E-News from KPMG's EU Tax Centre

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E-News from the EU Tax Centre
Issue 74 – February 9, 2018

KPMG's EU Tax Centre helps you understand the complexities of EU tax law and how this can impact your business, enabling you to better predict how rules will develop and how to leverage opportunities and minimize risks arising from EU tax law.

E-News provides you with EU tax news that is current and relevant to your business. KPMG's EU Tax Centre compiles a regular update of EU tax developments that can have both a domestic and a cross-border impact. CJEU cases can have implications for your country.

Latest CJEU, EFTA and ECHR

Advocate General’s Opinion on Danish rules on cross-border loss relief in the Bevola case (C-650/16)

On January 17, 2018, Advocate General (AG) Campos of the Court of Justice of the European Union (CJEU) issued his Opinion in the Bevola and Jens W. Trock case (C-650/16) concerning the compatibility with EU law of the Danish rules on the deductibility of losses from foreign permanent establishments, in cases where (1) the taxpayer did not elect to apply for the Danish international joint taxation regime and (2) the ‘Marks & Spencer exception’ applies (i.e. losses
are considered final). The AG concluded that the Danish legislation is contrary to the freedom of establishment.

For more information, please refer to Euro Tax Flash 352.

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Infringement procedures & referrals to CJEU

Infringement procedure

Commission requests Italy to lift restrictions on the free movement of capital in relation to investments in real estate

On January 29, 2018, the European Commission sent a reasoned opinion to Italy for excluding EU citizens of non-Italian nationality who do not intend to settle in Italy from a reduced rate regime on their first purchase of non-luxury housing on Italian soil. According to the Commission, this limitation may violate EU rules on the free movement of capital. If Italy does not act within the next two months, the Commission may bring the case before the CJEU.

Referrals to the CJEU

Germany

On October 4, 2017, the Financial Court of Baden-Württemberg decided to refer a question to the CJEU (C-581/17) to clarify whether German exit taxation rules, under which unrealized appreciations in the value of company rights are taxed (without deferral) when a German national transfers his residence to Switzerland, constitutes an infringement to the EU-Switzerland Agreement on the free movement of persons.

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State Aid

General Court decision on the private investor test in EDF (Case T-747/15)

On January 16, 2018, the General Court of the European Union upheld the Commission’s decision of July 22, 2015, ordering France to recover approximately EUR 1.37 billion in illegal State aid from EDF, a French utility company. The General Court confirmed that the private investor test was not applicable, as neither EDF nor France submitted evidence that France had decided to invest in EDF based on an evaluation of the profitability of the investment, as a private investor would have.

For more information, please refer to the General Court’s Press Release.

State Aid Scoreboard 2017

On January 16, 2018, the European Commission published the State Aid Scoreboard 2017 that ascertained the benefits of the Juncker Commission's State Aid Modernization package. Over
97% of new implemented aid measures fell under the new General Block Exemption Regulation and could be quickly implemented by Member States.

For more information, please refer to the European Commission State Aid Scoreboard 2017.

**Commission opens investigation into Polish tax incentive for shipyards**

On January 15, 2018, the European Commission opened an in-depth investigation into the Polish tax scheme for shipyards. This new measure gives shipyards operating in Poland the possibility of paying a 1% flat-rate tax on sales from the building and conversion of ships, rather than paying the applicable corporate or personal income tax. Additionally, the payment of the flat-rate tax is postponed until the building or conversion of a ship is completed. The Commission will investigate whether the Polish scheme provides some shipyards with a selective advantage over competitors.

For further information, please refer to the European Commission Press Release.

**Action brought against the European Commission’s decision to classify exemption of Belgian and French ports as illegal State aid**

In November 2017, several actions were brought before the General Court of the European Union against the European Commission’s decisions of July 27, 2017 to classify exemption of French and Belgian ports, including the Chambre de commerce et d’industrie métropolitaine Bretagne-ouest (T-754/17), UPF (T-747/17), and Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven (T-696/17), as illegal state aid.

