E-News from KPMG's EU Tax Centre

Key Insights of E-News Issue 213

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:* AG Kokott considers that Belgium's decision not to transpose Article 8(7) of ATAD is consistent with the Directive's framework of minimum harmonization
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Key Insights

- AG Kokott considers that Belgium's decision not to transpose Article 8(7) of the ATAD does not constitute a breach of its obligation to implement the Directive.

CJEU

AG opinion on the compatibility of the Belgian CFC rules with the ATAD

On May 22, 2025, Advocate General (AG) Juliane Kokott of the Court of Justice of the European Union (CJEU or the Court) recommended that the Court find Belgium's failure to transpose Article 8(7) of the EU Anti-Tax Avoidance Directive (ATAD or the Directive)[1] does not constitute a breach of its obligation to implement the Directive (case C-524/23).

Article 7 of the ATAD sets out the controlled foreign company (CFC) rule, which requires Member States to tax the income of low-taxed controlled subsidiaries or permanent establishments (PEs) as if it were earned by the parent company or head office. The rule applies when the tax paid by the CFC or the PE is substantially lower than the corporate tax that would have been due on the same income in the Member State of the parent. In such cases, the income is attributed to the parent company and taxed in its jurisdiction.

Member States may choose between two approaches when implementing the CFC rules:

- Model A: applies the charge to non-distributed income of the CFC derived from specific categories of passive income – Article 7(2)(a).
- Model B: applies the charge to non-distributed income of the CFC arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage – Article 7(2)(b).

Under Article 8(7) of the ATAD, Member States are required to allow a deduction for the foreign tax paid by a CFC against the domestic tax liability of the parent company resident in the Member State. At the time of the proceedings in case C-524/23, Belgium had transposed the ATAD and chosen Model B for the CFC rules. However, Belgium had not transposed Article 8(7), arguing that its domestic legal framework provided more robust safeguards against tax avoidance by disallowing such deductions.

On July 2, 2020, the European Commission (the Commission or the EC) sent a letter of formal notice to the Belgian authorities, followed by a reasoned opinion on December 2, 2021, requesting them to amend their legislation and transpose Article 8(7) of the ATAD. Subsequently, on April 19, 2023, the EC decided to refer Belgium to the CJEU for failing to correctly transpose the Directive (for more details, please refer to the European Commission's press release).

The AG started the analysis by noting that the key issue is whether Belgium failed to meet its transposition obligations under the ATAD by choosing to implement Model B without incorporating the tax deduction required under Article 8(7). The AG

[1] Directive - 2016/1164 - EN - EUR-Lex.

observed that this question assumes that Belgium was indeed required to transpose the Directive—a presumption the AG considered controversial given an alleged uncertainty surrounding the EU's competence to adopt the ATAD[2]. Whilst expressing reservations about the EU's legislative competence in this area, the AG nevertheless noted that the question of competence was not raised in this case and that the issue may only be reviewed by the Grand Chamber of the CJEU, which is not where the present case is judged. The competence issue raised by the AG will therefore remain unaddressed.

The AG also analyzed Belgium's plea that the transposition of Article 8(7) of the ATAD is unnecessary when applying Model B of the CFC rules. Whilst acknowledging that the text of the Directive extends the obligation to allow a deduction for taxes paid in the CFC's jurisdiction to both Model A and Model B, the AG analyzed the requirement from a systematic and teleological perspective. In the AG's view, since Article 6 of the ATAD requires Member States to disregard artificial arrangements, non-genuine arrangements would not result in double taxation. Therefore, according to the AG, the deduction mechanism in Article 8(7) would serve no purpose in such cases.

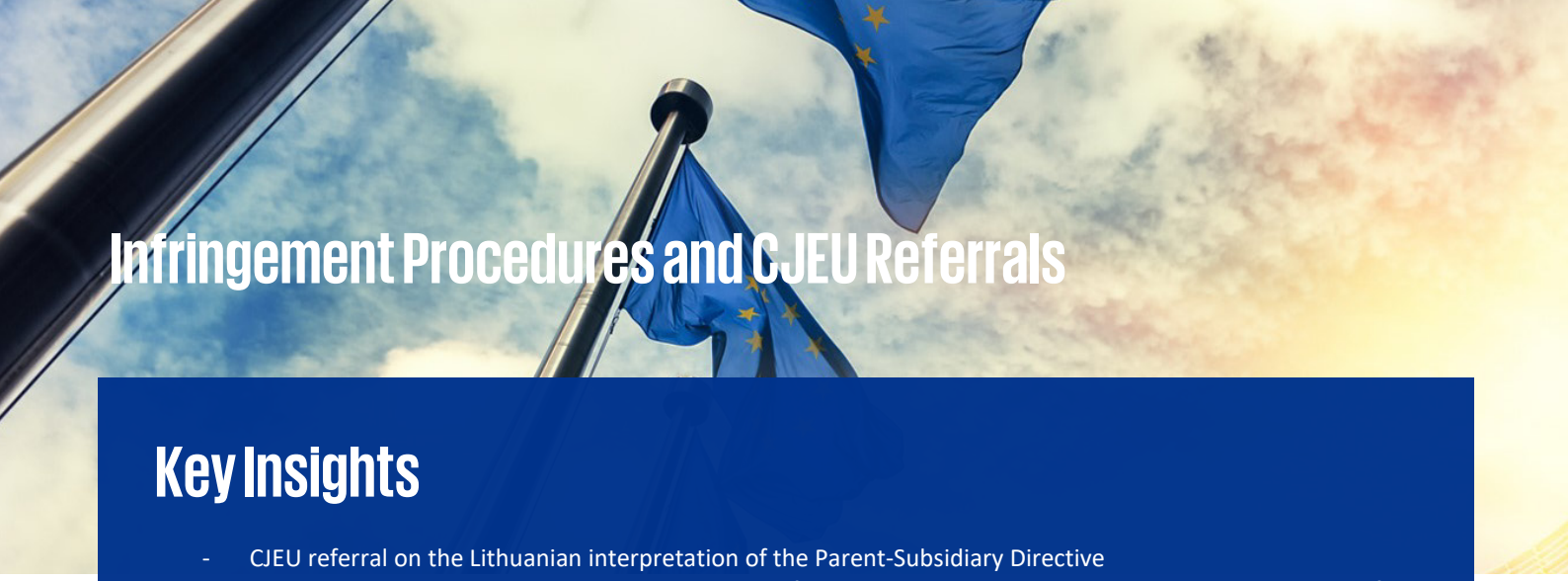
The AG further acknowledged that, in practice, risks of double taxation may arise and resolving such issues could require additional effort – either through the EU's dispute resolution mechanism (for CFCs located in Member States) or through mutual agreement procedures under applicable double tax treaties (for CFCs in third countries). Nonetheless, the AG considered this to be an acceptable consequence, as it serves to discourage non-genuine arrangements aimed at shifting profits to low-tax jurisdictions. Finally, the AG noted that this interpretation aligns with the Court's established case-law, which prevents reliance on EU rules for abusive ends and which cannot be overridden by secondary legislation.

