KPMG

E-News from KPMG's EU Tax Centre

E-News from the EU Tax Centre

Issue 82 – October 1, 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

CJEU decision on German Participation exemption regime

On September 20, 2018, the Court of Justice of the European Union (CJEU) published its decision in the EV v Finanzamt Lippstadt case (C-685/16) concerning the compatibility of the German participation exemption regime applicable to dividends originating in third countries with the free movement of capital. The Court concluded that the German legislation is contrary to the free movement of capital.

For more information, please refer to Euro Tax Flash 382.

CJEU decision on Portuguese tax on capital gains derived from immovable property

On September 6, 2018, the CJEU rendered its decision in the Patrício Teixeira case (C-184/18) concerning the compatibility with EU law of the Portuguese rules on capital gains from the transfer of immovable property by a third country resident. The CJEU held that the Portuguese legislation is contrary to the freedom of capital.

Infringement Procedures and Referrals to CJEU

Referrals to CJEU

Belgium

On June 16, 2018, a Belgian Court referred questions to the CJEU in the Argenta Spaarbank case (C-459/18) concerning the compatibility with EU law of the Belgian rule on the deductibility of risk capital. The scope of the deduction for risk capital is more limited if a Belgian company has a permanent establishment (PE) in another EU Member State, than if this PE is located in Belgium. The referring court asked that whether this difference in treatment is in accordance with the EU freedom of establishment.

Bulgaria

On June 12, 2018, a Bulgarian Court referred questions to the CJEU in the GVC Services (Bulgaria) case (C-458/18) regarding the payment of Bulgarian withholding tax on dividend distribution to a company established in Gibraltar. The referring court asked whether Gibraltar should be excluded from the scope of the Parent-Subsidiary Directive.

Hungary

On June 24, 2018, a Hungarian Court referred questions to the CJEU in the Google Ireland case (C-482/18) regarding the fine imposed by the Hungarian tax authorities on Google Ireland for failure to comply with the registration requirement in connection with the Hungarian advertising tax. The referring Court asked whether imposing higher fines to foreign taxpayers for failure to comply with administrative requirements is compatible with EU law.

State Aid

European Commission decision in Luxembourg fiscal state aid case

On September 19, 2018, the European Commission issued its final decision in the State aid investigation into two tax rulings obtained from Luxembourg by McDonald's. The Commission concluded that the tax rulings issued by the Luxembourg Tax Administration to McDonald's do not constitute State aid within the meaning of EU law.

For more information, please refer to Euro Tax Flash 381.

EU Institutions

EUROPEAN COMMISSION

European Commission publishes notice to stakeholders on probable VAT implications of Brexit

On September 11, 2018, the European Commission released a notice to interested parties on the withdrawal of the United Kingdom and EU rules in the field of value added tax (VAT). The notice provides an outline of the eventual consequences for the United Kingdom when it becomes a third country from a VAT perspective.

For more information, please refer to the notice.

EUROPEAN PARLIAMENT

ECON Committee's draft report on a digital services tax

On September 21, 2018, the Committee on Economic and Monetary Affairs (ECON) issued its draft report regarding the European Commission's proposal to introduce a digital services tax. The main suggested amendments include a rate increase from 3% to 5% and a broadening of the scope to cover the supply of digital content and online sales. It also proposes to introduce a sunset clause, under which the tax would cease to have effect as of the adoption of the European Commission's proposals for a digital permanent establishment or for a Common Consolidated Corporate Tax Base (CCCTB). However, further amendments to the draft report are expected before the European Parliament votes on its final position in January 2019. The European Parliament's position should be seen as a recommendation and does not bind the Member States. The proposed Directive has to be adopted at unanimity in the Council, constituted by the heads of government of the EU.

For more information, please refer to the draft opinion.

ECON Committee's draft report on a digital permanent establishment

On September 18, 2018, the ECON Committee issued its draft report regarding the European Commission's proposal for a "significant digital presence". The amendments suggested request the European Commission to publish additional guidelines on the identification of

a digital presence and aim at reinforcing the presence and role of the European Parliament in the advisory DigiTax Committee which would be set up. However, further amendments to the draft report are expected before the European Parliament votes on its final position in January 2019. The European Parliament's position should be seen as a recommendation and does not bind the Member States. The proposed Directive has to be adopted at unanimity in the Council, constituted by the heads of government of the EU.

For more information, please refer to the draft opinion.