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**EU Institutions**

**COUNCIL OF THE EUROPEAN UNION**

"Tax Policy Roadmap of the Bulgarian Presidency of the Council" published

On January 30, 2018, the Bulgarian Presidency issued a document setting out its tax priorities for the upcoming six months, in particular:

- The Presidency will aim at reaching agreement on the proposal for mandatory disclosure rules for intermediaries;
- The Presidency will seek agreement on the key elements of the Commission’s proposal of January 2016 on the good governance clause in EU agreements with third countries;
- The Presidency will continue work on the Code of Conduct Group and will seek agreement on a guidance note on the interpretation of the third criterion of the Code;
- The Presidency intends to start the technical examination of the Commission’s expected proposal on taxation of the digital economy;
- The Presidency will support the follow-up work on the EU blacklist;
- The Presidency intends to conclude the article-by-article examination of the proposal for a renewed common (consolidated) corporate tax base and to limit immediate work on defining as broadly as possible the CCCTB at the EU level;
• The Presidency will also continue work on the Interest and Royalties Directive, outbound payments, and the financial transaction tax, as well as on EU anti-fraud agreements with Andorra, Monaco, San Marino, Switzerland and Liechtenstein.

Supplementary directives for Brexit negotiations adopted

On January 29, 2018, the Council of the European Union adopted directives supplementing the decision that authorized the opening of Brexit negotiations. The document addresses issues relating to the application of EU acquis, as well as the participation of the UK to trade policy and international agreements and to EU institutions and bodies during the transition period.

For more information, please refer to the supplementing directives.

ECOFIN decides to remove eight countries from the EU blacklist of non-cooperative jurisdictions

On January 23, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) agreed to remove eight countries from the EU blacklist of non-cooperative jurisdictions and move them to the “grey list” of countries subject to close monitoring. Their removal from the blacklist and placement on the grey list was a response to the commitment by the countries to reform their tax systems in order to bring them in line with the conditions stipulated by the European Union.

For more information, please refer to Euro Tax Flash 353.

EUROPEAN COMMISSION

Notice on the consequences of Brexit in the field of customs and indirect tax

On January 30, 2018, the European Commission published a Notice to stakeholders on the withdrawal of the United Kingdom and EU rules in the field of customs and indirect taxation. The Notice, which is based on the Commission’s position paper of September 2017 on customs related matters, lists the main consequences of the Brexit in the field of customs and indirect taxation and describes the most relevant formalities that will have to be followed from an EU customs perspective.

For more information, please refer to the Notice.

EUROPEAN PARLIAMENT

Economic Dialogue and Exchange of Views with the Presidents of the Council (ECOFIN)

On January 24, 2018, the Committee on Economic and Monetary Affairs (ECON) held an exchange of views with the former and upcoming Presidents of the Council (ECOFIN). The briefing document highlights the accomplishments achieved during the Estonian presidency and the objectives to be achieved under the Bulgarian Presidency.

For more information, please refer to the In-Depth Analysis.

Mandatory disclosure rules for tax intermediaries
On January 11, 2018, the ECON committee met to discuss the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. In light of the Panama and Paradise Papers, the committee is calling for greater transparency from intermediaries who facilitate cross-border arrangements. The committee is also calling for additional sanctions for failing to report cross-border arrangements.

For more information, please refer to the video of the committee meeting.

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**OECD**

**Six countries sign the Multilateral Convention**

On January 24, 2018, Ministers and high-level officials from Barbados, Côte d’Ivoire, Jamaica, Malaysia, Panama, and Tunisia signed the BEPS Multilateral Convention bringing the total number of signatories to 78. Algeria, Kazakhstan, Oman, and Swaziland also expressed their intention to sign the Convention and various other jurisdictions are actively working towards signing by June 2018. Thus far, four jurisdictions – Austria, the Isle of Man, Jersey and Poland – have ratified the Convention, which will enter into force three months after a fifth jurisdiction deposits its instrument of ratification.

For more information, please refer to the [OECD Press Release](#).

**Multilateral risk assessment pilot program for large MNE groups**

On January 23, 2018, the OECD announced a new pilot program for multilateral risk assessment of large multinational entity (MNE) groups. The International Compliance Assurance Program (ICAP) is a pilot for a voluntary program that will use Country-by-Country reports and other information to facilitate cooperative multilateral engagements between MNE groups and tax administrations. The goal is to provide tax certainty and assurance for taxpayers and tax administrations.

For more information, please refer to the [OECD Press Release](#).

