E-News from the EU Tax Centre

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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 taxation of non-resident employment income

On October 24, 2018, the Court of Justice of the European Union (CJEU) rendered its decision in the Benoît Sauvage, Kristel Lejeune v État belge case (C-602/17) concerning the compatibility of Belgium tax law with EU law. The Court concluded that the Belgium legislation, which subjects the exemption of employment income received by a Belgian resident in another Member State to the condition that the relating activity is actually performed in that state is in line with the free movement of workers.

State Aid

European Commission withdraws CJEU's action against Ireland in the Apple case

On October 18, 2018, the European Commission decided to withdraw the court action against Ireland for failure to recover illegal state aid from Apple. This decision follows the confirmation by Ireland that the full recovery of the illegal aid granted to Apple has been finalized.

For more information, please refer to the European Commission's press release.

European Commission approved extension of Danish tonnage tax regime

On October 15, 2018, the European Commission approved under EU State aid rules the extension of the existing Danish tonnage tax scheme to additional types of vessels.

For more information, please refer to the European Commission's press release.

OECD

Practice notes for developing countries concerning the BEPS risks in mining activities

On October 19, 2018, the OECD released a series of "practice notes" that are developed as tools for use by resource-rich developing countries. According to the notes, mineral resources present a significant economic opportunity for increasing government revenue, but tax base erosion and profit shifting (BEPS), combined with gaps in the capabilities of tax authorities in developing countries, threaten this prospect.

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

New jurisdictions join inclusive framework for implementing measures against BEPS

According to several updates published by the OECD in October 2018, Antigua and Barbuda, St. Vincent and the Grenadines, Dominica and Grenada have joined the BEPS inclusive framework, bringing the total number of participating jurisdictions to 123.

United Nations

Seventeenth Session of the Committee of Experts on International Cooperation in Tax Matters

On October 16 –19, 2018, the UN Committee of Experts on International Cooperation in Tax

Matters held its seventeenth meeting in Geneva. Subcommittees provided updates on their progress and received feedback from the committee, in particular regarding:

- Report on updating the UN Model Double Taxation Convention;
- Update of the UN Practical Manual on Transfer Pricing for Developing Countries;
- Update of the Handbook on Selected Issues for Taxation of the Extractive Industries;
- Update of the Manual for the Negotiation of Bilateral Tax Treaties;
- Treatment of collective investment vehicles;
- Dispute avoidance and resolution;
- Tax consequences of the digitalized economy where relevant for developing countries
- Taxation of development projects;
- Environmental tax issues.

For more information, please refer to the UN's meeting announcements.

Local Law and Regulations

Andorra

Multilateral Competent Authority Agreement on automatic exchange of CbC reports signed

On October 18, 2018, Andorra signed the Multilateral Competent Authority Agreement (MCAA) on the automatic exchange of Country-by-Country reports.

Belgium

The Council of Ministers approved the MLI

On October 12, 2018, the Council of Ministers approved the MLI, which will subsequently be submitted for approval to the parliaments of regions and communities.

Bulgaria

Implementation of ATAD rules on interest limitation approved by parliament

On October 18, 2018, the Bulgarian parliament approved amendments to the tax law, including the implementation of interest limitation rules under the EU Anti-Tax Avoidance Directive (2016/1164). Information about the formulas for calculating excess borrowing costs has also been published. On the other hand, existing thin capitalization rules will remain in force, with the option to carry forward interest costs without limitation.

Czech Republic

Czech Republic's position on digital taxation published

On October 12, 2018, the Ministry of Finance published the Czech Republic's official position on digital taxation. According to press release, "the Czech Republic recognizes the need to

flexibly react to the changing business environment in the context of digitalization. The Czech Republic supports a common approach within the EU."

For more information, please refer to the Czech Ministry of Finance's press release.

