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E-News from KPMG's EU Tax Centre

Key Insights of E-News Issue 212

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. Today's edition includes updates on:

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CJEU

CJEU clarifies circumstances in which tax exemptions may be prohibited by EU law

On April 29, 2025, the Court of Justice of the European Union (CJEU) rendered its decision in case C-453/23, addressing the conditions under which tax exemptions may be considered permissible under EU State aid rules.

The case involved a Polish company seeking a property tax exemption for railway siding infrastructure. Although the company met national requirements, the exemption was initially denied as unlawful State aid under EU law. The Polish Supreme Administrative Court referred the matter to the CJEU for clarification on whether the exemption distorted competition or conferred a selective advantage.

The CJEU recalled settled case law according to which in order for a measure to be classified as State aid, it must involve state intervention, affect trade, confer a selective advantage, and distort competition. The CJEU found that the Polish tax exemption, defined neutrally and generally, did not confer a selective advantage and was part of the normal tax regime.

The ruling provided guidance on when tax exemptions may or may not be considered State aid. The CJEU emphasized that tax exemptions are not State aid if they are part of a non-discriminatory reference system and are not linked to specific characteristics of beneficiaries. In the Court's view, the fact that only entities satisfying the conditions of an exemption can benefit from that exemption is also not sufficient, in itself, for the exemption to be regarded as selective.

For more details, please refer to Euro Tax Flash Issue 561.

CJEU finds Maltese investor citizenship scheme in breach of EU law

On April 29, 2025, the Court of Justice of the European Union (CJEU or the Court) rendered its decision in case C-181/23, concerning the compatibility of Malta's investor citizenship scheme with EU law.

The Court ruled that Malta's scheme, which grants nationality in exchange for predetermined payments or investments, violates EU law (namely Article 20 of the Treaty of the Functioning of the European Union (TFEU) and Article 4(3) of the Treaty on the European Union (TEU)). Article 20 TFEU establishes EU citizenship for all nations of Member States, giving them rights such as free movement, voting in European and municipal elections and consular protection, in addition to their national citizenship. Article 4(3) TEU requires the EU and Member States to assist each other in fulfilling Treaty obligations, to cooperate sincerely, and to avoid actions that would undermine the Unions objectives.

The case was initiated by the European Commission, which argued that Malta's "Citizenship by Naturalization for Exceptional Services by Direct Investment"-scheme compromised the essence of Union citizenship. The scheme established in 2020 allowed foreign investors to acquire Maltese nationality, and thus EU citizenship, through significant financial contributions, without establishing a genuine link with Malta. The Commission saw the scheme as commercializing EU citizenship, which is contrary to the principles of sincere cooperation and mutual respect enshrined in EU law.

The CJEU agreed with the Commission's view and held that Malta's investor citizenship scheme breached EU law by effectively commercializing the grant of Union citizenship. The Court emphasized that Union citizenship is a fundamental status that should not be commodified through financial transactions. The decision highlighted that the scheme's lack of a requirement for a genuine link between applicants and Malta violated the principle of sincere cooperation and mutual trust among Member States.

The Court rejected Malta's argument that the scheme was within its sovereign rights to determine nationality criteria, stating that such powers must be exercised in compliance with EU law. The judgment reaffirmed that Member States must ensure their nationality laws do not undermine the essence of Union citizenship or the mutual trust that underpins it.

Following this judgment, Malta is expected to amend or repeal its investor citizenship scheme to align with EU law.

CJEU ruling on the compatibility of Austrian tax rules applicable to foreign investment funds with the free movement of capital

On April 30, 2025, the Court of Justice of the European Union (CJEU or the Court) rendered its decision in case C-602/23. The case dealt with whether Austrian tax provisions that exclude non-resident investment entities - comparable to Undertakings for Collective Investment in Transferable Securities (UCITS) under Directive 2009/65/EC - from dividend withholding tax refunds that would be available to non-transparent legal entities constitute a restriction on the free movement of capital.

The plaintiff is a sub-fund of an US-based investment company, treated as a separate legal entity and subject to taxation under US law. Its income is attributed to its unitholders upon distribution; if no distribution occurs, the income is attributed to the sub-fund itself. In such cases, the related federal corporate income tax can be reduced to zero. The fund's operations are, in all material respects, equivalent to those of an UCITS.

In the case under dispute, the plaintiff sought a withholding tax refund for taxes on dividends received from Austrian publicly traded companies. The dividends were fully distributed to the unitholders of the sub-fund, resulting in nil US federal corporate income tax liability for that year. However, the refund was denied by the Austrian tax administration on the basis of provisions in Austrian law, which treated such entities as tax-transparent, with income attributed directly to the investors, who were themselves liable for tax (the same regime applicable to resident investment funds). The Austrian tax authorities concluded that the fund itself was therefore not eligible for a refund.

The plaintiff essentially argued that the Austrian refund provisions represent a restriction of the free movement of capital under Article 63 of the Treaty on the Functioning of the EU (TFEU).

The CJEU noted that, provided that the dividends received by the plaintiff are not taxed at a higher rate than dividends paid to an Austrian investment fund, this equal treatment would only amount to a restriction under Article 63 TFEU if the non-resident fund is not objectively comparable to resident investment funds but is instead comparable to a resident legal entity (that is opaque for tax purposes). However, the mere fact that the plaintiff has legal personality does not place the plaintiff in a different position, provided that the dividends it receives are attributed to and taxed at the level of its unitholders in its country of residence, rather than at the level of the fund itself.

