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E-News from the EU Tax Centre

Issue 153 – April 27, 2022

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.

Latest CJEU, EFTA and ECHR

[Court of Justice of European Union announces web-streaming facility](#)

On April 22, 2022, the Court of Justice of the European Union (CJEU) announced that it will offer a streaming service from April 26, 2022 onwards to facilitate access for the public to its judicial activity. The delivery of judgments of the CJEU and the reading of Advocate Generals' opinions will be broadcast live on the CJEU website, for cases assigned to the Grand Chamber of the CJEU. There will also be a pilot of a delayed broadcasting facility for a period of six months.

For more information, please refer to the CJEU [press release](#).

General Court decision in Gibraltar State aid case

On April 6, 2022, the General Court of the European Union (General Court or the Court) gave its decision in a case concerning the compatibility with EU law of Gibraltar's corporate income tax exemption regime for royalties and of related individual tax rulings (T-508/19).

The General Court partially annulled the State aid decision issued by the Commission, in so far as it relates to individual aid granted to the plaintiff, based on a tax ruling, for the period 2014 onwards. The annulment also covers the order for recovery connected with that measure. On the other hand, the Court upheld the Commission's finding based on which Gibraltar's corporate tax exemption for royalty income applicable until December 31, 2013 constitutes unlawful State aid.

For more information, please refer to [Euro Tax Flash Issue 473](#).



Infringement Procedures and CJEU Referrals

Romanian request for a preliminary ruling on local rules applicable to domestic reorganizations

On December 30, 2021, the Romanian High Court of Cassation and Justice [requested](#) the Court of Justice of the European Union (CJEU) to rule on whether the local rules applicable to domestic reorganizations should be interpreted consistently with the provisions of the Merger Directive (C-827/21).

The referred question relates to the tax treatment of income arising when cancelling shares held by the acquiring company in the capital of the transferring company. Under Romanian tax rules applicable to domestic reorganizations at that time, such income was treated as non-taxable for Romanian corporate income tax purposes where the receiving company issued shares in exchange for the distribution of assets and liabilities to the shareholders of the transferring company. In the case under dispute, the acquiring company already held 100 percent of the shares in the transferring entity prior to the date of the merger and no shares could therefore be issued.

The referring court acknowledged several indicators suggesting that the Romanian tax authorities chose to harmonize the rules applicable for internal reorganizations with the Merger Directive and asked the CJEU for guidance on whether those elements were sufficient to require an interpretation of the measures under dispute in a manner consistent with the Merger Directive.



EU Institutions

EUROPEAN PARLIAMENT

FISC sub-committee on tax matters discusses potential regulation of tax advisors

On April 25, 2022, the European Parliament's Subcommittee on Tax Matters (FISC) held a public exchange of views on reinforcing the regulation of intermediaries in the field of taxation with a view to ensuring a fair and user-friendly tax system. During the meeting, MEPs heard from a number of interested stakeholders, including Mr. Grant Wardell-Johnson from KPMG's Global Tax Policy team and Ms. Raluca Enache from KPMG's EU Tax Centre.

The contributions focused on the existing status of regulation for tax advisors across the European Union, with speakers highlighting the divergence in treatment across Member States. While speakers noted that work undertaken by the EU and OECD in recent years has been instrumental in reducing tax evasion and aggressive tax planning, the contributors did acknowledge that a minority of advisors may still be engaged in questionable practices. It was noted that this was an area of great concern in public discourse, albeit it was highlighted that it is not always tax advisors that provide these services.

Representatives from the Confédération Fiscale Européenne (CFE Tax Advisors Europe) presented their work on the potential design of an ethical quality bar, which it was suggested could act as a suitable starting point for a conversation on ethics in tax practice across the EU.

Similar recommendations were made by the attendees from KPMG. Most notably, the KPMG attendees suggested that a full assessment of the functioning of EU mandatory disclosure rules (DAC6) should be undertaken. From a regulatory perspective, options for improvement suggested by the participants included the potential introduction of an EU-wide code of conduct for tax advisors or the ethical quality bar as suggested by CFE Tax Advisors Europe.