**Public comments received on tax rules requiring disclosure of CRS avoidance arrangements and offshore structures**

On January 18, 2018, the OECD published the comments received in response to their discussion draft on mandatory disclosure rules. The proposed rules would require intermediaries with a material involvement in the design, marketing, or implementation of CRS avoidance arrangements or offshore structures to disclose information to their national tax authority. The rules contemplate that information on those schemes (including the identity of any user or beneficial owner) would be made available to other tax authorities in accordance with the requirements of the applicable information exchange agreement.

For more information, please refer to the [public comments](#).

**Panama signs the CRS Multilateral Competent Authority on automatic exchange of information**
On January 15, 2018, Panama signed the CRS Multilateral Competent Authority Agreement (CRS MCAA) on the introduction of the automatic exchange of information in tax matters. Therefore, Panama agreed to implement the automatic exchange of financial account information pursuant to the OECD/G20 Common Reporting Standard and committed to providing the information by September 2018.

For more information, please refer to the OECD’s Press Release.

Local Law and Regulations

Andorra

Laws on automatic exchange of tax information approved

On November 30, 2017, the parliament approved two laws implementing the EU-Andorra agreement of February 2016 on the automatic exchange of tax information. The laws also list the jurisdictions that will start exchanging information as from January 1, 2017 and January 1, 2018.

Belgium

Corporate tax reform law published in the official gazette

Certain corporate tax reform measures are effective in 2018, 2019, or 2020. Reform measures effective beginning in 2019, include: (1) a regime of tax consolidation; and (2) provisions implementing the EU anti-tax avoidance directives (ATAD I and II). An interest deduction limitation will be effective beginning in 2020.

For more information, please refer to KPMG’s Tax News Flash.

CRS MCAA on automatic exchange of information enters into force in respect of Belgium

The Multilateral Competent Authority Agreement for the Common Reporting Standard (CRS MCAA) introducing the automatic exchange of financial account information on a reciprocal basis entered into force retroactively for Belgium as of January 31, 2016.

Croatia

Tax law changes effective in 2018

As of January 1, 2018, the arm’s length interest rate for corporate profit tax purposes on loans between related parties is decreased from 4.97% to 4.55% per annum.

For more information, please refer to KPMG’s Tax News Flash.
**Denmark**

National Tax Board decides Irish Common Contractual Fund is a transparent vehicle

On December 15, 2017, the customs and tax administration published a binding answer on the tax classification of an Irish Common Contractual Fund (CCF). The Tax Board concluded that an Irish CCF is to be regarded as a transparent vehicle under Danish tax law and that profits must be directly allocated to the investors regardless of whether they have actually been distributed. Nevertheless, investors may claim treaty benefits, if appropriate.

**Estonia**

Amendments to Income Tax Law enter into force

On January 1, 2017 several amendments to the Income Tax Law entered into force, including the introduction of an anti-abuse provision for hidden profit distributions, as well as changes to the taxation regime of dividends, in order to introduce a lower income tax rate for "regular" dividend distributions, as well as a specific anti-abuse provision for individuals.

**Finland**

Proposed changes to interest deduction limitation rules

On January 30, 2018, the Finnish Ministry of Finance released a draft proposal for new interest deduction limitation rules based on the Anti-Tax Avoidance Directive (2016/1164/EU). The proposed amendments would expand the scope of the current rules significantly, and if enacted, would be effective from the beginning of 2019. Consultation was also launched on January 19, 2018 in this respect.

Amendments to the Law on Tax Accounting

On January 1, 2018, some amendments to the Finnish Law on Tax Accounting entered into force, including a reduction of the statute of limitation period to four years and the simplification of the tax accounting and reporting procedures. The amendment will generally take effect as of November 1, 2018.

**Gibraltar**

Anti-money-laundering information – amendments enacted

On January 1, 2018, the regulations transposing into domestic law the EU Directive 2016/2258 as regards access to anti-money-laundering information by tax authorities entered into force.

**Iceland**

Inland Revenue publishes Country-by-Country notice form
The tax authorities recently published the Country-by-Country reporting notification form, according to which concerned multinationals have to file a notification by January 20, 2018, and subsequently every year by December 31.

Introduction of interest limitation rules for domestic groups reported

On December 30, 2017, the Icelandic parliament passed an amendment to the Income Tax Act, extending the exception provided for domestic groups with respect to interest limitation rules until January 1, 2019. Under Icelandic rules, the deduction of interest payments from related parties is limited to 30% of EBITDA, except if the lender is tax resident in Iceland. This exception was initially intended to be removed as of January 1, 2018, as it might be considered to represent a restriction on the freedom of establishment under the EEA Agreement.

