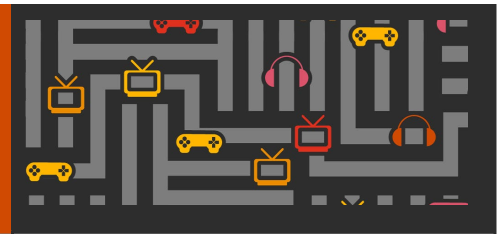
EU Gateway newsletter
An initiative of PwC the Netherlands
Summer 2024



EU Gateway newsletter - Issue 2024, no.7-9

本ニュースレターは、EU 全体および EU 加盟各国における直接税の主要な動向とそれに対する私どもの見解をとりまとめ、最新かつ有益な情報を提供することを目的としています。本内容についてご質問やご意見がある場合は、PwC オランダジャパンデスクまでお問い合わせ下さい。

今月のハイライト

1. EU 理事会ハンガリー議長国における施政方針（任期： 2024 年 7 月から 12 月）

＜直接税に関わる主要な EU 指令案に関する進捗状況（7 月号）＞
EU 経済・財務相理事会（ECOFIN）は、ベルギー前議長国の任期期間（2024 年 1 月から 6 月）における様々な議論状況について、EU 各国首脳から構成される欧州理事会に対して報告しました。

PwC オランダが発行する本記事では、ベルギー前議長国の成果を振り返ると共にハンガリー現議長国の優先事項をまとめており、FASTER、シェルカンパニーの濫用に関する欧州租税回避防止指令（ATAD3/Unshell）、TP、BEFIT、並びに HOT の 5 つの EU 指令案に関する議論状況について言及しています。

これらのうち、FASTER のみが EU 加盟国間で政治的合意に至っており、完成に近づいていますが、他の指令案は加盟国間の意見の相違により進展が不確実な状況に直面しており、ハンガリー議長国はこれらの意見の相違を乗り越えて立法過程を前進させる必要があります。

＜ハンガリー議長国： EU 理事会における 2024 年下半期の税制優先事項（7 月号）＞
2024 年 6 月に、EU 理事会のハンガリー議長国は半年の任期期間における優先事項と方向性を明確にしました。税制に関しては、新しいビジネスモデルのニーズへの対応や

国際協力、財政収入に着目しており、とりわけ租税回避への取り組みや納税者の法的確実性の確保、国際協調の促進を重要な優先事項としています。

ハンガリー議長国は、BEFIT、TP、HOT の各指令案について、2024 年 11 月 5 日の ECOFIN において各加盟国の財務相との議論を進めることで、今後の課題に関して政治的に方向性を定める予定です。また 2024 年 12 月 10 日の ECOFIN では、Pillar 2 の情報交換に関わる第 9 指令（DAC9）に関する現状と今後の作業のための方針についても議論されます。
ハンガリー議長国はこれらの施策は、デジタル化や情報の効率的な利用、簡素化を通じて、欧州企業の競争力を向上させる機会と捉えています。

2. 欧州司法裁判所による DAC6 への支持 - DAC6 の条件は十分に明確（8 月号）

EU 司法裁判所（CJEU）は、クロスボーダー取引に関する EU 義務的開示制度（DAC6）について、欧州連合の基本権憲章および EU 法の基本原則に違反していないと判決を下しました。

DAC6 に基づき、EU 加盟国において報告対象となるクロスボーダーアレンジメントに関する課税分野での強制的な自動的情報交換が行われています。CJEU は DAC6 の報告義務は平等な取り扱いと差別禁止の原則に違反しておらず、また DAC6 で使用されている用語は正確かつ明確であり、法的確実性と合法性の原則を維持しているものと判断しました。

一方で、法律専門家（弁護士）にのみ認められている報告免除規定は、一部の加盟国において法的権限を与えられている専門家（大学教授など）に対しては適用されません。また納税者や仲介者（税務専門家）の（事業）活動に対する自由の制限は、正当化されるものと判決しました。

3. 欧州委員会による ATAD 評価の開始（9 月号）

欧州委員会は、過度な節税策に対処するための最低基準を定めた欧州租税回避防止指令（ATAD）の実施状況と有効性の評価を開始しました。ATAD は現在すべての EU 加盟国によって実施されており、PwC では EU Gateway 特集記事第 4 弾として各 EU 加盟国での実施状況をまとめた ATAD I&II 実施概要の最新版をリリースしています。

当該評価では、1）ATAD の EU 加盟国での実施状況、2）最低基準に対する定性的・定量的な有効性、3）将来の有効性、の 3 点に焦点を当てています。3 点目の将来の有効