Representatives from the Commission advised that a full evaluation of the impact of DAC6 is underway and that a report is expected to be available in early 2023. The Commission also advised that a public consultation on the regulation of tax advisors will be launched in May 2022 and is expected to run until July 2022.

For more information, please refer to the FISC hearing [webpage](#).



OECD and other International Institutions

OECD

Public consultation on GloBE Implementation Framework

On April 25, 2022, the OECD held a public meeting on the GloBE Implementation Framework to discuss

the input provided during the formal consultation process and to consider mechanisms to be put in place to ensure that tax administrations and MNEs can implement and apply the GloBE Rules in a consistent and coordinated manner.

The [comments](#) collected from stakeholders during the public consultation period were released on April 14, 2022 and include the following common views of stakeholders.

Further administrative guidance

- Need for specific administrative guidance to be released on issues related to scope and transition rules, deferred tax accounting, tax credits, transfer pricing adjustments, tax transparent entities, joint ventures and minority-owned constituent entities in order to ensure consistent interpretation of the Model Rules by all jurisdictions.
- Need for the additional administrative guidance to be released on a rolling basis.

Information collection and reporting

- Need for a standardized GloBE Information Return template to ensure consistent reporting requirements and to avoid disproportionate compliance burdens.
- Need for a centralized filing in the UPE jurisdiction and an effective information exchange that includes data and confidentiality safeguards.
- Need for a grace period to ensure that good faith mistakes do not trigger any penalty for the first years of application.
- Need to streamline the GloBE reporting requirements with Country-by-Country reporting requirements to avoid reporting duplications.

Possible design of safe harbors

- Agreed list of jurisdictions where the Effective Tax Rate (ETR) is likely above the Minimum Rate and for which a MNE Group should not be required to calculate the jurisdictional ETR.
- Safe harbor rule to be based on Country-by-Country Reporting data. Where the accrued tax divided by the profit for a year is more than 15 percent plus an extra-margin, no top-up tax should apply.
- Specific safe harbor rule in respect of Qualified Domestic Minimum Top-up Tax (QDMTT) regimes. Where such regimes are introduced and applied, no ETR calculation should be required. In this regard, for the first years of application, the MNE Group should be able to rely on an assessment by the relevant jurisdiction before a peer review process is in place.

Rule coordination and tax certainty

- Need for coordinated and centralized audits at the level of the UPE or Filing Entity jurisdiction.
- Need for a timely and binding dispute resolution process.
- Need for possibilities to address disputes under pre-existing frameworks.

The responses received by the OECD include a [response letter](#) submitted by KPMG International, which highlights, for example, the following additional key issues:

- Additional clarification requested where the UPE is in a non-GloBE jurisdiction (e.g., it should

- be clarified which jurisdiction's interpretation has primacy where various terms or elections are interpreted differently by the relevant jurisdictions).
- Additional clarifications requested in respect of QDMTT regimes (e.g., safeguards in respect of expiry mechanism for unpaid QDMTT, application of election made at UPE level, the intended interface of QDMTT with other cross-border tax rules such as CFC regimes).
 - Need for regular reviews, at least every three years, of the compliance burden with input from business and revenue authorities focused on minimizing this cost. The question of whether information required by specific jurisdictions is 'reasonably necessary' to determine a top-up tax liability would be paramount in this evaluation.

For additional information, please refer to KPMG's [Tax News Flash](#) and the OECD [press release](#).

Public consultation on Draft Model Rules in respect of Amount A building blocks (Pillar One)

On April 22, 2022, the OECD/G20 Inclusive Framework on BEPS released [comments](#) received on the Draft Model Rules for Scope in relation to Amount A of the OECD Pillar One solution to reallocate profits of multinational enterprises to market jurisdictions. The OECD received a total of 28 responses, including a [response letter](#) submitted by KPMG International, which highlights the following key issues:

- The total revenues of a group should be subject to equivalent rules as the prior period and average tests.
- The prior period test and the average test should apply as permanent features of the scope rules, rather than amending the rules to apply them solely as "entry tests".
- The source rules should align the profitability test calculation with the computation of tax base rules in Article 5, particularly regarding net losses.
- Additional clarity should be provided with respect to consolidated financial statements prepared where a single Entity would meet the scope thresholds on a standalone basis.
- Groups should have the option to elect to be in-scope of Amount A for a fixed term following any period for which it satisfies both threshold tests.
- The definition of "real estate investment vehicle" should provide clarification on immovable property.
- All aspects of the Amount A scope should be included in the tax certainty process and any disputes that impact whether a MNE would be a covered group should be resolved early and expeditiously.