Withholding tax rates increased

On December 30, 2017, the Icelandic parliament approved the Budget Law for 2018, which inter alia increases the withholding tax rates on various incomes for entities with limited tax liability in Iceland and non-resident individuals.

Italy

New corporate income tax measures enacted

The Budget Law for 2018, which was published in the official gazette on December 29, 2017, includes the following measures:

- A final substitute tax of 26% on capital gains realized by non-resident entities on qualifying participations will be introduced as of January 1, 2019
- Amendments to the taxation of dividends received from jurisdictions with a privileged tax regimes entered into force as of January 1, 2018
- The optional regime allowing companies to step-up the value of a controlling participation following certain restructuring operations by paying a 16% substitute tax is extended to cover participations in both resident and non-resident companies, also without a permanent establishment in Italy
- The definition of a permanent establishment is amended, in line with the OECD recommendations on BEPS
- A new “web tax” on digital services is introduced and is expected to apply as of January 1, 2019 on supplies of services provided through electronic means to resident enterprises. The tax will be levied at a rate of 3% on the value of each transaction.

Monaco

Implementation of automatic exchange of information

A Ministerial Decree will come into force on February 19, 2018, implementing the automatic exchange of financial account information under the OECD Automatic Exchange of Financial Account Information Agreement (2014) and the EU - Monaco Savings Directive Agreement.
Netherlands

Overview of expected legislation for 2018 sent to parliament

On January 18, 2018, the Dutch Minister of Finance sent to the parliament an overview of the financial and tax-related legislative items, which are expected to be submitted by the government until September 2018. The overview includes letters on tax rulings (February), letterbox companies (February), and the taxation of savings and investment based on actual returns (February), as well as legislative proposals for the implementation of the EU Anti-Tax Avoidance Directive (June) and the EU Directive on tax dispute resolution mechanisms (September).

Norway

Regulation on corporate tax rate for 2018 gazetted

According to regulations published in the Official Gazette of December 20, 2017, the 2018 corporate tax rate for resident and non-resident companies will be 23% (24% in 2017). The rate remains at 25% for financial institutions.

Poland

Poland deposits instrument of ratification for the Multilateral Instrument (MLI)

On January 23, 2018, Poland became the fourth country to deposit its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). Poland completed the legal processes to ratify the MLI on November 8, 2017.

Slovak Republic

Exemption of capital gains from sale of stocks or shares applicable

As of January 1, 2018, capital gains on shares realized by resident legal entities and non-resident legal entities having a permanent establishment in the Slovak Republic will be tax exempt under the cumulative requirements that at least 10% of the shares are held for at least 24 months and the taxpayer is not a letterbox company.

Exit tax rules

The exit tax rules provided by the Anti-Tax Avoidance Directive were introduced in the Slovakian Income Tax Act and apply as of January 1, 2018.

Spain

Amendments to corporate income tax published

On December 30, 2017, a Royal Decree was published in the Official Gazette, which amends certain corporate income tax regulations. In particular, amendments to better align Country-by-Country reporting obligations with the EU Directive 2016/881 on mandatory automatic exchange
of information will apply with retroactive effect to tax years starting on January 1, 2016. In addition, a withholding tax exemption for certain payments to pension funds will be introduced as of January 1, 2018.

Amendments to management and audit procedure regulations published

On December 30, 2017, a Royal Decree was published in the Official Gazette, which introduces several tax changes, including a new reporting requirement for intermediaries engaged in holiday accommodation rentals (in particular collaborative platforms), as well as a revised procedure for tax rulings, ensuring compliance with the EU Directive on mandatory automatic exchange of tax rulings. The regulations also detail the applicable refund procedure where elements of the tax liability are adjusted due to a State aid decision.

Sweden

Guidance on Country-by-Country reporting obligations published

On January 15, 2018, the Swedish tax authorities issued additional guidance on Country-by-Country reporting obligations, clarifying when a Swedish company is subject to reporting and providing details on reporting requirements for shortened and extended financial years as well as certain restructuring operations.

Switzerland

Consultation on implementation of Global Forum’s recommendations launched

On January 17, 2018, the Federal Council launched a public consultation on the draft bill aiming at implementing the recommendations made by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes in July 2016. The proposed changes include the conversion of bearer shares into registered shares, sanctions for non-reporting of information on beneficial ownership, and additional provisions on access to the registers of shareholders by tax authorities and financial intermediaries. The bill also contains clarifications on administrative assistance requests.