性に関して、Pillar 2 の導入に伴い一部の加盟国では ATAD による外国子会社合算税制（CFC）と Pillar 2 の経済的二重課税を回避するため、CFC 税制による法人税額に対して当該 CFC 国（EU 加盟国）で課税された QDMTT を控除する（一方的な）措置を導入しています。EU 加盟国の CFC 税制が EU 指令である ATAD に基づき導入されたていることに鑑みると、欧州委員会によって CFC と Pillar 2 のオーバーラップを解消するための新たな指令案が提案される可能性があります。

4. 欧州委員会による公開国別報告書の電子フォーマットに関わる協議（9 月号）

欧州委員会は、公開国別報告書（Public CbCR）における法人税を含む情報開示を標準化するための実施規則の草案を公表しました。本実施規則は 2025 年 1 月 1 日以降開始事業年度において適用され、Extensible Business Reporting Language（XBRL）の仕様を使用した公開国別報告書のための共通のテンプレートと電子フォーマットの導入を含んでおり、Extensible Hypertext Markup Language（XHTML）と Inline XBRL を使用することで財務報告情報の利便性と正確性を向上させることを狙いとしています。

なお公開国別報告書の開示は、日系企業の場合、オランダ内に大規模又は中規模のエンティティ（総資産 750 万ユーロ超、純売上高 1,500 万ユーロ超、平均従業員数 50 名超のうち、二つ以上の基準を満たす法人（基準は 2024 年以降適用のもの）、又は、売上高基準を満たす支店）を有する連結収益 7 億 5,000 万ユーロ超の多国籍企業が対象となります。また PwC では EU 域内各国の実施状況をまとめた専用のウェブサイト（トラッカー）を提供しています。

その他 EU 加盟国の国内動向に関する詳細と合わせて、次ページ以降の英語本文をご参照下さい。

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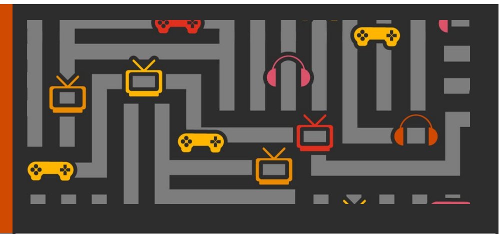

EU highlights

1. Update on Progress of 5 Pending Direct Tax Files in the EU

The ECOFIN Council was invited to report back to the European Council on the progress of various tax files during the Belgian presidency of the Council. The presidency of the Council of the European Union is held by an EU Member State. The presidency of the Council rotates among the EU Member States every six months. During this six-month period, the presidency chairs meetings at every level in the Council, helping to ensure the continuity of the EU's work in the Council.

In this EU gateway tax news article, we summarise the tax priorities of the Hungarian presidency and review the work of the previous Belgian presidency. The article contains information about the negotiations of 5 EU direct tax files: FASTER, Unshell Directive, TP Directive, BEFIT and HOTS proposals.

EU Gateway observation: Out of the five direct tax initiatives currently on the EU’s agenda, only the first one, FASTER, is nearing the finish line. This is because there is already a political agreement among EU Member States regarding this proposal. However, the outlook for the other pending tax Directive proposals is far less optimistic. Divergent views among EU Member States on each of these proposals present significant challenges. Given that unanimity is required for the adoption of each proposal, it is uncertain which, if any, of the remaining four initiatives will make progress in the next six months. This period marks the transition of the Council presidency from Belgium to Hungary. The forthcoming Hungarian presidency will face the tough task of navigating these differing opinions to push forward the legislative agenda. See our next news item regarding priorities of the Hungarian Presidency in taxation.

2. Hungarian Presidency Identifies Tax Priorities of Council of European Union for Second Semester 2024

In June 2024, the Hungarian presidency published the programme setting out the priorities and directions during the term of its presidency. In terms of taxation, the presidency aims to advance discussions on taxation files and international issues, with a focus on addressing the needs posed by new business models, international cooperation, and fiscal revenues. While specific details are not provided, the presidency highlights the fight against tax evasion, ensuring legal certainty for taxpayers, and supporting international engagement of the EU as high priorities. The presidency also sees digitalization, efficient use of information, and simplification as opportunities to enhance the competitiveness of European businesses.

Based on an indicative agenda, the Hungarian Council presidency plans to ask EU finance ministers to exchange views and give political guidance for further work on the BEFIT proposal, Transfer Pricing proposal, and the HOTS proposal. Date: 5 November 2024.