Lastly, the AG analyzed Belgium's plea that the ATAD is intended to achieve only minimum harmonization of measures protecting national corporate tax bases. Specifically, Belgium had argued that its domestic legislation, which disallows tax deductions in cases of abuse, is consistent with that objective. The EC, however, disputed this interpretation, arguing that minimum harmonization permits Member States to adopt additional or stricter measures, but does not allow them to omit provisions entirely.

The AG recalled the CJEU's settled case-law, which provides that Directives are binding as to the result to be achieved, while allowing Member States discretion in the choice of form and methods. Minimum harmonization enables Member States to introduce stricter rules, provided they do not undermine the Directive's objectives and remain consistent with primary EU law. In the AG's view, Belgium's decision not to transpose Article 8(7) serves to strengthen the Directive's primary aim—protecting national tax bases, more effectively than its transposition would. The AG also took the view that this approach supports the Directive's primary aim without exceeding necessary measures, consistent with the principle of proportionality.

In light of the above, the AG concluded that the claim that Belgium failed to meet its obligations by not transposing Article 8(7) of the ATAD when applying the CFC rules under Model B is unfounded. In the AG's view, this position is justified both by a teleological interpretation of the Directive and by the fact that the Directive establishes only minimum harmonization.

[2] The AG also notes that considerable doubts are raised in the academic literature as to whether the adoption of the ATAD is covered by the EU's legislative competences. Moreover, in the legislative procedure, Malta and Sweden also expressed reservations by means of reasoned opinions with regard to legislative competence.



Infringement Procedures and CJEU Referrals

Key Insights

- CJEU referral on the Lithuanian interpretation of the Parent-Subsidiary Directive
- Swedish Supreme Administrative Court request for a CJEU preliminary ruling in a case concerning free movement of capital and withholding tax

CJEU Referrals

CJEU referral on the Lithuanian interpretation of the Parent-Subsidiary Directive

On March 17, 2025, the Lithuanian Tax Disputes Commission (Disputes Commissions) made a request for a preliminary ruling to the CJEU in case C-203/25. The case concerns the interpretation of the anti-abuse rules under the Parent-Subsidiary Directive (the Directive or PSD).

The dispute arose from the decision of the Lithuanian tax inspectorate to impose withholding tax on dividends paid by the Lithuanian plaintiff to its Cypriot parent company. The inspectorate argued that the transactions involving these dividends are part of a non-genuine arrangement aimed at obtaining a tax advantage, thus triggering the application of the anti-abuse rule under the PSD as transposed into Lithuanian law[3].

The plaintiff is a Lithuanian entity wholly owned by a Cypriot parent company. In 2016 and 2017, the parent company received dividends from the plaintiff and another Lithuanian entity. The plaintiff considered that the payments were exempt from dividend withholding tax under the local rules implementing the PSD.

Following a tax audit, the Lithuanian tax inspectorate concluded that the dividends should not have benefited from the exemption and were instead subject to the standard 15 percent withholding tax. The inspectorate argued that the Cypriot parent company generated mainly dividend income, and that the dividend income was exempt from corporate income tax in Cyprus. In addition, the ownership structure of the parent company had changed, since its shares were transferred to another newly established Cypriot company. In this context, the inspectorate identified a chain of transactions involving the Cypriot parent and related entities. Initially, the Cypriot parent was owned by a Belize-based company (the grandparent of the Lithuanian plaintiff), which subsequently sold its shares to a newly set-up Cypriot entity. Despite these changes, the ultimate beneficiary of the dividends, a Cypriot company that owned both the Belizean and Cypriot companies, remained unchanged. The inspectorate viewed this series of transactions as an artificial arrangement designed to avoid taxation, citing the similarity

[3] The PSD aims to prevent double taxation of dividends distributed by EU subsidiaries to their parent companies within the EU by exempting them from withholding taxes in the Member State of distribution and from corporate income tax in the hands of the parent company. The Directive also includes general anti-abuse rules which allow Member States to deny PSD benefits if the arrangements are not genuine and have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage. The Lithuanian domestic rules implementing the PSD mirror these provisions.

in amounts between dividends received and loans granted as indicative of artificial indebtedness with the aim of avoiding tax liabilities.

The plaintiff, however, argued that the Cypriot parent company has a genuine economic activity, and that the dividends were used by the latter for legitimate business purposes. According to the plaintiff, the chain of transactions under dispute did not generate any new tax advantage, since the Cypriot parent had been receiving dividends since 2005. The plaintiff further argued that the Cypriot parent qualifies as the beneficial owner of the dividends under the Lithuania – Cyprus double tax treaty, which should override national rules. Additionally, the plaintiff highlighted that the restructuring was part of a group-wide decision to eliminate offshore entities and transfer the management of the group's parent company to the EU (Cyprus).

The Disputes Commission acknowledged the CJEU's rulings in the so-called "Danish cases"[4]. Nonetheless, it also noted that the case at hand is different since the dividends are paid to an entity with real economic activity which, in the tax authorities' view, is a participant in a chain of non-genuine transactions. The Disputes Commissions therefore referred the following questions to the CJEU:

- Is it compatible with the EU PSD anti-abuse rule for a national tax practice to deny a withholding tax exemption on dividends paid to a genuine parent company established in another EU Member State, solely on the grounds that the payment is a part of a chain of non-genuine transactions?
- Can a chain of dividend transfers be presumed to be artificial or abusive based solely on the similarity of amounts involved at different stages of the transactions?
- Is it compatible with the EU PSD anti-abuse rule for a national tax practice to deny tax benefits on a cross-border dividend payment based on a chain of non-genuine transactions that occurred entirely after the dividend payment and in another EU Member State?
- Can the tax advantage be attributed to the plaintiff if the tax advantage was ultimately realized by another party – i.e., the ultimate beneficiary, through a chain of non-genuine transactions?
- Can the anti-abuse rule under the PSD apply if the dividends were passed over on a continuous basis – i.e., from one year to one month, instead of "very soon after their receipt" as mentioned in the Danish cases?
- What is the relevance of the plaintiff's knowledge or intent to undertake non-genuine transactions when applying the anti-abuse rules under the PSD.

Swedish Supreme Administrative Court request for a CJEU preliminary ruling in a case concerning free movement of capital and withholding tax

On March 28, 2025, the CJEU lodged a new request for a preliminary ruling in case C-241/25. This case examines the compatibility of the Swedish withholding tax rules with the EU's principle of free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU).

The plaintiff was a French company that was part of a French tax group and that received dividends from portfolio investments in Swedish companies in 2012, which were subject to Swedish withholding tax. The company sought a refund of the withholding tax, arguing that it was a loss-making entity and that a Swedish company in a similar situation would not have been taxed on such dividends. The plaintiff also argued that the entire French tax group was in a loss position. The company claimed that the tax levied constituted a restriction on the free movement of capital, as established by settled CJEU case-law[5].

[4] The CJEU's joined cases C-116/16 and C-117/16 on the Parent-Subsidiary Directive and joined cases C-115/16, C-118/16, C-119/16 and C-299/16 on the Interest and Royalty Directive are collectively known as the 'Danish cases'. For more details, please refer to Euro Tax Flash Issue 396.

