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E-News from the EU Tax Centre

Issue 106 – September 3, 2019

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 may develop and how to leverage opportunities and reduce 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.

Infringement Procedures & Referrals to CJEU

Referrals to the CJEU

Sweden

On June 25, 2019, reference was made to the Court of Justice of the European Union (CJEU) by the Supreme Administrative Court for a preliminary ruling in the case of Lexel (C-484/19). The referring court requested a ruling regarding the deduction for interest paid to an associated foreign company and its compatibility with the freedom of establishment.
Finland

On June 24, 2019, reference was made to the CJEU by the Supreme Administrative Court for a preliminary ruling in the E case (C-480/19). The referring court requested a ruling concerning the treatment of an individual’s income derived from collective investment in foreign transferable securities and its compatibility with the free movement of capital.

EU Institutions

EUROPEAN COMMISSION

Sixth Brexit preparedness Communication

On September 4, 2019, the Commission reiterated its call to all stakeholders to prepare for a 'no-deal' scenario in its newly published sixth Brexit preparedness Communication. The Commission also published a checklist to help businesses that trade with the UK make final preparations.

For more information, please refer to the Communication and checklist.

OECD

Multilateral Convention developments

On August 29, 2019, Canada and Switzerland deposited their instrument of ratification for the Multilateral Convention (2016) (MLI). The MLI will enter into force in respect of these countries on December 1, 2019. In addition, the MLI entered into force in respect of the United Arab Emirates on September 1, 2019.

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

Guinea, Namibia and Honduras join the Global Forum on Transparency and Exchange of Information for Tax Purposes

On August 26, 2019, Guinea, Namibia and Honduras became the 155th, 156th and 157th members of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Their membership signals their commitment to implement the OECD Standard for Exchange of Information on Request as well as the Standard for Automatic Exchange of Financial Account Information in Tax Matters to facilitate international cooperation in the field of tax transparency.
Ecuador and Serbia deposit instruments of ratification for the Convention on Mutual Administrative Assistance in Tax Matters

On August 26 and August 30, 2019, Ecuador and Serbia deposited respectively their instruments of ratification for the multilateral Convention on Mutual Administrative Assistance in Tax Matters, and the convention shall enter into force for both Ecuador and Serbia on December 1, 2019.

Outcome of second phase of BEPS Action 13 peer review published

On September 3, 2019, the outcome of the second phase of peer reviews of the BEPS Action 13 Country-by-Country (CbC) reporting initiative was published. This review indicates substantial progress has been made in the continuing efforts to improve the taxation of multinational enterprises (MNEs) worldwide. According to the report 116 jurisdictions and virtually all large MNEs are now covered, implementation is generally consistent with BEPS Action 13, jurisdictions are acting on prior recommendations and more than 2,200 exchange relationships are now in place.

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

Local Law and Regulations

Bulgaria

Public consultation launched on the proposal for implementation of ATAD I and ATAD II measures on hybrid mismatches and exit taxation


Greece

Updated guidance on the automatic exchange of financial information published

On August 22, 2019, updated guidance on the automatic exchange of information under the OECD Agreement on Automatic Exchange of Financial Account Information (2014) and the Directive on Administrative Cooperation in the field of Taxation (2011) was gazetted. The circular establishes a procedural framework for the operation of the system.

Ireland

Amendments to transfer pricing laws proposed by Ireland

On September 2, 2019, Ireland’s Department of Finance published a proposed amendment for Ireland’s transfer pricing legislation for public comments. The document provides feedback on
the answers received to the initial consultation and includes examples on how the new legislation may apply.

For more information, please refer to the Feedback Statement.

Italy

Publication of a ruling on the tax treatment of profit distributions to Singapore REITs

On August 26, 2019, Italian tax authorities published a ruling detailing the extent to which an exemption from withholding tax in Italy is provided for profit distributions made to Singapore real estate trusts by resident real estate funds.

Update of country-by-country reporting rules

On August 20, 2019, the Ministry of Economy and Finance published a decree which provides an update to the rules on country-by-country (CbC) reporting. The amendments extend the permitted use of information contained in the CbC report to risk assessments in the areas of Transfer Pricing and Base Erosion and Profit Shifting and authorizes the use of such information by the Finance Department for statistical analyses.

Lithuania

Amendment to the transfer pricing rules

On August 12, 2019, the Lithuanian tax authorities published further details regarding transfer pricing (TP) reporting. The updated guidance abolishes the hierarchy of TP methods and establishes a dispute resolution mechanism under the mutual agreement procedure.

Norway

A loan to a sole shareholder held an illegal dividend

On August 21, 2019 the decision made by the Norwegian Tax Board in case 49/2019 was published. In light of the facts of the case (e.g. the loan was not in line with company law requirements) the Tax Appeals Board held that the consideration paid under the loan agreement between a company and its sole shareholder should be reclassified as an illegal dividend and included in the shareholder’s taxable income.

Sweden

Bank tax to be introduced from 2022

On August 31, 2019, the Swedish government announced its plans to introduce a bank tax as of 2022. The tax is expected to generate around SEK 5 billion revenues in 2022 that will be used for funding the Swedish defense.
Local Courts

Belgium

Incompatibility of the Belgian tax on collective investment funds with tax treaty

On March 26, 2019, the Court of Appeal of Brussels held that the special subscription tax on foreign collective investment funds levied by Belgium was incompatible with the Tax treaty between the Netherlands and Belgium. The Court noted that in accordance with the treaty, capital can only be taxed in the resident state.

Greece

Supreme Administrative Court interprets treaty definition of royalties

On August 30, 2019, it was reported that the Supreme Administrative Court, in published judgment No. 346/2019, provided clarification on the taxation of professional and customization services under the double tax treaty between Greece and India. The court ruled that the services provided by the Indian parent company to its Greek subsidiary did not constitute a transfer of know-how, and therefore, the remuneration paid from the Greek subsidiary to the Indian parent company should not be classified as royalties but rather as business profits.

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

Key links
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