we have seen similar announcements from other jurisdictions, including Hong Kong (SAR), China, Japan, Singapore, and the UK.

A common misconception is that asset managers and sovereign wealth funds ("SWFs") are automatically "excluded" from Pillar Two. Like everything Pillar Two related, the rules are not quite that simple.

For asset managers or SWFs that are potentially in-scope of Pillar Two, or where the application of the scope rules outlined below are uncertain, now is the time to think about next steps. The OECD is still seeking to issue clarificatory guidance and this could help to address areas where the Pillar Two rules have unintended consequences. Seeking an external review of how the rules apply could help groups identify these scenarios, and quantify their potential Pillar Two exposure, but also design and develop the processes they will likely need to introduce to manage their compliance and reporting obligations. For a three-year transition period, an external review may also help to protect against penalties.

For more details, please refer to the article prepared by KPMG in the US.

KPMG's EU Tax Centre team

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

Ana Pușcaș
Manager
KPMG's EU Tax Centre

Marco Dietrich
Manager
KPMG's EU Tax Centre

Jack Cannon
Manager
KPMG's EU Tax Centre

Nevena Arar
Assistant Manager
KPMG's EU Tax Centre

Key EMA Country contacts

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

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

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

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

Elli Ampatzi
Senior Manager
KPMG in Greece
E: eampatzi@cpalaw.gr

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

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

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

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

Paul Suchar
Partner
KPMG in Croatia
E: psuchar@kpmg.com

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

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

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

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

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

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

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

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

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

Birute Petrauskaite
Partner
KPMG in Lithuania
E: bpetrauskaite@kpmg.com

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

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

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

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

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

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

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

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

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

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