Therefore, the CJEU concluded that the Austrian legislation at issue – which prevents non-resident investment funds from obtaining a withholding tax refund, does not constitute a restriction on the free movement of capital under Article 63 TFEU, provided that the income is attributed to the unitholders and taxed in the fund's state of residence at the level of those unitholders, not the sub-fund itself.

For more details, please refer to Euro Tax Flash Issue 562.

EU Institutions

Key Insights

- DAC9 published in EU Official Journal
- European Parliament Subcommittee holds hearing on green transition and competitiveness
- Draft report on the impact of simple tax rules and tax fragmentation on European competitiveness

Council of the EU

DAC9 published in EU Official Journal

On May 6, 2025, the Council Directive (EU) 2025/872 on Administrative Cooperation to establish a framework for the exchange of Pillar Two information between Member States (DAC9) was published in the Official Journal of the EU. This follows the agreement on the compromise text which occurred on March 11, 2025. The Directive entered into force the day after its publication in the Official Journal of the European Union, i.e., May 7, 2025.

Member States must transpose the Directive by December 31, 2025. The initial top-up tax reporting deadline is set for June 30, 2026. EU Member States that have opted to delay the implementation of the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR) must also transpose DAC9 by this deadline.

For more information on DAC9, please refer to E-News Issue 208.

European Parliament

European Parliament Subcommittee holds hearing on green transition and competitiveness

On April 24, 2025, the European Parliament's Subcommittee on Tax Matters (FISC) conducted a public hearing focused on the intersection of tax policy, the green transition, and competitiveness.

Highlights of the discussion include:

- Part of the hearing were Kurt Van Dender of the OECD, Mitra Qurban of DHL, Lúcio Vinhas de Souza representing BusinessEurope and Dr. Angela Köppl of the Austrian Institute of Economic Research.
- The role of tax policy in achieving climate goals by influencing consumer behavior and offering targeted tax incentives was highlighted. In this regard the need for time-bound measures to encourage investment and innovation was emphasized.
- Tax measures such as green VAT rates and favorable depreciation for zero-emission vehicles to support sustainability, were proposed.
- Participants advocated for a simplified tax system that supports innovation and market predictability.
- Lastly, reforms to the Energy Taxation Directive, potential amendments to the EU Carbon Border Adjustment Mechanism, and a global carbon levy on international shipping were proposed.

For further details on the statements and presentations of the invited experts see here.

Draft report on the impact of simple tax rules and tax fragmentation on European competitiveness

On March 24, 2025, the FISC Subcommittee published a draft report on the impact of simple tax rules and tax fragmentation on European competitiveness.

Key takeaways of the report include:

- The report welcomes the European Council's conclusions on tax simplification, emphasizing that future EU tax initiatives should prioritize administrative simplification, removal or redundant tax rules, and enhanced clarity in application of tax rules.
- The report calls on the European Commission to guide all Member States towards a simplified tax system to alleviate the administrative burden on businesses. The report considers simplifying refund procedures and deductions as essential measures, particularly for small and medium sized enterprises (SMEs).
- The report reiterates the EU's commitment to implementing the OECD Pillar Two agreement with a call for the Commission to inform Parliament of contingency plans and to take swift action to safeguard EU interests against potential retaliatory measures related to the implementation of Pillar Two by third states.
- The report asks for legal clarity and certainty with respect to the implementation of Pillar Two, based on the expectation that the negotiation and publication of Administrative Guidance will conclude soon. In addition, the report anticipates further developments regarding a Permanent Safe Harbour.
- The report acknowledges the Directive on Administrative Cooperation (DAC) for its role in curbing tax evasion and enhancing transparency. However, the report stresses the complexity of the rules and related administrative demands, particularly with respect to the reporting of cross-border arrangements under DAC6.
- The report calls on the European Commission to present a study on simplifying tax rules and addressing tax fragmentation for cross-border workers and the self-employed, with the goal of boosting competitiveness. The report considers divergent national tax systems as obstacles to labor mobility and cross-border entrepreneurship due to administrative burdens, legal uncertainty and double taxation.
- The report requests further studies from the European Commission on the impact of tax incentives for research and development and innovation in strengthening European competitiveness globally, in alignment with the Draghi report.

The draft report will likely be subject to amendments and is scheduled for a vote by the European Parliament's Committee on Economic and Monetary Affairs (ECON) on July 15, 2025, with a plenary vote expected on September 1, 2025.

OECD and other International Institutions and Research Centers

Key Insights

- OECD releases Consolidated Commentary on Pillar Two rules
- EU Tax Observatory releases policy note on tax incentives

OECD

Consolidated Commentary on Pillar Two rules

On May 9, 2025, the OECD released a consolidated version of the Commentary to the Pillar Two global anti-base erosion (GloBE) Model Rules that incorporates into the already updated Commentary released in April 2024 all recently agreed Administrative Guidance released by the Inclusive Framework until March 2025. More specifically, the updated version features:

- the June 2024 Administrative Guidance,
- the January 2025 Administrative Guidance on Articles 8.1.4/8.1.5 and 9.1 of the GloBE Model Rules,
- the January 2025 Administrative Guidance on the central record of legislation with transitional qualified status (updated in March 2025), and
- the GloBE Information Return release published in January 2025.