Another discussion will take place on 10 December 2024, which will include, amongst others, the state of play and guidance for further work for a DAC9 - Exchange of Information Regarding Pillar Two. DAC9 has not been officially proposed yet.

EU Gateway observation: Overall, the Hungarian presidency of the Council of the European Union shares common goals with the previous Belgian presidency. These goals include fighting tax evasion, ensuring legal certainty, and promoting international cooperation. Additionally, the Hungarian presidency continues to focus on the potential of digitalization and simplification to enhance the competitiveness of European businesses, which was already on the agenda during the Belgian presidency. However, unlike the previous Belgian presidency, the Hungarian presidency specifically aims to address the needs posed by new business models.

Domestic Highlights

1. Dutch Secretary of Finance Clarifies Anti-Abuse Rule on Interest Deduction with Potential Overreach

On 14 June 2024, the Dutch State Secretary of Finance published a new Decree (hereinafter: the new Decree) regarding the anti-abuse rule with respect to interest deduction (Art. 10a Corporate Income Tax Act - CITA). The new Decree updates the Decree of 25 March 2013, which was last amended by the Decree of 10 February 2022. Compared to the previous decrees, the new Decree contains the following new elements:

I. Abuse of law (fraus legis)

Recently there have been a number of cases where the tax authorities argued abuse of law (*fraus legis*) in addition to the application of targeted anti-abuse rule included in Article 10a of the Dutch Corporate Income Tax Act. The new Decree clarifies that interest deduction cannot be denied based on *fraus legis* if the taxpayer plausibly establishes that the debt and the related transaction are justified by business reasons. However, in some cases, interest may still not be deductible under *fraus legis* when there is a breach of the CITA as a whole (and thus not only with respect to Article 10a CITA).

II. Adaptation to the “financial hub function”

According to the judgment of the Dutch Supreme Court of 3 March (BNB 2023/61), Art. 10a CITA should not apply if the funds are obtained from a related entity that performs a “financial hub function” within the group in carrying out financing activities. The tax authorities interpret the financial hub function in a very strict manner.

III. Approving policy in case of partially effectively taxed interest income

According to Art. 10a CITA, the interest deduction limitation does not apply if there is sufficient taxation levied on the interest received, according to Dutch standards. However, according to the literal text of Art. 10a CITA, there is no sufficient taxation if the interest income is only partially effectively (directly or indirectly) subject to tax at the level of the recipient. In the new Decree, it is clarified that the interest deduction limitation does not apply, provided that:

- the taxpayer annually proofs that the specific part is actually taxed; and
- treaties nor other instruments for the avoidance of double taxation further limit the actual taxation on that income.

IV. Coordinated group

Per 1 January 2017 a 'coordinated group' is considered affiliated for article 10a CITA, even though the members of the coordinated group individually may not exceed the threshold for affiliation (broadly 1/3 interest). In the decree it is described what may be considered a coordinated group, and it is indicated that a coordinated group in any case includes the situation where the material decision making power with regard to the - design of the - investment and the joint interest in an acquired target rests with one or a coordinated whole of (legal) person(s). In such a case the ultimate investors have - as it were - transferred the decision making power (to a large extent) to that person/those persons.

V. Uncommercial rerouting

In the decree a number of additional examples is included of uncommercial rerouting transactions.

EU Gateway observation: Article 10a CITA is a very important anti-abuse rule for international business operating in the Netherlands. The new Decree incorporates previously decided case law. Most notably, although it seems an incorporation of case law, we read a quite restrictive interpretation by the tax authorities, which does not necessarily follow from the case law itself. This is, for instance, the case in defining whether a company performs a financial hub function. The State Secretary has been quite creative with adding restrictive requirements that do not follow from the case law itself. If a taxpayer would take a position that is in conflict with the positions taken in the Decree, it may require going to court. We also remind you that Article 10a CITA is under review before the European Court of Justice.

2. Lithuania To Increase Its CIT Rate From 15% to 16%

The Lithuanian parliament has passed several revisions to the Corporate Income Tax Act. Starting 1 January 2025, the standard corporate income tax rate will increase to 16%, a 1% increase from the previous rate. This adjusted rate will be applicable to a variety of financial categories, including dividends, profits distribution, income of foreign entities not linked to permanent establishments, and other specific income types.

In addition to the standard rate, a preferential tax rate of 6%—up from 5%—will be introduced for small enterprises that maintain an average workforce of no more than 10 employees and whose annual revenue does not surpass EUR 300,000. Notably, the first tax-free period for these entities will remain intact. Furthermore, this reduced rate will extend to profits generated from the commercial exploitation of R&D-derived assets, which includes usage, sales, or ownership transfers, calculated through a designated formula.