[5] CJEU decision in the cases C-575/17 and C-601/23.

The Swedish Supreme Administrative Court (the Court) seeks clarification on whether, when seeking a refund of the withholding tax paid on the grounds that the recipient is a loss-making company, a non-resident company must recalculate its profit or loss according to Swedish tax rules to demonstrate a comparable situation to a loss-making resident company. The Court questions whether such a requirement would be in line with Article 63 TFEU. Additionally, the Court inquires whether, for a non-resident company subject to consolidated taxation in it state of residence, the profit or loss of the entire tax group should be considered when assessing comparability to a resident loss-making company. This question addresses the relevance of the tax group's financial status versus the individual legal entity's status. Furthermore, the Court seeks guidance on whether the absence of consolidated taxation rules in the source state, but the presence of intra-group transfer rules, affects the approach to determining a company's tax loss position.

EU Institutions

Key Insights

- European Commission: The Commission launches the EU Startup and scaleup strategy
- European Parliament: Draft report and draft budgetary assessment on BEFIT proposal released
- European Parliament: Public hearing on "The Future of EU Anti-Avoidance Tax Rules, Including Simplification"
- European Parliament: Public hearing on the implementation of the Pillar Two under consideration of the current EU-US relations
- European Parliament: Parliamentary question on the necessary steps and pre-conditions for considering a EU wealth tax

European Commission

The Commission launches the EU Startup and scaleup strategy

On May 28, 2025, the Commission published its "Choose Europe to Start and Scale" strategy, which aims to strengthen the EU's competitiveness by positioning Europe as a great place to start and grow global technology-driven companies.

From a tax perspective, the strategy:

- Reaffirms that the Commission will propose a "European 28th regime" to simplify rules and reduce the cost of failure by addressing critical aspects in areas like insolvency, labor and tax law. For more details on the "European 28th legal regime", please refer to E-News Issue 206. Although the "Choose Europe to Start and Scale" strategy indicates that the proposed "European 28th regime" will also cover taxation, a response published by the Commission on June 10, 2025, clarifies that it remains undecided whether tax law elements will ultimately be included in the regime.
- Announces the "Blue Carpet initiative" to support the attraction and retention of talent from within the EU as well as from non-EU countries. The initiative will also entail actions with a tax component, that will be undertaken between 2025 and 2026, as follows:
  - consider legislative measures to harmonize certain aspects of the treatment of employee stock options, including taxation;
  - proposing a recommendation to eliminate tax obstacles for remote cross-border employees for startups and scaleups. It is not clear at this stage whether the recommendation will also address corporate income tax aspects.

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

European Parliament

Draft report and draft budgetary assessment on BEFIT proposal released

On May 12, 2025 the Committee on Economic and Monetary Affairs (ECON) published a draft report on the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), which aims to establish a harmonized

corporate tax framework across the EU – for more information on the proposed BEFIT Directive, please refer to Euro Tax Flash Issue 553.

Whilst the report is generally supportive of the text proposed by the Commission, a number of amendments are recommended, including:

- lower scope revenue threshold of EUR 40 million after the transitional period (constant revenue threshold of EUR 750 million based on EC proposal), lower materiality thresholds of 3 percent and EUR 40 million (5 percent and EUR 50 million based on EC proposal) and lower ownership threshold of 50 percent (75 percent based on EC proposal);
- introduction of the concept of significant economic presence for purposes of considering the existence of a permanent establishment. Significant economic presence triggering a permanent establishment in a Member State would be deemed to exist where total revenues derived by a BEFIT group from a Member State exceed EUR 1 million;
- additional requirement for qualifying dividends to be subject to an effective tax rate of at least nine percent to benefit from the participation exemption;
- amendments to the deduction limitations for exceeding borrowing costs (the lower of the two amounts between 75 percent of the exceeding borrowing costs and 20 percent of the EBITDA) and royalty expenses (where the corresponding income is subject to an ETR below nine percent at the level of the recipient). The EC proposal makes reference to the ATAD interest deduction limitation rules and does not provide for a royalty deduction limitation rule;
- application of a CFC regime in alignment with Model A under the ATAD CFC rules;
- amendments to the applicable depreciation periods for certain assets and authorization for the Commission to lay down temporary rules regarding accelerated depreciation by way of delegated acts;
- limiting the possibility to carry-forward BEFIT losses for a maximum of five years (no limitation based on EC proposal);
- requirement for Members States to refrain from offering output-based tax incentives, e.g., patent boxes (no limitation based on EC proposal);
- permanent allocation formula that gives equal weight to the factors of sales, labor, and assets and applies from 2035 (the EC proposal only provides for transitional allocation rules);
- minimum penalties of 0.1 percent of the turnover of the BEFIT group for failing to file the BEFIT Information Return (no specific penalty regime is included in the EC proposal).

Furthermore, on May 14, 2025, the Committee on Budgets released its budgetary assessment for the ECON Committee proposal. The report finds the BEFIT proposal compatible with a genuine corporate tax-based own resource as well as with a statistics-based national contribution as proposed by the Commission in the amended proposal for a next generation of own resources for the EU budget (see Euro Tax Flash Issue 518). The report further considers that the temporary statistics-based national contribution recently endorsed by the European Parliament might incentivize Member States to accelerate negotiations and reach a swifter agreement on BEFIT. In this context, the report raises concerns that the timeline envisaged for local application of the BEFIT rules (including transitional period and review) would not be finalized before 2030, which is not aligned with the Next Generation EU repayment needs.

Public hearing on "The Future of EU Anti-Avoidance Tax Rules, Including Simplification"

On May 15, 2025, the European Parliament's Subcommittee on Tax Matters (FISC) held a public hearing to discuss the EU's anti-avoidance tax rules, focusing on simplification and harmonization.

Part of the hearing were Francesco De Lillo (IBFD), Saara Hietanen (tax specialist from FinWatch), Dr. Borbála Kolozs (researcher in tax law), Bob Michel (the Tax Justice Network).

Key takeaways from the discussion include:

- *Recommendations to simplify anti-abuse rules:* Recommendation were brought forward to modernize the EU's anti-tax avoidance framework in line with the 2025 Commission Work Program and to address overlaps between the Anti-Tax Avoidance Directive (ATAD) and the EU Minimum Tax Directive, as well as the fragmented implementation of the

ATAD and DAC6 across EU Member States. Experts further highlighted the need to increase consistency in the application of the ATAD rules, e.g., by issuing practical guidance, the need to reduce complexity and declutter tax laws without introducing new anti-avoidance measures and the need to enhance international cooperation to tackle tax avoidance, especially in VAT law.

- *Cooperative compliance programs:* Concerns were raised about the burden of anti-avoidance measures on compliant taxpayers. Experts suggested the application of cooperative compliance programs and emphasized that anti-avoidance rules have to stay applicable to all taxpayers, as it would not be possible to target only non-compliant individuals.
- *Harmonization and sovereignty:* The tension between harmonizing tax systems and maintaining national sovereignty was discussed. Experts proposed non-binding instruments and platforms for resolving interpretative issues.
- *Capital taxation:* The lack of EU initiatives in capital taxation was highlighted, with suggestions for minimum tax levels for capital income and measures to address tax avoidance by individuals.
- *Impact on competition:* The role of taxation in market competition was debated, with experts agreeing that taxation plays a role but is not the sole factor affecting competition.