For more information on the various OECD releases with respect to Pillar Two, please refer to the dedicated KPMG International Tax Policy webpage.

EU Tax Observatory

Policy note on tax incentives

On May 6, 2025, the EU Tax Observatory published a policy note highlighting the main conclusions of a working paper on declining tax rates of multinationals and the impact of tax base reforms.

Key takeaways include:

- According to the note, average statutory tax rates in the EU decreased from 23 percent to 21 percent between 2014 and 2022 (amounting to a 0.21 percent decrease per year). Over the same period, the effective tax rates (ETR – determined by the EU Tax Observatory as the ratio of corporate taxes paid to net profits) of multinational firms decreased from 20.8 percent to 18.1 percent (amounting to a 0.34 percent decrease per year and a 2.7 percent decrease overall).
- In the working paper, the EU Tax Observatory analyzed 295 tax reforms during this period, finding that 141 base-narrowing measures reduced companies' ETR by 2.1 percent.

- However, anti-tax-avoidance regulations mitigated this impact. The paper shows that, between 2014 and 2022, Member States implemented 54 reforms related to anti-tax avoidance, with 44 reforms linked to the 2016 Anti-Tax-Avoidance Directive (ATAD) and the BEPS Recommendations increasing the ETR by 1.5 percent. Consequently, the net effect of base-narrowing reforms was a 0.6 percent decrease in ETR. Statutory rate reforms contributed to a 0.9 percent decrease in ETR, resulting in a tax revenue loss equivalent to 3.5 percent of tax collected from sample firms.
- The paper notes that base-narrowing reforms between 2014 and 2022 were frequently linked to industrial policy goals, such as strengthening investment (38 cost-based investment reforms), promoting R&D activities (19 R&D incentive reforms), or granting preferential treatment to profit arising from intellectual property (10 IP regime reforms). The paper stresses that whilst these reforms aim to boost growth and innovation, they may also increase tax competition among Member States, potentially leading to a mere reallocation of investments and profits without real economic benefits.

For more information, please refer to our dedicated article on the interaction between Pillar Two and tax incentives.

Local Law and Regulations

Key Insights

- Belgium proposed changes to capital gains tax on financial assets
- France issues revised list of non-cooperative jurisdictions
- French tax authorities issue ruling on withholding tax and dividend arbitrage
- Finland’s Ministry of Finance announced the General Government Fiscal Plan for 2026–2029
- Ireland Updated Pillar Two Guidance
- Lithuania published updates to reporting rules under DAC7
- Pillar Two implemented in the Basque Country
- Switzerland consults on GloBE reporting regulations
- Uganda proposed tax amendments that include 15 percent withholding tax on income from digital services
- Ukraine moves to implement international information exchange on digital platform income
- UK HMRC issues consultations on tax rules relating to transfer pricing, permanent establishments and diverted profits

Belgium

Proposed changes to capital gains tax on financial assets

On April 24, 2025, the Belgian Minister of Finance issued a proposal to introduce a tax on capital gains from financial assets, in alignment with the Coalition Agreement 2025-2029 of the new federal government – for more details, please refer to E-News Issue 207.

The proposed tax targets individuals and non-profit entities and would apply to transfers of financial assets. Currently, capital gains from transfers of financial assets are not taxed where they are generated as part of the normal management of private assets.

Key takeaways include:

- *Scope of the term “transfer”:* The tax would apply in case of a disposal of financial assets as well as in case of a liquidation of a life insurance contract, donation of assets to a non-resident and relocation of tax residence outside Belgium. As such, the draft bill proposes the introduction of an exit tax, with payment options available for transfers within the EEA.
- *Scope of the term “financial asset”:* The tax would apply to various financial assets (including securities such as shares, bonds and other debt instruments, money market instruments and participation rights in collective investment institutions), saving or investment insurance contracts, crypto-assets, and currencies.
- *Rates:* A 33 percent rate would apply to internal capital gains (transfer to a buyer that is controlled by the seller alone or together with their family). A progressive rate ranging from 1.25 percent to 10 percent would apply to significant interest transfers (transfer in case of a participation of at least 20 percent at any time in the previous 10 years by the seller alone or together with their family). A 10 percent rate would apply for other transfers.
- *Exemptions:* Certain temporary and permanent exemptions would apply (depending on the category of capital gain).

The proposal is set to be discussed within the federal government. If agreed upon, the new rules would take effect from January 1, 2026.

For more details please refer to a report prepared by KPMG in Belgium.

Finland

Finland's Ministry of Finance announced the General Government Fiscal Plan for 2026–2029

On April 23, 2025, Finland's Ministry of Finance presented the General Government Fiscal Plan for 2026–2029.

Key takeaways from a direct tax perspective include:

- *Corporate tax rate reduction:* The corporate tax rate will be reduced by two percentage points from 20 percent to 18 percent starting in 2027.
- *Loss carryforward*: The right to carry forward corporate losses will be extended from 10 to 25 years, beginning with confirmed losses in the 2026 tax year.
- *Tax credit*: Support for large-scale investments in the clean transition will continue through a tax credit if the relaxed EU State aid rules (as currently provided under the Temporary Crisis and Transition Framework) continue to apply. A broadening of the scope of the credit regime is under consideration. For more details on the current tax credit scheme to support the green transition, please refer to E-News Issue 210.
- *Simplification of the investment process for foreign investors*: Establishment of a fund structure in the legal form of a corporation, which could provide a more flexible and attractive framework for investors. Additionally, the government aims to explore tax exemptions for non-profit organizations investing in private equity funds to incentivize more diverse investment sources.