Parliamentary questions submitted to the European Commission

In June, July, August and September 2018, members of the European Parliament referred numerous questions to the European Commission on tax issues, including:

- Status of the file on public country-by-country reporting within the Council (E-004588/2018)
- Abolition of the Dividend Tax in the Netherlands (E-004428/2018)
- Privatization of the Register of Beneficial Owners in Spain (E-004039/2018)
- Plans to increase monitoring and control of cryptocurrencies (E-003987/2018)
- Relations between the 'Big Four' and the EU institutions (E-003961/2018, E-003816/2018)
- Gibraltar's Income Tax Act 2010 (E-003936/2018, E-003935/2018, E-003522/2018)
- Ireland's transfer pricing regime (E-003713/2018)
- Apple and capital allowances on intangible assets (E-003712/2018)
- Capital allowances for intangible assets in the EU (E-003711/2018)
- Legality of Shell tax ruling in light of state aid rules (P-003326/2018)
- Corporate tax system in Malta (E-003314/2018)

For the detailed information on questions and answers, please refer to the parliamentary questions.

OECD

MLI recent developments

On September 18, 2018, Saudi Arabia signed the Multilateral Instrument (MLI). On September 11 and 13, 2018, Lithuania and Israel respectively became the tenth and eleventh countries to deposit their instruments of ratification for the MLI and the convention will enter into force in respect of them on January 1, 2019. On September 12, 2018, the Burkina Faso Council of Ministers submitted a draft bill on the ratification of the MLI to the National Assembly.

Comments received on the public discussion draft on BEPS Actions 8-10 published

On September 14, 2018, the OECD released three documents, sharing the comments it received on the Discussion Draft concerning the transfer pricing aspects of financial transactions under Actions 8-10 of the base erosion and profit shifting (BEPS) Action Plan.

For more information, please refer to OECD's announcement.

Country-by-country reporting guidance updated

On September 13, 2018, the OECD announced the release of new guidance in a "question and answer" (Q&A) format regarding implementation of country-by-country (CbC) reporting pursuant to BEPS Action 13. The updated guidance includes a complete set of CbC guidance issued to date. The guidance is to apply prospectively.

For more information, please refer to KPMG's TaxNewsFlash.

Local Law and Regulations

Belgium

Amendments to Belgian rules applicable to interest income from bonds published

On September 14, 2018, a Decree was published in the Official Gazette in response to the European Commission's request to amend Belgium's tax legislation on interest income from bonds. The Decree abolishes the difference in treatment between the taxation of interest income derived from Belgian bonds and from foreign bonds.

Parliament approves deduction for innovation income

The Belgian Parliament has approved a draft law that introduces a deduction for innovation income. The new regime will replace the patent income deduction (that was previously repealed but with a "grandfathering period" until June 30, 2021) because the patent income deduction was found not to be in line with the OECD "modified nexus approach." The new deduction for innovation income will be effective retroactively as from July 1, 2016.

For more information, please refer to KPMG's TaxNewsFlash.

Bulgaria

Public consultation launched on ATAD implementation

On August 30, 2018, the Ministry of Finance launched a public consultation regarding proposed amendments to the Bulgarian Corporate Income Tax Code, implementation of the EU Anti-Tax Avoidance Directive into domestic law.

Denmark

Ruling on taxation of a Luxembourg special investment fund

On September 6, 2018, the Danish Tax Board published its ruling on the classification and tax treatment of a Luxembourg special investment fund incorporated as a limited liability company

with variable capital (SICAV). The Tax Board concluded that in the case at hand the Luxembourg fund was comparable to a Danish collective investment vehicle and did not constitute a permanent establishment in Denmark, as it did not qualify as a trading company.

Deductibility of loses from virtual currency sales

On September 5, 2018, the Danish Tax Authority published a ruling concerning the deductibility of losses from sales of virtual currencies. Such losses are considered to be deductible for income tax purposes.

France

2019 Finance Bill presented to Parliament

On September 24, 2018, the French government submitted the Finance Bill for 2019 to the French parliament. Proposed amendments include:

- The transposition of the EU ATAD into domestic law, in particular regarding the interest limitation and general anti-abuse rules as well as a relaxation of the existing exit tax rules applicable to individuals,
- Bringing the tax consolidation regime in line with EU law, and
- Bringing the French patent box regime in line with the OECD's modified nexus approach

Greece

Gradual reduction of corporate income tax rate announced

On September 8 2018, the Prime Minister announced that a gradual reduction of the corporate income tax rate is planned from 29% to 25% within four years.