Moreover, on April 14, 2022, the OECD/G20 Inclusive Framework on BEPS issued a [public consultation document](#) seeking public comments on the Extractives Exclusion under Amount A of Pillar One. In short, the proposed exception would exclude the profits from extractive activities from the scope of Amount A when an MNE group derives revenue from the exploitation of extractive products and the group has carried out the relevant exploration, development, or extraction.

The OECD's press release stresses that the proposed approach reflects the policy goal of excluding the economic rents generated from location-specific extractive resources that should only be taxed in the source jurisdiction. It is further noted that the approach does not undermine the comprehensive scope by limiting the exclusion in respect of profits generated from activities taking place beyond the source jurisdiction, or later in the production and manufacturing chain.

The OECD's press release also stresses that the draft rules do not reflect consensus from the Inclusive Framework on BEPS regarding the substance of the document. Comments are requested by April 29,

2022.

For additional information please refer to KPMG's [Tax News Flash](#) and the OECD [press release](#).

MLI updates

On April 7 and April 21, 2022, respectively, Belize and Cameroon deposited their instruments of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). For these two jurisdictions, the MLI will enter into force on August 1, 2022.

On April 21, 2022, Japan notified the OECD that it wishes to extend the list of tax treaties covered by the MLI, by adding its treaty with Thailand.

For additional information, please refer to the OECD's [press release](#).

OECD releases Stage 2 peer review reports on dispute resolution for nine jurisdictions

On April 14, 2022, the OECD published Stage 2 peer review monitoring reports under BEPS Action 14 for [Andorra](#), [Bahamas](#), [Bermuda](#), [British Virgin Islands](#), [Cayman Islands](#), [Faroe Islands](#), [Macau \(China\)](#), [Morocco](#) and [Tunisia](#).

The results from the peer review and peer monitoring process demonstrate positive changes across all nine jurisdictions, although not all jurisdictions show the same level of progress. The reports evaluated the progress made by these nine jurisdictions in implementing the recommendations resulting from their Stage 1 peer review, take into account any developments in the period from September 1, 2019 to April 30, 2021 and build on the Mutual Agreement Procedure (MAP) statistics for 2016-2020.

For more details, please refer to OECD's [press release](#).



Local Law and Regulations

Bahrain

Economic substance returns extended for certain entities

The Bahrain Government has extended the due date for economic substance information returns from March 31, 2022, to mid-August 2022, for entities that did not have their financial statements for financial year 2021 audited by March 31, 2022.

In addition, the government has announced that entities that have submitted their economic substance returns based on unaudited financial statements may be required to resubmit their economic substance returns based on their audited financial statements.

For more details, please refer to an [April 2022 report](#) prepared by KPMG in Bahrain.

Finland

[Finland publishes new guidelines on withholding tax on dividends, interest and royalties](#)

On April 14, 2022, the Finnish tax authorities published new guidelines on the taxation of dividend, interest, and royalty income received from sources in Finland. The new guidelines apply to persons with a limited tax liability in Finland, including foreign individuals and entities. The guidelines provide:

- an overview of the meaning of limited tax liability, taxation under the Finnish Withholding Tax Act, the application of tax treaties and EU law, and specific sections on dividends, interest, and royalties.
- withholding tax procedures and obligations of the payer, including an overview of general and specific procedural aspects, the tax implications for payers that fail to withhold tax correctly, and the actual mechanisms for the collection and declaration of withholding tax.

For more information, please refer to the limited tax liability [guidelines](#) and the withholding tax procedures [guidelines](#) (both in Finnish).