France

Revised list of non-cooperative jurisdictions issued

On May 7, 2025, French tax authorities published a revised list of non-cooperative jurisdictions removing Belize, the Bahamas, and the Seychelles (for previous coverage, please refer to E-News Issue 191).

The French list generally follows the EU list of non-cooperative jurisdictions adopted by the Council of the EU on February 18, 2025 (please see E-News Issue 207), but applies additional local tax good governance criteria.

Accordingly, the French list includes the following jurisdictions and territories: American Samoa, American Virgin Islands, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos Islands, Vanuatu.

Note that France applies different defensive measures depending on the criteria based on which a country is listed. For more details, please refer to KPMG's summary of proposed or enacted measures.

French tax authorities issue ruling on withholding tax and dividend arbitrage

On April 17, 2025, the French tax authorities issued a ruling clarifying domestic withholding tax (WHT) regulations targeting dividend arbitrage, following amendments in the French Finance Act 2025.

Key changes include the incorporation of a beneficial ownership requirement and an expanded list of abusive arrangements (Cum-Cum schemes) triggering French withholding tax. The ruling clarifies the interaction between these provisions and the French abuse of law doctrine.

For more information, please refer to our previous coverage of the French Finance Act 2025 in E-News Issue 207.

Ireland

Updated Pillar Two Guidance

On May 8, 2025, Irish Revenue published updated Guidance on the application of the Irish minimum taxation rules (Pillar Two). Key changes were made to the following Tax and Duty manuals (TDMs):

- TDM Part 04A-01-01. This manual provides an overview of the administration of Pillar Two. Sections 8 and 11 have been revised to explain the application of UTPR and Qualified Domestic Top-up Tax (QDTT) group recovery provisions when a securitization entity is part of these groups. The group recovery provisions generally apply where a group fails to pay its Top-up Tax liability within twelve months of the due date. In this case, an authorized officer is authorized to issue a notice to a relevant group member, requiring payment. This notice can be issued between twelve months and four years after the return date, and payment must be made within thirty days of receiving the notice. However, it has been clarified that the notice cannot be issued to a securitization entity if certain conditions are met.
- TDM Part 04A-01-02. This manual offers guidance on the operation of Pillar Two rules. It references the Finance Act 2024, which states that certain amendments apply to fiscal years or accounting periods starting on or after December 31, 2024 (i.e., prospectively) The updated manual indicates that Revenue will accept the retrospective application of these provisions, at the taxpayer's discretion, to periods starting on or after December 31, 2023.

For previous coverage, please refer to E-News Issue 207.

Lithuania

Updates to reporting rules under DAC7 published

On April 23, 2025, the Lithuanian State Tax Inspectorate further amended the law transposing Council Directive 2021/514 (DAC7) into domestic law, with effect from April 24, 2025. Key takeaways include:

- Qualifying platform operators must submit an annual XML data file via the electronic portal of the tax authorities (TIES). Where another qualifying platform operator has already submitted the data, platform operators can submit a limited set of data.
- The amendments also specify the XML format for submissions and provide schema files (XSD) on the tax authorities' website. Additionally, the tax authorities can block access to non-compliant platform websites with court approval.
- Finally, a new annex lists countries with effective tax data exchange agreements, including the UK, New Zealand, and Canada.

For previous coverage, please refer to E-News Issue 183. For more information on the DAC7 transposition across the EU, please refer to Euro Tax Flash Issue 553.

Spain

Pillar Two implemented in the Basque Country

On April 30, 2025, the Economic Agreement ruling the on the economic and tax competences between mainland Spain and the region of the Basque country has been modified by Law 3/2025 (available in Spanish only) to rule on the internal distributions of competences for GloBE Model Rules.

Through this amendment, the Pillar Two Complementary Tax is agreed to be treated as a tax where the Basque region can exercise legislative and tax inspection competences under the approved conflict rules. Although the calculation of the Complementary Tax in Spain must be carried out at jurisdictional level (considering the entirety of Spain), conflict rules have been established to determine which territory (Spanish common territory or Basque) holds legislative and tax inspection competences specifically for groups operating in both territories. In any case, it is not foreseen that the transposition of Directive 2022/2523 into the autonomous Basque regulations will substantially differ from the Pillar Two legislation enacted in the Spanish national territory.

The Economic Agreement introduces the criteria to decide whether Basque or common Spain national rules apply to a taxpayer. For this purpose, two types of large multinational or national groups are identified within the Spanish territory:

- Groups that include both a tax group under the Basque consolidated regime and another under the Spain national regime. In this case, the applicable rules are based on those governing the substitute taxpayer as defined under Pillar Two legislation.
- Groups that do not meet the above conditions. In this case, the applicable law is determined by the fiscal domicile of the substitute taxpayer, unless the group had a turnover of more than EUR 12 million in the previous year and conducted at least 75 percent of its operations in the other territory, in which case the other territory's legislation should apply.