For more information, please refer to the FISC Subcommittee webpage.

Public hearing on the implementation of the Pillar Two under consideration of the current EU-US relations

On May 15, 2025, the European Parliament's FISC Sub-Committee on Tax Matters convened to discuss the implementation of the Pillar Two framework, particularly in light of international developments and EU-US relations.

Key takeaways from the panelists include:

- *Mrs. Manal Corwin, Director of the Centre for Tax Policy and Administration at the OECD:* The role of international cooperation in eliminating tax barriers and protecting domestic tax bases is critical. Mrs. Corwin highlighted the OECD's ongoing efforts to address US concerns regarding Pillar Two, underscoring the importance of maintaining a collaborative approach to international taxation. Mrs. Corwin pointed out that the stakes are higher than ever, and the OECD is committed to working with all member countries, including the EU, to bridge differences and promote a stable tax environment.
- *Benjamin Angel, Director of 'Direct taxation, tax coordination, economic analysis and evaluation' of the European Commission:* Mr. Angel highlighted the EU's commitment to implementing Pillar Two, despite the concerns raised by the US Administration. He noted that Pillar Two is already generating moderate income, indicating its effectiveness in promoting fair taxation and leveling the playing field for corporate income tax globally.
- *Professor of Economics, Peter Jansky of the Charles University in Prague:* Prof. Jansky underlined the persistent issue of tax avoidance by multinationals, noting that while the BEPS project has helped increase effective tax rates, significant improvements are still necessary. He expressed uncertainty about the future of the global minimum tax and the EU's role in shaping future tax reforms. Prof. Jansky highlighted the need for the EU to leverage its power effectively to address tax avoidance and ensure fair taxation across its Member States.
- *Professor Nadine Riedel, Director of the Institute for Public and Regional Economics at the University of Münster:* The focus was put on the coordination of anti-profit shifting rules and the necessity of Pillar Two in addressing remaining BEPS issues. Prof. Riedel discussed the challenges posed by the US administration's stance on Pillar Two, noting that the 15 percent minimum tax is designed to limit tax competition and address conceptual issues related to anti-profit shifting instruments. Prof. Riedel emphasized the importance of harmonizing tax rules to lower compliance costs and avoid unilateral measures that could disrupt global tax cooperation.

The Q&A session further explored these themes, with participants raising concerns about the complexity of international tax rules and the implications of the US announcement in the context of Pillar Two.

Parliamentary question on the necessary steps and pre-conditions for considering an EU wealth tax

A member of the European Parliament (MEP) asked if the European Commission supports the proposal for an EU-wide minimum tax on high net worth individuals, as set out in the recent report of the EU Tax Observatory. The MEP also asked to what extent the European Commission is planning to propose a wealth tax.

The European Commission answered by acknowledging the significant differences across EU countries in how capital income and wealth are taxed. The Commission also noted that a study on wealth-related taxes was launched in December 2024, due by the end of 2025, to improve the Commission's understanding of the effects of taxing of high-net-worth individuals.

The European Commission offers clarifications on the so-called "European 28th legal regime"

An MEP asked the European Commission to provide more details on the "European 28th legal regime", that was announced in the Competitiveness Compass (see E-News Issue 206). In particular, the MEP wanted to understand whether the new regime will act as a second legal regime for Member States, whether companies in-scope will have the option to choose between this new regime and the pre-exiting national ones, and the current state of play of the proposal.

A representative of the EC clarified on June 10, 2025 that the upcoming 28th regime would offer companies the option to operate across the Single Market through an EU-wide legal status. According to the EC, it is still undecided whether the proposal will take the form of a new European legal entity or a harmonized national legal form. In either case, the rules would apply across all Member States, and company founders would be able to choose between adopting a legal form under the 28th regime or continuing to use an existing national legal form.

The Commission representative also confirmed that it is still to be determined whether, and to what extent, tax law elements will be included in the proposal. A public consultation on the 28th regime is expected to be launched before the summer of 2025, and the proposal is planned to be adopted in the first quarter of 2026.

Local Law and Regulations

Key Insights

- Bahrain: Clarifications published on the administration of local Pillar Two rules
- Bermuda: Public consultation launched on 2023 Corporate Income Tax Act amendments
- Denmark: Danish Parliament adopts bill implementing DAC8 and amendments to Danish Minimum Taxation Act enacted
- Estonia: Proposal to increase income tax rates
- Germany: Tax reform proposal to strengthen investment
- Iceland: Public consultation opened on draft legislation implementing minimum taxation rules (under Pillar Two)
- Ireland: Guidance issued on participation exemption for certain foreign distributions
- Isle of Man: Guidance on Pillar Two compliance obligations
- Kenya: Update to the 2024 Finance Bill published
- Mauritius: 2025-2026 budget highlights presented
- Norway: Norway proposed national list of non-cooperative tax jurisdictions
- Sweden: 2026 autumn budget proposals include corporate tax rate cuts
- Switzerland: Canton of Basel-City introduces new package of tax incentives

Bahrain

Clarifications published on the administration of local Pillar Two rules

In May 2025, the National Bureau for Revenue (NBR) in Bahrain released guidance providing clarifications on the administrative aspects of the Domestic Minimum Top-Up Tax (DMTT).

Key components of the guidance include:

- clarifications regarding the requirements and processes for registration, deregistration and revenue test notifications (see also the DMTT Registration Manual as of March 9, 2025).
- clarifications regarding the appointment of a Filing Constituent Entity and the administrative responsibilities of same.
- clarifications regarding the payment of taxes (including advance payments) and the eligibility for tax refunds.
- clarifications regarding the joint liability for tax and administrative fines applicable to local Constituent Entities and Joint Ventures (including in cases where entities joining or leaving the group).
- clarifications regarding the process for resolving tax disputes.

Further guidance on the DMTT tax returns is expected to be provided at a subsequent stage.

These publications follow the introduction of a 15 percent DMTT in Bahrain effective from January 1, 2025. For previous coverage on the enactment of the DMTT in Bahrain, please refer to E-News Issue 201.

For more information on the Pillar Two compliance requirements in Bahrain, please refer to the KPMG BEPS 2.0 tracker in Digital Gateway.

Bermuda

Public consultation launched on 2023 Corporate Income Tax Act amendments

On May 29, 2025, the Corporate Income Tax Agency of Bermuda announced a public consultation paper suggesting amendments to the 2023 Corporate Income Tax Act, with a view to aligning the corporate tax regime with the OECD's Pillar Two Model Rules, Commentary and Administrative Guidance. The consultation questionnaire seeks input from stakeholders on the policy options that the Tax Agency of Bermuda may consider as it adopts the amendments to the Corporate Income Tax Act, including:

- Aligning the treatment of excluded dividends with the corresponding liability adjustment for unit-linked insurance.
- Allowing an election to limit the use of current-year losses and converting the unused portion into a carryforward.
- Various clarifications regarding fiscal transparency.
- Alignment with the Pillar Two de minimis exclusion.
- Filing requirements of the Constituent Entity and related elections.
- Clarifying the methodology to be applied to foreign currency conversion.