Finland

Information on pre-emptive discussions with tax authorities published

On October 22, 2018, the Finnish tax authorities issued details about the possibility for certain multinational enterprises (MNEs) to have pre-emptive discussions with the Large Taxpayers' Office, in particular regarding cross-border tax matters. The MNEs may also request a cross-border discussion between the tax authorities of two or more countries.

For more information, please refer to the Finnish tax authority's webpage.

France

Updated guidelines on deductibility of foreign taxes paid in breach of bilateral tax treaties

On October 3, 2018, the tax authorities updated their guidelines on the deductibility of foreign taxes. According to the updated guidelines, foreign taxes that are paid in breach of a tax treaty provision or in the absence of any treaty are deductible from the taxable result in France.

Germany

Draft Bill issued regarding the tax consequences of Brexit

On October 9, 2018, the Ministry of Finance released a draft bill, which aims to implement certain tax measures to protect German resident taxpayers from possible negative consequences of the Brexit. The draft bill clarifies that if the United Kingdom leaves the EU without a withdrawal agreement or a transition period, certain rules available only to taxpayers resident in EU/EEA Member States will no longer be applicable.

Ireland

Updated Guidance regarding the Knowledge Development Box Regime

On October 16, 2018, the Revenue Commissioner published updated guidance on the Knowledge Development Box Regime, in particular if an Irish branch performing a qualifying activity is incorporated.

For more information, please refer to the updated Guidance.

Latvia

Automatic exchange of tax rulings extended to non-EU jurisdictions

On October 12, 2018, new regulations entered into force, aiming to extend, in line with the

minimum standards proposed in Action 5 of the OECD's BEPS project, the obligation to automatically exchange tax rulings with non-EU jurisdictions with which Latvia has concluded a relevant international agreement.

Lithuania

Draft Bill to implement EU anti-tax avoidance directives released

On September 28, 2018, the Ministry of Finance released a proposal to transpose the EU Anti-Tax Avoidance Directive (2016/1164) into domestic law. The bill introduces interest limitation rules in addition to existing thin capitalization rules and controlled foreign company (CFC) rules, in accordance with ATAD 1. If adopted, the new rules will apply as of January 1, 2019.

Malta

State Budget 2019 released

On October 23, 2018, the Finance Minister announced key economic and tax points of the Malta Budget 2019. The tax measures include:

- The implementation of anti-tax avoidance measures in accordance with the ATAD 1, such as interest limitation rules, exit taxation, general anti-abuse rule (GAAR) and controlled foreign company (CFC) rules.
- The introduction of a patent box regime, in line with the modified nexus approach.
- Continued efforts to attract further investment to Malta upon Brexit.

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

Netherlands

New developments regarding the 2019 Tax Plan and fiscal unity

On October 25 and 26, 2018, the Ministry of Finance sent several Memoranda of Amendment to the Dutch parliament, resulting from the government's reconsideration of the business climate package. These include:

- the further reduction of the corporate income tax rate and no additional increase of the tax rate for a substantial interest;
- not abolishing dividend withholding tax;
- not introducing a conditional withholding tax on dividends;
- the reversal of the amendments to the investment fund (FBI) regime;
- transitional rules for the 30% ruling;
- the amendment of the emergency repair of the fiscal unity;

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

Spain

Tax Provisions in draft budget 2019

On October 11, 2018, the Spanish Government announced the details of the 2019 budget and the proposed tax measures that would affect certain businesses and individuals, including:

- Amendments to participation exemption rules, i.e. 95% exemption of qualifying income (5% minimum participation and one year minimum holding period).
- Introduction of a minimum tax on profits (i.e. 15% for companies subject to the general tax rate of 25% and 18% for companies subject to the 30% tax rate) for consolidated groups and companies with a minimum annual net turnover of EUR 20 million.
- Several tax transparency measures such as bringing limitations on cash payments, updating the tax havens list, and introducing a tax amnesty prohibition.
- A 3% digital tax similar to the EU proposal for a Digital Services Tax (DST)
- A 0.2% financial transaction tax on the acquisition of shares listed on the Spanish stock exchange, with a capitalization amount of more than EUR 1,000 million.