Federal Tax Administration amends rules on cross-border securities lending transactions

The Federal Tax Administration recently published a circular on the tax treatment of cross-border securities lending transactions, with the objective of preventing treaty shopping. As of January 1, 2018, non-resident borrowers of securities are no longer able to obtain a refund of Swiss withholding tax levied on the original dividend payment. Only the lender may request a refund and will have to provide evidence that the original dividend payment received from the borrower was subject to withholding tax.

United Kingdom

HMRC published an overview of groups’ compliance obligations under the new corporate interest restriction regime.
HMRC published a short guidance note regarding the circumstances in which a group may wish to consider appointing a ‘reporting company’ under the new corporate interest restriction (CIR) regime that is applicable from April 1, 2017.

For more information and advice, please refer to KPMG’s Tax News Flash.

Guidelines on tax avoidance schemes updated

On January 12, 2018, HMRC updated its Guidance on Disclosure of Tax Avoidance Schemes to include information regarding the new disclosure requirements for the apprenticeship levy and published Guidance to support the Serial Tax Avoidance Regime legislation (STAR), which imposes sanctions for the use of avoidance arrangements.

Brexit: European Union (Withdrawal) Bill 2017-19 incompatible with devolution in Scotland

On January 10, 2018, the Scottish government announced preparations for introducing an EU Continuity Bill in February 2018 to prepare Scotland's laws for Brexit. The UK government's European Union (Withdrawal) Bill 2017-19 was said to be "incompatible with the devolution settlement" by a cross-party Holyrood committee.

Finance Bill 2017/2018: Amendments tabled by the government in Committee

In January 2018, the UK government presented to the Public Bill Committee a number of minor amendments to the Finance Bill 2017/2018, including on corporate interest restrictions and anti-avoidance provisions with respect to offshore trusts.

For more information, please refer the HMRC dedicated webpage

Local Courts

Finland

Interest deduction restriction applies to Guernsey private equity fund

On January 10, 2018, the Supreme Administrative Court rendered a decision on the application of the interest deduction restriction to a Guernsey private equity fund. The Court upheld the decision of the tax administration to deny the application of a group equity ratio, as no entity within the organizational structure of the fund would be able to prepare financial statements that meet the conditions for the exemption to apply.

France

Opt-in requirement for the participation exemption in line with EU Parent-Subsidiary Directive

On December 20, 2017, the French Administrative Supreme Court ruled that the optional character of the French participation exemption on dividends is compatible with the EU Parent-Subsidiary Directive, as election to the regime may be requested at any time within the relevant
time limitation period. As a consequence, it does not restrict access to the benefits granted by the Directive.

Withholding tax exemption on dividends distributed to US pension funds

On January 24, 2018, the French Administrative Supreme Court ruled that a withholding tax cannot be levied on dividends paid to a US pension fund, as this would be contrary to the free movement of capital. The court concluded that an exemption must be granted to those foreign pension funds which are able to prove that they would be eligible for the exemption had they been French, and provided that the relevant tax treaty contains a non-discrimination provision.

Netherlands

Application of anti-abuse rule to non-resident substantial shareholders

On December 5, 2017, the Hague Court of Appeal rendered its decision on the compatibility of the Dutch anti-abuse provisions with the Parent-Subsidiary Directive and with the freedom of establishment. The Court concluded that the Dutch provision only targets wholly artificial arrangements and is therefore compatible with EU law. As a consequence, the Court rejected the taxpayer’s claim and ruled that the dividends were subject to withholding tax in the Netherlands. Considering the specific circumstances of the case, the Court further held that the 2.5% withholding tax for qualifying shareholders under the tax treaty between Luxembourg and the Netherlands applies.

United Kingdom

The Upper Tribunal held that a company was entitled to claim income tax relief for its PE’s trading losses against its non-PE letting income.

The Upper Tribunal has agreed with the decision of the First-tier Tribunal that a non-UK resident company was entitled to claim income tax relief for trading losses generated by its UK permanent establishment (PE) against letting income from its UK property rental business, even though any trading profit made by the PE would have been chargeable to corporation tax rather than income tax.

For more information, please refer to KPMG’s Tax News Flash.