Finally, the tax collection is determined by the taxpayer's (or substitute taxpayer) fiscal domicile or, for those with a turnover over EUR 12 million, by the proportion of operations performed in each territory in the last corporate income tax period. For group members, territorial allocation is based on the group's overall turnover allocation. The Pillar Two returns should be filed and the eventual Top-up Tax paid by the substitute taxpayer to the relevant tax administration according to the tax collection rules mentioned.

For previous coverage of Pillar Two in Spain, please refer to E-News Issue 210.

Switzerland

Switzerland consults on GloBE reporting regulations

On April 30, 2025, the Swiss Federal Council issued a public consultation on amending the Minimum Taxation Ordinance. The proposal aims to incorporate rules for the international reporting obligation by including the GloBE Information Return (GIR). Key takeaways include:

- The ordinance amendment establishes procedures for submitting the GIR to the Swiss Federal Tax Administration and its use by the cantons. These amendments aim to facilitate the automatic exchange of GIRs between the Swiss Federal Tax Administration and foreign tax authorities, while also detailing how cantons can utilize these returns.
- The Swiss Federal Council upholds a one-stop-shop concept, requiring only a single Constituent Entity in Switzerland to submit the GIR to the Swiss Federal Tax Administration, fifteen months after the end of the Reporting Fiscal Year (eighteen months for the transitional year). The amendments support this approach by designating one entity within a corporate group to file a GIR with the Swiss Federal Tax Administration, which will then be exchanged with relevant foreign tax administrations under competent authority agreements.
- If Switzerland receives a GIR from another jurisdiction, the Swiss Constituent Entity must notify the tax administration about the submission details, including the submitting entity and jurisdiction, with the same deadlines as mentioned above.
- An electronic portal will streamline the one-stop-shop process, with the amendment outlining GIR submission requirements based on the GloBE Model Rules. The draft amendments describe the organization, usage, and access of the GloBE information system, with data accessible through an electronic portal and destroyed within 20 years of receipt. The amended ordinance specifies the content and format of the GIR – aligned with the January 2025 GIR template and explanatory notes, submission obligations, transmission details, handling of received GIRs, and penalty provisions. Note that the amendments do not address any additional local registration and local return filing requirements.
- The amendments are scheduled to take effect on January 1, 2026, with the public consultation period ending on August 20, 2025. The implementation does not impact potential future developments in minimum taxation.

Please note that in Switzerland a temporary ordinance for a Qualified Domestic Minimum Top-up Tax (QDMTT) was enacted, taking effect on January 1, 2024. This ordinance was amended in November 2024 to incorporate an IIR, which will be effective from January 1, 2025.

For earlier coverage on this topic, please refer to E-News Issue 200.

Uganda

Proposed tax amendments include 15 percent withholding tax on income from digital services

In Uganda, several bills have been published proposing amendments to various tax laws. Key changes from a direct tax perspective include:

- *Withholding tax on digital services:* A 15 percent withholding tax is imposed on income from digital services provided by non-residents to associates in Uganda, replacing the previous 5 percent digital services tax.
- *Start-up business exemption:* A three-year income tax exemption is introduced for new start-up businesses established by citizens with investment capital not exceeding UGX 500 million (approximately EUR 123,000).

Following presidential assent, the measures are set to take effect on July 1, 2025.

For more details, please refer to the report prepared by KPMG in Uganda and KPMG's Tax News Flash.

Ukraine

Ukraine moves to implement international information exchange on digital platform income

On April 29, 2025, the Ukrainian government approved a draft law amending the Tax Code to facilitate the international automatic exchange of information on income received through digital platforms. This amendment introduces a new article detailing requirements for user verification, identification of accountable sellers, and reporting to Ukraine's State Tax Service.

The amendment is in line with the OECD's Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Information on Income Derived through Digital Platforms (DPI-MCAA) to which Ukraine is preparing to join, upon implementation of the OECD Model Rules for Reporting by Platform Operators.

Disclosure requirements for platform operators were introduced in the EU through an amendment to the Council Directive 2021/514 (DAC7), which provides for relief from the reporting obligations in the EU for non-EU platform operators that report outside the EU. Such relief is available where the European Commission has determined that Member States receive equivalent information from that non-EU jurisdiction that applies similar reporting regimes (e.g., under the OECD's MCAA).

The proposed rules would enter into force on the day following the day of their publication.

For a state of play of the implementation of the DAC7, please refer to Euro Tax Flash Issue 553.

United Kingdom

UK HMRC opens consultations on tax rules relating to transfer pricing, permanent establishments and diverted profits tax

On April 28, 2025, His Majesty's Revenue and Customs (HMRC) opened a public consultation regarding proposed amendments to the UK's international tax rules in respect of transfer pricing, permanent establishments (PEs), and the diverted profits tax (DPT).

Key takeaways include:

- *Transfer Pricing (TP):* among others, the draft proposes a targeted broadening of the definition of "associated enterprises", whilst narrowing the concept of "acting together". The draft further proposes an exemption from the application of the UK TP rules for a narrowly defined category of transactions between UK resident companies. The draft also proposes a closer alignment of the UK rules with OECD principles relating to financial transactions (Chapter X of the OECD Transfer Pricing Guidelines).