Ireland

State aid recovery from Apple announced

On September 18, 2018, the Irish Ministry of Finance by means of a press release confirmed that Ireland has recovered the alleged State aid granted to Apple amounting to EUR 13 billion. The document also clarifies that Ireland is appealing the Commission's decision before the General Court of the EU.

Public comments for the corporate tax review consultations published

On September 12, 2018, the Irish Ministry of Finance published the public comments received from stakeholders in respect of corporate tax review consultations held between October 10, 2017 and January 31, 2018.

For more information, please refer to submissions.

Ministry of Finance published feedback statement on ATAD's CFC rules

On September 7, 2018, the Department of Finance published a feedback statement on the implementation of the ATAD's CFC rules. The statement aims to evaluate the views expressed by stakeholders via public consultation documents and clarifies Ireland's structural approach to ATAD's CFC rules.

For more information, please refer to the feedback statement.

Latvia

Introduction of CFC legislation compatible with ATAD announced

The Latvian Ministry of Finance has recently released a draft bill introducing controlled foreign company (CFC) rules in accordance with the EU ATAD. If adopted by the Parliament, the new rules will be applicable as of January 1, 2019.

Lithuania

Instrument of ratification of the MLI deposited

On September 11, 2018, Lithuania deposited its instrument of ratification of the MLI and became the tenth jurisdiction to complete the ratification procedures for the MLI.

Netherlands

Tax treaty policy, designation of low-taxed states for consultation

On September 25, 2018, the Dutch Government launched an internet consultation seeking comments relating to the Dutch tax treaty policy, and the designation of low-taxed states with respect to proposed controlled foreign companies (CFCs) measures. The consultation runs until October 22, 2018.

For more information, please refer to KPMG's TaxNewsFlash.

Tax plan 2019 presented on "Budget Day"

On September 18, 2018, the Dutch Government presented the 2019 tax plan to the lower house. The proposed tax measures, which include the implementation of the EU ATAD into domestic law, the progressive reduction of the corporate income tax rate to 22.25%, and the abolition of the Dividend Tax focus on lower labor costs, addressing tax avoidance and tax evasion, providing an attractive business climate, furthering environmental measures, and practical feasibility. Many of the proposed measures will be effective as of January 1, 2019.

For more information, please refer to KPMG's TaxNewsFlash.

Slovakia

MLI ratification instrument deposited

On September 20, 2018, Slovakia deposited its instrument of ratification for MLI.

Sweden

Updated guidance on hard-to-value intangibles released

On September 13, 2018, Sweden's Tax Authority issued an update to the transfer pricing guidance for intangible assets, to be in line with the OECD's hard-to-value intangible (HTVI) guidance. The OECD HTVI guidance provides tax authorities with a tool for the valuation of intangible assets according to the arm's length principle.

United Kingdom

Letters on 'no deal' Brexit advice for businesses only trading with the EU

On September 13, 2018, HMRC published advisory documents for VAT-registered businesses only trading with the EU that explain changes to customs, excise and VAT in the event that the UK leaves the EU without a deal.

For more information please refer to HMRC's announcement.

Local Courts

Greece

Supreme Administrative Court decision on the offsetting of losses in the case of mergers

On September 11, 2018, the Supreme Administrative Court rendered its judgment on the offsetting of losses in the case of mergers. The Court held that, in the case of mergers resulting in the creation of a new company, the acquired company losses cannot be offset against the losses of the new company, irrespective of whether the latter is considered a full legal successor of the acquired company.

Supreme Administrative Court decision on presumption of overpricing overseas expenses

On June 30, 2018, the Supreme Administrative Court gave its decision on the tax deductibility of costs incurred for the purchase of services and goods from non-resident offshore companies benefiting from a favorable tax regime. The Court concluded that if the taxpayers can prove that the expenses are related to genuine transactions, the incurred expenses must be deductible for tax purposes.

Switzerland

Federal Supreme Court's decision on mutual assistance in tax matters

On July 17, 2018, the Federal Supreme Court gave its decision in a case regarding the non-

consideration of a mutual assistance request arising from the applicable Double Tax Treaty between Switzerland and India. The Court held that the use of information obtained illegally to submit a request for mutual assistance does not in itself violate the principle of good faith, to the extent that the (Indian) requesting authorities did not themselves obtain such information in an illegal manner.

Robert van der Jagt
Chairman, KPMG's EU Tax Centre and
Partner,
Meijburg & Co

Key links

- Visit our website for earlier editions

---

kpmg.com/socialmedia

kpmg.com/app

Privacy | Legal