The public consultation period runs until June 19, 2025, with late submissions potentially not being considered.

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

Denmark

Danish Parliament adopts bill implementing DAC8

On April 29, 2025, the Danish parliament adopted a draft bill to transpose Council Directive (EU) 2023/2226 (DAC8) into domestic law. This follows the previous public consultation on the draft bill, which ended on December 13, 2024.

Amongst others, the bill introduces rules on due diligence procedures and reporting requirements for crypto-asset service providers. The rules should generally apply to reporting periods starting from January 1, 2026.

For our previous coverage, please refer to E-News Issue 204.

Ruling on PE exposure triggered by construction work undertaken outside Danish territorial waters

On May 16, 2025, the Danish tax authorities issued an advance ruling addressing the question of whether a foreign company performing work in Denmark's exclusive economic zone (EEZ) triggers a permanent establishment (PE) in Denmark. The applicant was engaged in construction activities related to an offshore wind farm project, with the work expected to last approximately 120 days within the Danish EEZ but outside Danish territorial waters.

The company requested confirmation that its activities constituted a PE under Danish domestic law, which the tax authorities confirmed. However, the company contended that, under the applicable double tax treaty between Denmark and its country of residence, it should not be subject to Danish taxation. The tax authorities concurred, concluding that the company does not have a PE in Denmark under the treaty, as the project duration does not exceed the typical 12-month threshold required to establish a construction PE.

Amendments to Danish Minimum Taxation Act enacted

On June 3, 2025, the Danish Parliament passed the Bill 2024/1 LSV 194 A (available in Danish only), enacting amendments to the Minimum Taxation Act, which incorporate the June 2024 and January 2025 OECD Administrative Guidance.

Furthermore, the Bill addresses the compensation of qualified distributors in specific countries, modifies rules regarding the reclassification of transparent entities, and offers relief for Transfer Pricing documentation and international joint taxation. Finally, the Bill enacts the political commitment to honor the results of a covered jurisdiction's application of Amount B under Pillar One.

The amendments will enter into force on July 1, 2025, and, for Minimum Taxation Act purposes, apply to fiscal years starting on or after December 31, 2023.

For previous coverage, please refer to E-News Issue 207.

Estonia

Proposal to increase income tax rates

On May 9, 2025, the Estonian government presented a draft bill to Parliament.

From a direct tax perspective, a key takeaway is the proposed removal of the temporary corporate tax of two percent levied, which would have taken effect from January 1, 2026. Instead, starting January 1, 2026, the standard personal income tax rate and corporate income tax rate (i.e., corporate tax in relation to distributed profits) would be increased from 22 percent to 24 percent.

For our previous coverage of the defense tax act, please refer to E-News Issue 205.

Germany

Tax reform proposal to strengthen investment

On June 4, 2025, the German government adopted a draft government bill aimed at strengthening investment (Tax-based immediate-action investment program to strengthen Germany as a business location Act). Key takeaways include:

- *Accelerated depreciation:* The draft law proposes reintroducing a declining balance depreciation method for moveable fixed assets acquired or manufactured between July 1, 2025, and January 1, 2028. The maximum depreciation rate would be three times the straight-line rate, capped at 30 percent annually.
- *Reduction of corporate income tax rate:* The federal corporate income tax rate, currently at 15 percent, would be reduced by one percent annually from 2028 to 2032, with a steady 10 percent rate being applied from 2032 onwards. Note that Germany levies trade tax alongside the corporate income tax. The trade tax rate is set at municipal level and amounts on average to 14 percent, calculated on the taxable trade income (trade income adjusted for trade tax purposes).
- *Expansion of R&D tax incentive:* The draft proposes to expand the existing research allowance by broadening the definition of qualifying expenses and increasing the annual amount of qualifying expenses from EUR 10 million to EUR 12 million for eligible expenses incurred after December 31, 2025. As such, the maximum annual allowance amount would increase from EUR 2 million to EUR 3 million based on an unchanged 25 percent allowance rate. Further, the scope of eligible expenses would be expanded to include overhead and operating costs for eligible R&D projects initiated after December 31, 2025. Those expenses would be recognized in form of a flat rate amounting to 20 percent of other eligible expenses.

As a next step, the draft bill will be subject to approval by the Parliament and Federal Council. The draft bill is expected to evolve during the legislative process, with potential significant changes. The final provisions and their implementation will depend on the outcome of the Parliamentary process.

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

Iceland

Public consultation opened on draft legislation implementing minimum taxation rules (under Pillar Two)

On June 5, 2025, the Icelandic Ministry of Finance and Economic Affairs published draft legislation (available in Icelandic only) proposing the implementation of the Pillar Two rules, while opening a public consultation process.

Key features include:

- *General*: Although Iceland is not a Member State of the EU, the draft legislation is generally aligned with the EU Minimum Tax Directive and would introduce a DMTT and the Income Inclusion Rule (IIR) for fiscal years beginning on or after December 31, 2025. No decision has been made on the introduction of the Undertaxed Profits Rule (UTPR) in Iceland; however, this has only been postponed to a later date, still to be defined.
- *OECD guidance:* Whilst the bill includes the IIR and QDMTT aspects of the Pillar Two rules, it currently does not include most of the OECD Administrative Guidance. However, the bill provides for a QDMTT Safe Harbour (i.e., IIR and UTPR Top-up Tax are deemed to be zero in Iceland in relation to other jurisdictions that apply a QDMTT, subject to conditions). In addition, the bill includes a placeholder Safe Harbour provision, with more details expected to be issued at a later stage.
- *DMTT:* the DMTT would generally follow the regular GloBE rules for calculating the ETR and Top-up Tax liability. However, cross-border taxes, such as CFC taxes, as well as withholding taxes related to intragroup dividends, that would be allocated to domestic constituent entities under the regular GloBE rules, need to be excluded for DMTT purposes.
- *Filing requirements:* The GIR would need to be filed within 15 months after the end of the reporting fiscal year (with an exception for the first year where the deadline is 18 months after the end of the first reporting fiscal year). If a GIR is filed by a foreign Constituent Entity, a notification must be filed within the same deadline.

The public consultation on the draft legislation lasts until August 5, 2025.

Please note that the draft legislation comes after the drafting of the Fiscal Strategy Plan for 2025-2029 which already confirmed the intention of the Icelandic government to implement Pillar Two in Iceland. For previous coverage on the Fiscal Strategy Plan, refer to E-News Issue 194.

Ireland

Guidance issued on participation exemption for certain foreign distributions

On May 6, 2025, Irish Revenue issued guidance on the participation exemption introduced by the Finance Act 2024, which allows companies to claim relief from corporation tax on qualifying distributions made by foreign subsidiaries as an alternative to the existing credit method.