- *PE definition and attribution of profits:* the draft proposes to broadly align the UK definition of a PE with that included in Article 5 of the OECD Model Tax Convention. Furthermore, changes to domestic legislation would align rules on the attribution of profits to PEs with Article 7 of the OECD Model Tax Convention (supported by the OECD Commentary) and the Authorised OECD Approach to PE profit attribution.
- *PE investment manager exemption changes:* the draft aims to broaden and simplify the Investment Manager Exemption (IME) to ensure that changing the dependent agent permanent establishment test will not result in investment managers becoming PEs of the funds for which they make investment decisions. A further clarification that the IME is in addition to the exemption for agents of independent status is also proposed.
- *Diverted Profits Tax (DPT) reform:* it is proposed that the DPT will be replaced with a new charging provision to corporate tax for unassessed transfer pricing profits allowing for treaty network access and double taxation relief. It is further proposed that the 'Insufficient Economic Substance Condition' in the DPT regime is replaced by a simplified, but broadly defined condition. Lastly, notification requirements would be removed, while HMRC would have the power to issue assessments without necessarily having first issued a notice of enquiry.

The consultation is open for feedback until July 7, 2025. The earliest operative date for this new legislation would be from January 1, 2026.

For more information, please refer to a report prepared by KPMG in the UK.

Local courts

Key Insights

- Belgian Constitutional Court upholds CJEU decision on validity of DAC6 Directive
- Luxembourg High Administrative Court reclassifies interest-free loans as equity and denies existence of a Malaysian PE
- Dutch Supreme Court issues guidance on the concept of abuse with respect to dividend withholding taxation

Belgium

Belgian Constitutional Court upholds CJEU decision on validity of DAC6 Directive

On April 30, 2025, the Belgian Constitutional Court issued decisions No. 67/2025, No. 68/2025, No. 69/2025 and No. 70/2025, which uphold the CJEU's decision from July 29, 2024 (case C-623-22) regarding the validity of Council Directive 2018/822 (DAC6) as transposed into Belgian legislation.

The CJEU's decision affirmed that while several key concepts introduced by DAC6 are broad, they are nevertheless "determined in a sufficiently clear and precise manner" and do not constitute a breach of the Charter of Fundamental Rights of the EU. The DAC6 reporting obligations, which cover all taxes under the DAC, were challenged for allegedly infringing equality and non-discrimination principles. However, the CJEU found no breach, confirming compliance with EU law. Concerns regarding the clarity of terms such as "arrangement", "intermediary", and the 30-day reporting period were dismissed, with the CJEU concluding that these terms are adequately defined. The requirement for intermediaries to notify other intermediaries of their reporting obligations, even when bound by legal professional privilege, was deemed acceptable. Lastly, the CJEU ruled that the reporting obligations do not infringe the right to respect for private life.

Consequently, the Belgian Constitutional Court dismissed the proceedings initiated by Belgian legal tax professional bodies seeking the (partial) nullification of implementing decrees and ordinances adopted in different Belgian regions in 2020.

For more details on the CJEU decision, please refer to Euro Tax Flash Issue 544.

Luxembourg

Luxembourg High Administrative Court reclassifies interest-free loans as equity and denies existence of a Malaysian PE

On April 17, 2025, the Luxembourg High Administrative Court ruled against the recognition of a permanent establishment (PE) in Malaysia and requalified interest free loans received by a Luxembourg-resident entity from its shareholder as equity contributions.

The case involved a Luxembourg company (LuxCo) that acquired participations in two companies and subsequently allocated these participations to its Malaysian branch. The company then applied for an advance tax ruling confirming the Malaysian branch's status as a PE under the Luxembourg-Malaysia double tax treaty. Recognition of the branch as a PE would have exempted the related assets (including the participations in the two companies) from Luxembourg net wealth and corporate taxes. The investment in the two companies were funded by two interest-free loans (IFLs) from LuxCo's shareholder.

The Luxembourg tax authorities (LTA) rejected the request for an advance tax ruling due to tax abuse concerns. Nevertheless, LuxCo treated the branch as a PE in its 2015 tax returns, claimed exemptions for related income, and classified the IFLs as deductible debt instruments. The LTA challenged this position, reclassifying the IFLs as equity instruments and rejecting the status of the Malaysian branch as a PE. As a result, LuxCo was considered as holding two participations not meeting the requirements of the Luxembourg participation exemption. LuxCo was further not allowed to deduct the IFLs from its net wealth tax basis due to their classification as equity. The Administrative Tribunal upheld the LTA's decision, prompting the company's appeal to the Court.

The Court decision focused on two main issues:

- *Tax status of the loans:* The Court confirmed the requalification of the IFLs into an equity contribution. It rejected the taxpayer's argument that the IFLs should be considered debt due to their ten-year term and lack of participating interests or voting rights. The Court found that the funds were used for long-term fixed assets, and the absence of interest, guarantees, and the significant debt/equity imbalance, indicating an equity instrument. The Court noted that the classification of a financial instrument for tax purposes must adhere to the substance-over-form principle, which prioritizes the economic reality of the instrument over its legal form.
- *Existence of a Malaysian PE:* The Court determined that the branch lacked the necessary autonomy and operational independence required to be classified as a PE. It had no separate bank account, outsourced management, and did not engage in significant economic activities, therefore failing to meet the criteria for a PE under the Luxembourg-Malaysia tax treaty.