United Kingdom

Synthesized texts of UK's tax treaties released

On October 11 and 12, 2018, the tax administration published the synthesized texts of the tax treaties between the United Kingdom and Slovenia (2007) and Serbia (1981) respectively, as modified by the MLI. The documents were jointly prepared and agreed to by the competent authorities of the countries referred to and the United Kingdom.

Local Courts

Belgium

Court of Appeal decision on the tax consequences of a company's migration to Belgium

On September 4, 2018, the Antwerp Court of Appeal ruled on the compatibility with EU law of Belgian legislation on the tax consequences of the migration to Belgium of a Luxembourg company. The Court considered that Belgian provisions, which deny the deductibility of write-downs on shares recognized before the company's migration, only infringe the freedom of establishment if such write-downs are not deductible in Luxembourg either. However, the Court concluded in the case at hand that, based on previous CJEU case law on the Marks & Spencer exception, there is no infringement as the non-deductibility of the write-downs in Luxembourg resulted solely from the company's loss-making position.

Czech Republic

Supreme Administrative Court decision on transfer pricing assessment

The Supreme Administrative Court dismissed a taxpayer's appeal from a November 2017 decision of a regional court regarding the provision of services within a taxpayer group. The court agreed with the tax authority's conclusions concerning the evidence (or more specifically, the lack of probative value of such evidence) supporting the pricing of the services.

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

Denmark

Administrative Tax Court decision on qualification of intra-group services

On October 8, 2018, the Danish tax authorities published a decision from the Administrative Tax Court regarding an upward transfer pricing adjustment on the revenues of a Danish loss-making company acting as fully-fledged distributor for a multinational group. The Court rejected the adjustment and considered that the company's presence in the Danish market cannot be qualified as the provision of intra-group service, as this results from the company's integration into a multinational group's structure and strategy.

Administrative Tax Court decision on transfer pricing adjustment resulting from restructurings

On October 8, 2018, the Danish tax authorities published a decision from the Administrative Tax Court regarding an upward adjustment on the revenues of a Danish company, whose production facilities were shut down following a group's restructuring. The Court rejected the adjustment, as no transfer of IP rights or customer base had resulted from the operation.

Germany

Federal Financial Court decision on the application of CFC legislation in a triangular case

On June 13, 2018, the Federal Financial Court rendered its decision regarding the application of CFC legislation in a case where a German parent company indirectly held a Cypriot company through a Dutch holding company. Based on the CJEU decision in the Cadbury-Schweppes case, the Court concluded that the German legislation is contrary to EU law, as it does not only apply to wholly artificial arrangements. The Court further held that the Cypriot company was carrying on genuine economic activities and that the fact that such activities could have been undertaken in Germany is not sufficient to consider the structure wholly artificial.

Netherlands

Supreme Court decision in line with CJEU's "per element" approach

On October 19, 2018, the Dutch Supreme Court rendered a final judgment in two cases for which it had previously requested and received a preliminary ruling from the CJEU (C-398/16 & C-399/16). The Court followed the CJEU judgment in both cases, which dealt with the question whether taxpayers, despite being unable to enter into a fiscal unity with non-resident subsidiaries, may nevertheless be eligible for benefits from separate elements of the fiscal unity regime.

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

Court of Appeal decision on profit allocation to a permanent establishment

On October 10, 2018, the Amsterdam Court of Appeal rendered its decision regarding the attribution to a Dutch PE of profit resulting from the work performed by a Belgian resident

investor. The Court considered that the activities performed by the investor may result in higher added value than the remuneration received, even if such remuneration is at arm's length. As a consequence, it cannot be precluded that profits will have to be allocated to a PE in the Netherlands, and in the circumstances at hand a 50% profit allocation is reasonable under both domestic law and the applicable tax treaty between Belgium and the Netherlands

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

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