The guidance provides clarifications on the conditions for groups to benefit from the exemption, including:

- *Eligible parent entity:* The parent must be an Irish resident company or a company that is resident for foreign tax purposes in a European Economic Area (EEA) state.
- *Minimum participation threshold:* The parent entity must meet a minimum participation threshold, i.e., 5 percent ownership or entitlement to profits or distributions that must be given continuously for a minimum 12- month period, with that period including the date the distribution is made.
- *Eligible subsidiary:* The subsidiary must be resident in in the EU, the EEA or in a double tax treaty partner jurisdiction and must not be exempt from foreign tax. The exemption does not apply with respect to countries listed on the EU list of non-cooperative jurisdictions.
- *Eligible distributions:* The distribution must be made out of profits or assets, cannot be deductible for tax purposes, and must constitute income for the recipient. Distributions from offshore funds or those deductible in foreign jurisdictions are excluded.

- *Anti-avoidance measures:* The guidance provides clarifications on the anti-avoidance rules, which provide that arrangement will not be eligible for the exemption where obtaining a tax advantage is one of the main benefits of an arrangement, and there is a lack of commercial reasons for the arrangement.

Taxpayers can elect annually whether to use either the participation exemption or continue with the existing credit method in their corporation tax return starting January 1, 2025.

For more information, please refer to the Irish Revenue webpage and E-News Issue 204.

Isle of Man

Guidance on Pillar Two compliance obligations

On April 24, 2025, the Isle of Man income tax division published a Guidance Note clarifying how MNE groups in scope of Pillar Two should utilize the Pillar Two online services to fulfill their compliance requirements.

Under Isle of Man Pillar Two legislation, in-scope MNE groups are subject to several filing requirements, including filing of a GIR, a Domestic Top-Up Tax (DTUT) return on the amount of QDMTT due, and a Multinational Top-Up Tax (MTUT) return on the amount of IIR top-up tax due. All returns would need to be filed within 15 months after the end of the reporting fiscal year (with an exception for the first year where the deadline is 18 months after the end of the first reporting fiscal year).

The Guidance Note clarifies how the online services can be used, specifically:

- The domestic filing entity (DFE) is responsible for managing the registration and filing duties of the group. These tasks must be completed within 12 months from the start of the group's first accounting period that falls under the Isle of Man's legislation. The DFE must be appointed before the usage of the online services.
- The MNE group is obliged to notify the Assessor of Income Tax of any changes to the details provided during the registration.
- The online services offer a document library where users can retrieve correspondence, charge notices, and related documents. It also includes further details on how to use the services and to maintain group information.
- Finally, the Guidance Note states that the Pillar Two online services will be extended in due course to allow MNE groups to file both the DTUT and MTUT returns.

For previous coverage on the implementation of Pillar Two in the Isle of Man, please refer to E-News Issue 204.

Kenya

Update to the 2024 Finance Bill published

On May 7, 2025, Section 7 of the Kenya 2025 Finance Bill was sent to Parliament, clarifying that the Kenyan Minimum Top-up Tax (MTT) is payable by the end of the fourth month following the end of the fiscal year.

Please note that the Kenyan Tax Amendment Act, which came into effect on December 27, 2024, provides for the implementation of a 15 percent MTT from January 1, 2025. Notably, the MTT has been designed in the form of the DMTT, but it is not fully compliant with the OECD standards, hence further regulations are yet to be issued to provide more detail on how the MTT will operate in practice. Finally, note that neither the IIR, nor the UTPR are covered by the Tax Amendment Act.

For previous coverage, please refer to E-News Issue 206.

Mauritius

2025-2026 budget highlights presented

On June 5, 2025, the Prime Minister of Mauritius held a speech presenting the 2025-2026 budget highlights which, among other measures, plans to implement a domestic minimum top-up tax, which is envisaged to be in alignment with the OECD's Pillar Two Model Rules. Key takeaways include:

- *DMTT initiative*: Aims to impose a minimum 15 percent tax rate on large resident multinational companies and their resident subsidiaries, while ensuring measures are in place to maintain the competitiveness of the Mauritius International Financial Services Sector. Additionally, the country intends to implement an alternative minimum tax on certain profitable sectors to promote fairness and equity due to their low effective tax rates.
- *Special taxation*: A new 10 percent tax would be levied on book profits of specific companies within the hotel, insurance, financial intermediation, real estate, and telecommunication sectors.
- *"Fair share contribution":* ranging from 2 percent to 5 percent of chargeable income to be introduced for corporations with annual chargeable income exceeding MUR 24 million (approximately EUR 460 thousand), along with an additional 2.5 percent contribution for certain banks.

Once adopted, the measure regarding the DMTT initiative would take effect on July 1, 2025. For further details on the 2025-2026 budget highlights, refer to a report prepared by KPMG in Mauritius.

Norway

Norway proposed national list of non-cooperative tax jurisdictions

On May 14, 2025, the Norwegian Ministry of Finance issued a proposal to introduce a national list of non-cooperative jurisdictions for tax purposes. This initiative is aligned with the EU's efforts to combat tax evasion and is aiming to implement Article 4 of the EU Securitization Regulation, which requires EEA / EFTA States (Iceland, Liechtenstein and Norway) to create national lists reflecting the EU list of non-cooperative jurisdictions.

In line with the EU's listing exercise, the Norwegian list would have two annexes: Annex I for jurisdictions not meeting tax good governance criteria (i.e., tax transparency, fair taxation, and the implementation of OECD anti-BEPS measures) and Annex II for those that do not comply with all standards but committed to implementing reforms. The proposal includes legal measures such as prohibiting the establishment of special-purpose vehicles (SPVs) in Annex I jurisdictions and requiring notification for investments in Annex II jurisdictions. The list would be updated following EU revisions.

Public comments on the proposal are invited until June 13, 2025.

For more details on defensive measures against non-cooperative jurisdictions, please refer to KPMG's summary.

Sweden

Autumn budget 2026 proposals include corporate tax rate cuts

On May 14, 2025, the Swedish Ministry of Finance announced several tax proposals for consideration ahead of the 2026 Autumn Budget.

Key takeaways include:

- *Reduced corporate tax rate*: it is proposed that the corporate tax is reduced from 20.6 percent to 20 percent, effective January 1, 2026.
- *Reduced special income tax for non-residents*: it is proposed that the special income tax for individuals residing abroad, who earn taxable income from Sweden, such as salaries, pensions, and other earnings (SINK) is reduced from 25

percent to 20 percent. The change would take effect on January 1, 2026, for income received after December 31, 2025. For more information, please refer to a report prepared by KPMG in Sweden.

The inclusion of these proposals in the government's autumn budget will depend on the economic situation, available reform space, financing needs, and final budget negotiations.