The Court concluded that the arrangement was primarily tax-driven without substantial commercial rationale, constituting an abuse of law. Consequently, the appeal was dismissed, and the tax administration's assessments were upheld.

Netherlands

Dutch Supreme Court issues guidance on the concept of abuse with respect to dividend withholding taxation

On April 25, 2025, the Dutch Supreme Court (the Court) issued two decisions - case no. 22/04506 and 22/04508 – whereby it addressed the concept of abuse and clarified the allocation of the burden of proof in a case where dividend payments were made to a Curaçao holding company.

The two decisions involved a family business structure where a father and son held interests in a Dutch operating company through personal holdings. In 2011, an intermediate holding company was created to facilitate the sale of 85 percent of the stake in the operating company to a private equity house. The father and son, along with family members, held the depositary receipts for shares in this intermediate holding company via a trust office foundation. After the father, who was also the director of the son's personal holding, moved to Curaçao at the end of 2011, both personal holdings were managed from there. In 2015, the remaining 15 percent of the operating company was sold, and dividends were paid in 2016 to the Curaçao-based personal holdings. The issue was whether these holdings were subject to corporate income tax in the context of a technical substantial interest, impacting the taxation of the dividend income.

Under Dutch law, foreign companies may be subject to Dutch corporate income tax if they hold a substantial interest in a Dutch entity on the basis of a 'technical substantial interest'. The aim of the rules is to prevent individuals from being able to avoid Dutch personal income tax holding a substantial interest in a Dutch entity indirectly, through a foreign entity, such as a personal holding company. The ‘technical substantial interest' rule is essentially an anti-abuse provision, which only applies if two tests are met: (i) a subjective motive test which assess whether the structure is set up with the main purpose or one of the main purposes of avoiding Dutch personal income tax (and, until 2018, dividend withholding tax) and (ii) an objective test of whether the structure is of an artificial nature.

The Court of Appeal in The Hague first addressed the burden of proof in such discussions. In the first place, it would be up to the tax inspector to demonstrate that there are grounds for the transactions to be deemed artificial and for the existence of tax avoidance. The taxpayer then has the opportunity to bring evidence to the contrary. In the case at hand, the inspector had successfully demonstrated that the subjective test (motive test) had been met. However, the Court of Appeal found that the taxpayers successfully demonstrated that the objective test (artificial nature of the structure) had not been met. The structure set up in 2007 was seen as a customary domestic holding structure and the father's subsequent emigration had taken place for personal (non-tax) reasons. As a result, it was not regarded as artificial, which meant that the technical substantial interest rules did not apply, according to the Court of Appeal.

The Dutch Supreme Court upheld the Court of Appeal judgement and considered that the anti-abuse test aligns with the EU-law concept of anti-abuse, as set out in settled CJEU case law. In the decisions, the Court concluded that although the Dutch operating company lacked sufficient economic substance and its use resulted in a tax benefit for its shareholder, it was not part of an artificial or abusive structure. The Court took into account the following circumstances:

(i) the cross-border arrangement was established and developed over time for reasons unrelated to taxation,
(ii) despite having minimal substance, the Dutch operating company was still the beneficial owner of the dividend, and
(iii) the tax benefit arose from the tax rules that came into effect between the Netherlands and Curaçao after the Dutch operating company and its shareholder relocated to Curaçao for personal (non-tax) reasons.

The Court also highlighted indicators of EU law abuse (with reference to the so-called 'Danish cases' – see Euro Tax Flash Issue 396). According to the Court, this includes operating 'conduit companies' that are not considered the beneficial owner of the payments (e.g., where dividends are artificiality redistributed, possibly under a different legal title and absent a contractual or legal obligation to do so), lacking economic activities and having the effect of reducing the overall tax burden. With reference to the CJEU decision in case C-228/24 (see Euro Tax Flash Issue 560), the Court further clarified that even where certain abuse indicators are met, this should not be assessed in isolation, but should take into account the relevant facts and circumstances as a whole, including the history (e.g., previous motives) and the overall tax position of the arrangement.

Ultimately, the Supreme Court ruled in favor of the taxpayer, concluding that the interposing of the holding company was not artificial, thus exempting it from dividend withholding tax.

For more details, please refer to the report prepared by KPMG in the Netherlands.

EU public county-by-country reporting (CbyC) reporting - a new era for tax transparency webcast – replay now available

On April 22, 2025, KPMG held its latest webcast on EU public CbyC reporting.

The EU has made tax transparency mandatory for multinational groups with a qualifying European presence. Australia has gone a step further, requiring multinationals to disclose not only their CbyC reports to the public but also a description of the group's approach to tax. This is a game changer in the tax transparency landscape.

To explore these findings further, a panel of KPMG tax specialists shared the details of the new regulations. The team zoomed in on the EU disclosure rules, including differences between EU-headquartered companies and non-EU headquartered companies, as well as the particularities of the Australian regime. This webcast included a closer look at:

- An overview of the existing EU public CbyC reporting regulations
- Practical examples of implementation strategies and steps towards meeting the various local requirements
- Insights on lessons learnt from early adopter Romania: what did corporates do?
- An update on Australian public CbyC reporting and the overlap and differences with EU public CbyC reporting
- Insights into the state of play of tax transparency beyond the rules in force and future perspectives
- A solution to data challenges – KPMG's Tax Footprint Analyzer.