Germany

[Termination of agreement between Germany and Switzerland on taxation of cross-border workers](#)

On April 11, 2022, the German Ministry of Finance decided to terminate an agreement between Germany and Switzerland regarding the taxation of cross-border workers during the COVID-19 pandemic. The agreement was originally signed on June 1, 2020 and will remain effective until July 1, 2022.

As previously reported in [E-News Issue 147](#), Germany has a number of similar agreements in place with Austria, Belgium, France, Luxembourg and the Netherlands which had been extended previously.

Ireland

[Public consultation launched on R&D tax credit and knowledge development box](#)

On April 14, 2022, the Irish Department of Finance launched a public consultation regarding Ireland's R&D tax credit and Knowledge Development Box (KDB) regimes. The purpose of the public consultation is to consider the issues facing companies engaged in R&D activity, as well as the implications of recent domestic and international tax reforms for these two reliefs (in particular, Pillar One and Pillar Two of BEPS 2.0).

The consultation poses a number of questions regarding how both reliefs currently operate in practice and requests feedback on how the reliefs could be improved going-forward. The consultation period runs until May 30, 2022.

For more information, please refer to the Department of Finance [press release](#).

Jersey

[Jersey and Isle of Man approaches to the OECD's two-pillar solution](#)

On April 12, 2022, the Jersey Government published a [policy paper](#), outlining tax policy considerations on the OECD's two-pillar solution. The document provides insights on the elements that Jersey will evaluate before making a final decision on its approach to GloBE. At the same time, authorities in the Isle of Man released a [statement](#) indicating that their approach is consistent with the approach being taken by Jersey.

Latvia

[Corporate income tax changes include measures for "doubtful debts" interest expense limits](#)

On April 7, 2022, the Latvian President announced a number of amendments to Latvian corporate income tax law. Key measures announced included changes to the procedures for paying corporate income tax on expenses of provisions for doubtful debts for taxpayers that make such provisions in accordance with International Financial Reporting Standard (IFRS) 9. Provided certain criteria are met, provisions made pursuant to IFRS 9 would be subject to Latvian corporate income tax only if the debt was not recovered within a 60-month timeframe (as opposed to the standard 36-month timeline).

In terms of interest payments, the Latvian corporate income tax law would be updated to clarify that the 30 percent EBITDA threshold, introduced as part of the interest limitation rules contained in the EU Anti-Tax Avoidance Directive (ATAD), will only apply to net interest expenses (i.e. the difference between interest income and interest payments). In addition, interest expenses calculated in accordance with IFRS 16 (i.e. the finance element of leases) will not be restricted by the Latvian interest limitation rules. The Latvian debt to equity limit of 4:1 would also not be applied for 2021 and 2022.

For more details, please refer to KPMG's [Tax News Flash](#) and an [April 2022 report](#) prepared by KPMG in Latvia.

[Information about results of tax audits and taxpayer compliance publicly available](#)

Since August 5, 2021, the Latvian tax authorities have been required to publish information on the tax authority website including the results of tax audits, data compliance checks and tax assessments raised by the Latvian tax authorities.

The information is publicly available on the tax authority website and includes:

- The name and registration number of the legal entity (taxpayer).
- The date when the tax authority decision is effective.
- A summary and description of the tax authority decision.
- Information about whether the decision has been appealed.

There is no obligation on the Latvian tax authorities to request taxpayer consent before the information

is published and publication is not considered to be a breach of confidentiality.

For more details, please refer to KPMG's [Tax News Flash](#) and an [April 2022 report](#) prepared by KPMG in Latvia.

Norway

Revised proposal for a new petroleum tax system

On April 8, 2022, the Norwegian Government issued revised proposals that would amend the current petroleum tax system and move it toward a cash flow-oriented tax system. The purpose of the proposed changes is to improve the “neutrality” of the petroleum tax system, and to better determine that development projects are profitable before tax (as well as after tax). The current tax allowance for investments when the government covers approximately 88 percent of the capital expenditure (capex) through the tax system is considered too generous. Under the proposal, the government would cover about 78 percent (i.e., equal to the income tax rate of 78 percent), but deductions for offshore E&P investment would be accelerated and allowed a refund for the tax value of special tax losses.