Switzerland

Canton of Basel-City introduces new package of tax incentives

On May 18, 2025, the electorate of the Swiss canton of Basel-City accepted the public referendum launched against the Basel-City location package which had received parliamentary approval on January 9, 2025 with the goal of introducing new tax incentives. According to the location package, the additional revenues derived from the minimum taxation would be used to enhance the region's attractiveness. Further key items include:

- The location package fosters innovation, with grants available for personnel costs related to research and development in the Basel region. These grants will also cover the depreciation of fixed assets, including expenses related to clinical trials or the production of necessary active ingredients, in the canton itself as well as elsewhere in Switzerland. Finally, increased funding may be available for activities involving patents and intellectual property rights.
- A new fund, endowed with CHF 150 million to CHF 500 million (approximately EUR 159 to 530 million) annually, will be established to support, among others, research activities, with at least 80 percent of the total allocated for innovation and 20 percent to other initiatives.
- The cantonal government will determine the type of funding, which may be provided through Qualified Refundable Tax Credits (QRTCs) for Pillar Two purposes, or through government grants.
- The application for the funding has to be submitted electronically and will be reviewed by the appointed auditor.

The law is expected to come into force in the course of 2025, however applications for the fundings can be submitted already now for the year 2025.

Finally, note that, starting January 1, 2026, Basel-City will increase its cantonal corporate income tax rate to 8.5 percent for profits over CHF 50 million (approximately EUR 53 million), while profits below this amount will continue to be taxed at 6.5 percent. This new tax rate will be in effect for ten years.

For more information, please refer to a report prepared by KPMG in Switzerland and to our dedicated article on the interaction between Pillar Two and tax incentives.

Local courts

Key Insights

- German Federal Tax Court on interest for withholding tax refunds
- German Federal Tax Court confirms permanent establishment for taxi company
- German Federal Tax Court rules on temporal requirements for a permanent establishment under tax treaty law
- Polish Supreme Administrative Court decision on application of provision exempting dividends from withholding tax
- UK Court of Appeal decision on treatment of distribution as dividend not of capital nature determined under foreign law

Germany

German Federal Tax Court confirms interest for withholding tax refunds

On May 15, 2025, the Federal Tax Court (BFH) published a decision from February 25, 2025 providing that interest must be paid on refunds of dividend withholding tax under EU law when the German Federal Tax Office withholds such refunds without evidence of abusive arrangements.

The case involved an Austrian corporation with shares in a German company, where withholding tax and solidarity surcharge were applied to dividends distributed between 2007 and 2011. The plaintiff sought exemption from withholding tax based on the Parent-Subsidiary Directive (PSD) but faced initial refusal and subsequent revocation of the exemption certificate by the German Federal Tax Office, citing anti-treaty/directive shopping provisions. The Tax Office eventually refunded the withholding tax and surcharge in 2018, following CJEU case law[6] that deemed the German anti-treaty/directive shopping rule contrary to EU law.

The plaintiff requested interest on the refunded amounts for the period between tax withholding and refund payment, which was initially rejected by the German Federal Tax Office. The Federal Tax Court emphasized that EU law mandates interest payments on refunds when national regulations contravene EU law, citing previous CJEU case law on the matter.[7] The court noted that interest conditions, including rate and calculation method, are to be determined by national law in the absence of harmonized regulations at EU level. According to the decision, the interest period starts either three months after a valid refund application or from the date on which the tax is withheld if an exemption certificate was revoked. The interest period ends on the date the withholding tax is repaid by the tax authorities. The applicable interest rate under German law is currently 0.5 percent per month, calculated daily.

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

[6] CJEU decisions of December 20, 2017 – C 504/16 and C 613/16.

[7] CJEU decisions of April 28, 2022 – C 415/20, C 419/20 and C 427/20 and CJEU decision of June 8, 2023 – C 322/22.

German Federal Tax Court confirms permanent establishment for taxi company

On May 2, 2025, the German Federal Tax Court (BFH) published a decision from December 18, 2024, regarding the permanent establishment (PE) status of a taxi company operating within a taxi dispatch center in Switzerland. The case revolved around whether the company had a PE in Switzerland under the Germany-Switzerland Double Taxation Treaty (DTT).

Since 2003, the plaintiff has operated a taxi company, which is registered in Switzerland and part of a joint taxi dispatch center in Switzerland. In the years 2009 and 2010, the plaintiff was resident in Germany and therefore assessed in Germany for income tax purposes. During the years in dispute, the plaintiff was a member of the dispatch center and had access to its premises in Switzerland at all times. The premises included an office room and a separate room for the taxi center employees. The office room was equipped with three desks, one of which was mainly used by the plaintiff. The plaintiff used this desk once or twice a week to carry out all the preparatory work such as accounting for the Swiss tax returns, paying invoices and other correspondence. The plaintiff had a container in the office, labeled with his (company) name, in which he kept the documents required for bookkeeping and the monitoring of driving and rest periods. Only he had a key to this container. The taxi center also maintained a post box in the nearby post office. The majority of the mail for the plaintiff's company was received there. The mail was collected once a day and then distributed to the mailboxes kept on the premises of the cab center for the plaintiff, among others.

In Switzerland, the plaintiff's income from the taxi company was subject to cantonal income tax and direct federal tax. In addition, the profits of his taxi company were also subject to taxation in full in Germany, as the defendant tax office assumed that, due to the lack of a PE in Switzerland, Germany had the sole right to tax the profits.

During a mutual agreement procedure, the German tax office issued amended tax assessments in which it departed from its previous stance and assumed the existence of a Swiss PE pursuant to Art. 5 para. 4 of the Germany-Switzerland DTT.

This action was upheld by the Lower Tax Court which treated the plaintiff's entire commercial income from his taxi business as tax-exempt income that was only subject to the progression provision[8] in Germany. All income from the taxi company was attributable to this PE in Switzerland.

The BFH confirmed the existence of a PE based on several factors:

- *Consistent use of office space:* The BFH determined that the shared office space within the taxi dispatch center constituted a fixed place of business. This was due to its consistent use by the German resident since 2003, even if only once or twice weekly. The taxpayer had unrestricted access to this space as a member of the association.
- *Permanent access:* The court noted that the office space was not merely temporarily available to the taxpayer. This was evidenced by the presence of a designated, lockable drawer cabinet, accessible only to the taxpayer, indicating a permanent arrangement.
- *Core business activities:* The BFH rejected the tax authorities' claim that the activities conducted were merely auxiliary or temporary. The court found that the activities, including human resources management, bookkeeping, financial monitoring, and regulatory compliance, were integral to the taxi business.

In addition, the BFH did not recognize any other PE in Germany since all business activities occurred in Switzerland. As a result, the court decided that all profits must be attributed to the Swiss PE, consequently being exempt from German taxation.

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

[8] The progression provision refers to a mechanism where certain types of income, which are tax-free or taxed at a lower rate, are considered when determining the applicable tax rate for other taxable income. Although these specific incomes themselves are not directly taxed, they can increase the overall tax rate applied to the taxable income.

German Federal Tax Court rules on temporal requirements for a permanent establishment under tax treaty law

On May 2, 2025, the German Federal Tax Court (BFH) published a decision from December 18, 2024, addressing the temporal criteria for establishing a permanent establishment (PE) under Double Taxation Treaties (DTT).