The replay of the webcast is available on the event page.

EU Tax Perspectives webcast – May 6, 2025

On May 6, 2025, a panel of KPMG professionals explored the implications of today's geopolitical climate on EU tax policy, including the future of BEPS 2.0, EU simplification efforts, and recent developments in public CbCR and other direct tax initiatives.

The session focused on:

- *Tax Policy:* The potential impact on EU tax policy of the current geopolitical climate, including considerations on the position of the US administration on international tax cooperation, the rise of tariffs, and the future of BEPS 2.0.
- *Simplification efforts:* The EU Competitiveness Compass, the European Commission work program and the EU tax decluttering and simplification agenda.
- *Tax transparency:* An update on EU Public Country-by-Country Reporting, including insights from the experience with reporting in Romania, where the first reports were due by December 31, 2024 and a discussion on key steps that in-scope MNEs should be taking now.
- *State of play of other EU direct tax files:* The Unshell Directive proposal, BEFIT Directive proposal, the Transfer Pricing Directive proposal, DEBRA Directive proposal.

The replay of the webcast is available on the event page.

Talking tax series

With tax-related issues rising up board level agendas and developing at pace, it’s more crucial than ever to stay informed of the developments and how they may impact your business.

With each new episode, KPMG Talking Tax delves into a specific topic of interest for tax leaders, breaking down complex concepts into insights you can use, all in under five minutes. Featuring Grant Wardell-Johnson, KPMG’s Global Head of Tax Policy, the bi-weekly releases are designed to keep you ahead of the curve, empowering you with the knowledge you need to make informed decisions in the ever-changing tax landscape.

Please access the dedicated KPMG webpage to explore a wide range of subjects to help you navigate the ever-evolving world of tax.

KPMG's EU Tax Centre team

Raluca Enache
Associate Partner
Head of KPMG's EU
Tax Centre

Ana Pușcaș
Senior Manager
KPMG's EU Tax Centre

Marco Dietrich
Senior Manager
KPMG's EU Tax Centre

Marco Lavaroni
Senior Manager
KPMG's EU Tax Centre

Marta Korc
Senior Associate
KPMG's EU Tax Centre

Sarah Wolf
Senior Associate
KPMG's EU Tax Centre

Key EMA Country contacts

Ulf Zehetner
Partner
KPMG in Austria
E: UZehetner@kpmg.at

Kris Lievens
Partner
KPMG in Belgium
E: klievens@kpmg.com

Alexander Hadjidimov
Director
KPMG in Bulgaria
E: ahadjidimov@kpmg.com

Maja Maksimovic
Partner
KPMG in Croatia
E: mmaksimovic@kpmg.com

Margarita Liasi
Principal
KPMG in Cyprus
E: Margarita.Liasi@kpmg.com.cy

Ladislav Malusek
Partner
KPMG in Czechia
E: lmalusek@kpmg.cz

Birgitte Tandrup
Partner
KPMG in Denmark
E: birgitte.tandrup@kpmg.com

Joel Zernask
Partner
KPMG in Estonia
E: jzernask@kpmg.com

Jussi Järvinen
Partner
KPMG in Finland
E: jussi.jarvinen@kpmg.fi

Patrick Seroin Joly
Partner
KPMG in France
E: pseroinjoly@kpmgavocats.fr

Gerrit Adrian
Partner
KPMG in Germany
E: gadrian@kpmg.com

Antonia Ariel Manika
Director
KPMG in Greece
E: amanika@cpalaw.gr

Zsolt Srankó
Partner
KPMG in Hungary
E: Zsolt.Sranko@kpmg.hu

Colm Rogers
Partner
KPMG in Ireland
E: colm.rogers@kpmg.ie

Lorenzo Bellavite
Associate Partner
KPMG in Italy
E: lbellavite@kpmg.it

Steve Austwick
Partner
KPMG in Latvia
E: saustwick@kpmg.com

Vita Sumskaite
Partner
KPMG in Lithuania
E: vsumskaite@kpmg.com

Olivier Schneider
Partner
KPMG in Luxembourg
E: olivier.schneider@kpmg.lu

John Ellul Sullivan
Partner
KPMG in Malta
E: johnellulsullivan@kpmg.com

Robert van der Jagt
Partner
KPMG in the Netherlands
E: vanderjagt.robert@kpmg.com

Michał Niznik
Partner
KPMG in Poland
E: mniznik@kpmg.pl

António Coelho
Partner
KPMG in Portugal
E: antoniocoelho@kpmg.com

Ionut Mastacaneanu
Director
KPMG in Romania
E: imastacaneanu@kpmg.com

Zuzana Blazejova
Executive Director
KPMG in Slovakia
E: zblazejova@kpmg.sk

Marko Mehle
Senior Partner
KPMG in Slovenia
E: marko.mehle@kpmg.si

Julio Cesar García
Partner
KPMG in Spain
E: juliocesargarcia@kpmg.es

Caroline Valjemark
Partner
KPMG in Sweden
E: caroline.valjemark@kpmg.se

Stephan Kuhn
Partner
KPMG in Switzerland
E: stefankuhn@kpmg.com

Matthew Herrington
Partner
KPMG in the UK
E: Matthew.Herrington@kpmg.co.uk

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