The proposals are expected to be discussed by the Norwegian Parliament by July 2022. If enacted, the revised system would be effective from January 1, 2022.

For more information on the key elements of the revised petroleum tax system, please refer to KPMG's [Tax News Flash](#).

Poland

Closure of public consultation regarding amendments to “Polish Deal”

On April 13, 2022, the latest draft of the “Polish Deal” was published and includes newly proposed changes originating from a public consultation process launched on March 24, 2022.

The Polish Deal contains wide-ranging legislation amending Polish income tax laws affecting corporations and individuals, as well as value added tax and other tax legislation. The package was initially passed on October 29, 2021 and became effective on January 1, 2022. For more information on the Polish Deal, please refer to [E-News Issue 143](#).

The proposed amendments would become effective on July 1, 2023 and include the following measures:

- Taxpayers that applied a flat tax or lump-sum tax on recorded revenue in 2022 would be allowed to switch to taxation based on a tax scale.
- Tax-free allowances for advance payments would be made available to all tax remitters.
- Expenses incurred in relation to acquisition of a historic real estate entered in the register of monuments or participation in such a real estate would not constitute the basis for reducing taxable income.

For more details, please refer to an [April 2022 report](#) prepared by KPMG in Poland.

[Amendments to tax depreciation rules for certain real estate companies](#)

On March 31, 2022, the Polish authorities announced that, with effect from January 1, 2022, tax depreciation for corporate income tax purposes would not be available for real estate companies that perform asset valuations based on fair market value and do not claim depreciation write-offs in line with the accounting provisions.

For more details, please refer to KPMG's [Tax News Flash](#) and an [April 2022 report](#) prepared by KPMG in Poland.

United Kingdom

[Penalties for facilitating avoidance schemes involving non-resident promoters](#)

On April 11, 2022, HMRC published guidance on legislation introduced as part of the UK Finance Act 2022, which introduced new penalties for UK-based entities that facilitate tax avoidance schemes involving non-resident promoters. The legislation became effective on February 24, 2022 and provides for penalties of up to 100 percent of the fees generated by all entities involved in the arrangement.

For more information, please refer to the [guidance](#) published by HMRC.



KPMG Insights

Tax Reimagined – Your readiness for upcoming regulatory changes

The next instalment in KPMG's Future of Tax webinar series was held on April 26, 2022 and focused on the changing regulatory landscape and the impact that this will likely have on companies as they adapt their compliance and reporting models.

Implementation of tax legislation such as real-time digital reporting, e-invoicing, BEPS 2.0 etc. brings with it reporting and related systems challenges which are expected to have a big impact on companies. This session provided specific insights and observations on what these changes mean, the work companies should do to understand the impact of these changes on their tax profile, and how companies can leverage their systems and other approaches to be ready to comply with these changes in a short period of time.

Please access the [event](#) to view a replay of the webcast.

EU Tax perspectives update – May 2022 edition

As part of the Future of Tax & Legal webcast series, KPMG's EU Tax Centre will hold a webcast on May 10, 2022, during which a panel of KPMG specialists will share their insights on some of the latest developments from across the EU affecting multinational groups operating in Europe.

The webcast will be focused on:

- BEPS 2.0 in the EU: the future of the EU Minimum Tax Directive (Pillar Two) and the EU's response to Pillar One;
- The "Unshell" Directive proposal: what the European Commission has proposed and some open questions and concerns;
- Harmful tax practices: updates on the work of the Code of Conduct Group and the latest on EU State aid

Please access the [event page](#) to register.

Bringing tax transparency into focus for life sciences companies

Tax transparency is set to become an integral part of environmental, social and governance disclosures. Are you aware of the tax transparency issues regarding ESG (environmental, social, and governance) and sustainability within life sciences companies? Is your business prepared for the challenge? There's a reason you should be. Recently, there has been a dramatic cultural shift as governments and communities increase their focus on social and health issues, environmental concerns, sustainability, and corporate governance.

KPMG IMPACT have prepared a summary of the key issues that life science companies should be considering from an ESG perspective.

For more information, please refer to the KPMG IMPACT [article](#).



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