The case revolved around three German residents who had formed a general partnership under UK law with the intention of engaging in commodity trading activities. This partnership secured office space in the UK, leasing it from October 2007, to April 2008. During this period, they engaged various UK service providers, including secretarial and courier services, as well as IT hardware supply, but notably did not hire any employees. The German partners alternated their presence in the UK from September 2007 to April 2008, sometimes visiting together on different days. The partnership's trading activities were conducted between December 2007, and January 2008. After this period, the focus shifted to winding down the business operations in the UK. The German residents contended that the losses incurred from these trading activities in 2007 should be attributed to a PE in the UK. They argued that this allocation would allow them to account for these losses when determining their German individual income tax rates, potentially resulting in a lower tax rate.

However, the German tax authorities argued that no PE had been established due to the brief duration of actual trading activities. The lower tax court agreed with this position, noting that the short period did not satisfy the requirements for establishing a PE. The BFH upheld this decision, emphasizing that, under tax treaties, a PE requires a minimum duration of six months, involving both the existence of a fixed place of business and the conduct of business activities at that location.

In this case, the BFH found that the intended and actual business activities lasted less than six months, thus failing to meet the required threshold. The court further clarified that activities aimed at winding down a business cannot be taken into account with respect to the six-month requirement for establishing a PE. The BFH also ruled that no exceptions to the six-month minimum period are justified, even if all business activities are conducted through a foreign business location.

Poland

Polish Supreme Administrative Court decision on the applicability of the dividend withholding tax exemption

On May 30, 2025, the Polish Supreme Administrative Court (Supreme Court) issued a judgement on the interpretation of the Polish rules implementing the EU Parent-Subsidiary Directive (PSD) in domestic law. Under these provisions, and in line with the PSD, the WHT exemption applies provided certain conditions are met, including one based on which the recipient should be subject to corporate income tax without the possibility of an option or of being exempt.

The plaintiff, a company based in the Netherlands, received dividends from its Polish subsidiary and applied for a WHT refund based on the Polish rules implementing the PSD. Whilst the Polish tax authorities granted a partial refund based on the Poland – Netherlands double tax treaty (reducing the WHT to five percent), they denied relief for the remaining amount. The denial was based on the grounds that the relevant conditions under domestic law were not met – specifically, that the dividends were not effectively taxed in the hands of the Dutch recipient due to the application of the Dutch participation exemption. Furthermore, the tax authorities argued that the Dutch company subsequently distributed the dividends to its UK parent, and as a result the dividends were not taxed in the EU (since the Dutch WHT was reduced to nil under the Netherlands – UK double tax treaty).

Following several legal proceedings, the Supreme Court overturned the decision of a lower court and annulled the tax authority's decision, concluding that the company was indeed entitled to the full WHT exemption.

In the oral justification of the judgement – official written justification is not yet available, the Supreme Court took the view that the measure under dispute refers to a subjective exemption, i.e., exemption covering all types of income, regardless of their source. The Court rejected the argument that objective exemptions, which apply only to specific categories of income (such as dividends), could disqualify a company from benefiting from the WHT exemption.

The Court also referred to Article 5 of the PSD stating that profits distributed by a subsidiary to its parent company are exempt from withholding tax and that, in the Cout's view, this represents a clear legal standard that has been implemented into Polish legislation with the same purpose. The Court also noted that the Directive allows for dividends to be taxed at a later stage, when distributed by the parent company to other entities, ensuring that taxation occurs when the dividends are no longer used for business purposes.

The Court concluded that the tax authorities' interpretation was incorrect and that the Dutch company should not be denied the WHT exemption. The decision is line with a November 20, 2024 general ruling issued by the Polish Minister of Finance on the requirement of effective taxation of dividends for WHT purposes – see E-News Issue 204.

United Kingdom

UK Court of Appeal decision on treatment of distribution as dividend not of capital nature determined under foreign law

On May 2, 2025, the Court of Appeal issued a decision addressing the tax question of what constitutes a 'dividend' and when it should be regarded as 'dividend of a capital nature'.

The distinction is relevant in light of Section 402 of the Income Tax (Trading and Other Income) Act 2005 which generally requires the application of income tax on dividends received from a non-UK resident company, subject to an exclusion for "dividends of a capital nature".

The case involved distributions received by a Jersey-incorporated company tax resident in Switzerland. These distributions, made between 2011 and 2016, were debited to a share premium account under Jersey law. The appellant contended that these distributions should be classified as "dividends of a capital nature" and thus subject to capital gains tax rather than income tax. However, HMRC disagreed, and their view was upheld by both the First-tier Tribunal and the Upper Tribunal.

The Court of Appeal's decision emphasized that the mechanism used under Jersey law to make the distributions - specifically Part 17 of the Companies (Jersey) Law 1991, determined their nature as income rather than capital. The judgment clarified that while the concept of "dividends of a capital nature" exists, it is the form and mechanism of distribution that primarily dictates whether a dividend is capital or income for UK tax purposes.

Similarly, the court considered a separate in specie distribution of a non-cash asset received by the appellant in 2015 as a "dividend" and not a "dividend of a capital nature".

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

EU public county-by-country reporting (CbyC) reporting - a new era for tax transparency webcast – replay now available

On April 22, 2025, KPMG held its latest webcast on EU public CbyC reporting.

The EU has made tax transparency mandatory for multinational groups with a qualifying European presence. Australia has gone a step further, requiring multinationals to disclose not only their CbyC reports to the public but also a description of the group's approach to tax. This is a game changer in the tax transparency landscape.

To explore these findings further, a panel of KPMG tax specialists shared the details of the new regulations. The team zoomed in on the EU disclosure rules, including differences between EU-headquartered companies and non-EU headquartered companies, as well as the particularities of the Australian regime. This webcast included a closer look at:

- An overview of the existing EU public CbyC reporting regulations
- Practical examples of implementation strategies and steps towards meeting the various local requirements
- Insights on lessons learnt from early adopter Romania: what did corporates do?
- An update on Australian public CbyC reporting and the overlap and differences with EU public CbyC reporting
- Insights into the state of play of tax transparency beyond the rules in force and future perspectives
- A solution to data challenges – KPMG's Tax Footprint Analyzer.

The replay of the webcast is available on the event page.

EU Tax Perspectives webcast – May 6, 2025

On May 6, 2025, a panel of KPMG professionals explored the implications of today's geopolitical climate on EU tax policy, including the future of BEPS 2.0, EU simplification efforts, and recent developments in public CbCR and other direct tax initiatives.

The session focused on:

- *Tax Policy:* The potential impact on EU tax policy of the current geopolitical climate, including considerations on the position of the US administration on international tax cooperation, the rise of tariffs, and the future of BEPS 2.0.
- *Simplification efforts:* The EU Competitiveness Compass, the European Commission work program and the EU tax decluttering and simplification agenda.
- *Tax transparency:* An update on EU Public Country-by-Country Reporting, including insights from the experience with reporting in Romania, where the first reports were due by December 31, 2024 and a discussion on key steps that in-scope MNEs should be taking now.
- *State of play of other EU direct tax files:* The Unshell Directive proposal, BEFIT Directive proposal, the Transfer Pricing Directive proposal, DEBRA Directive proposal.

The replay of the webcast is available on the event page.

Talking tax series

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

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