The Lithuanian CIT rate increase relates to the defense tax package initiated to increase national defense funding to 3% of the gross domestic product.

Other Domestic Developments

Belgium: Royal Decree on Public Country by Country Reporting published - see here for more information.

Belgium: Belgian law amending the investment deduction and innovation income deduction regime published in the Official Gazette - see here for more information.

Denmark announces a rise in permanent super-deduction for R&D activities to 120%, with an annual cap of DKK 1 billion starting from the year 2025.

Denmark amends Pillar Two rules and implements OECD guidelines. Key measures in the adopted bill include: excluding all tax expenses arising from specified hybrid arrangements; clarifying the conditions for a country-by-country (CbCR) report to qualify as a qualifying CbCR for Pillar Two purposes; and establishing a new transition year for group entities in scope, that are subject to an income inclusion rule (IIR) or undertaxed profit rule (UTPR) for specified financial years.

Denmark has enacted a bill requiring all royalty payments to non-residents to be reported to the Danish Tax Authorities. Starting from 1 July 2024, Danish payors must report all royalty payments made to non-residents unless the recipient is exempt under the EU Interest and Royalty Directive. This reporting obligation applies irrespective of whether the recipient is subject to Danish tax on the royalty and regardless of any affiliation between the recipient and the payor.

Germany: Ministry of Finance Issues Guidance on Applying Bill on Combating Tax Avoidance and Unfair Tax Competition.

Germany: Federal Cabinet approves government draft of the Finance Act 2024 - see here for more information.

Greece: Ministry of Finance announces extension of Temporary Solidarity Contribution of 33% to refining companies' excess profits for the tax year 2023.

Greece: Minister of Finance proposes to replace stamp duty with transaction fee.

Ireland: Revenue confirmed that foreign tax officials acting as nominated officers will have access to confidential taxpayer information during a joint audit under DAC7. However, they will not be permitted to remove or make copies of any documentation provided during the course of the joint audit. Joint audits take the form of administrative enquiries conducted jointly by the competent authorities of two or more EU Member States, and be linked to one or more persons of common or complementary interest to the competent authorities of those EU Member States. DAC7 sets the framework for the conduct of these audits.

Ireland: Revenue clarifies on the required information for registration of Foreign Platform Operators under DAC7.

Italy releases draft decree on Public CbCR, in line with the EU Public CbCR Directive, with non-compliance penalties ranging from EUR 10,000 to EUR 50,000.

Italy: Decree on Pillar Two transitional country-by-country reporting (CbCR) safe harbor and transitional UTPR safe harbor published.

Latvia enacts Pillar Two (limited) implementation.

Lithuania enacts Pillar Two (limited) implementation.

Lithuania adopts the extension of the solidarity contribution for banks until 31 December 2025.

Luxembourg: Council of Ministers Adopts Amendments to Minimum Taxation Law: the Draft Law, in line with the OECD Guidance, extends the scope of Excluded Entities (i.e. investments funds to be treated as an excluded entity), adapts certain provisions relating to the Qualified Domestic Top-up Tax (QDMTT) and clarifies the application of the Transitional Country-by-Country Reporting (CbCR) safe harbor. Furthermore, the Draft Law amends the transitional rules on controlled foreign entities (CFCs) to take account of the December 2023 OECD Administrative Guidance (dealing in particular how to compute a jurisdiction's ETR where a QDMTT or a CbCR safe harbor applies).

Netherlands: Ministry of Finance publishes evaluation report on Dutch expat regime. Based on the evaluation, the new government is expected to make choices about whether to reverse the previous measures or to take other measures that are less harmful to the economy. See here for more information.

Poland enacts DAC7.

Slovenia consults on changes to corporate income tax law, including possible abolition of the thin cap rule (whose coexistence with the ATAD's EBITDA rule adds complexity to the tax system).

Spain submits draft Pillar Two Bill to parliament.

Judicial Developments

Dutch Court of First Instance Rules Again That Brazilian "Interest on Net Equity" Is to Be Considered a Dividend - Important for Calculation of the Tax Sparing Credit in Applicable Tax Treaty

On May 14, 2024, The Hague Court of First Instance issued two court rulings regarding the application of the tax sparing credit for the Brazilian "Interest on Net Equity" ("IoNE"). The question at hand was whether this IoNE qualifies as dividend or interest for the purpose of the Netherlands-Brazil tax treaty. The significance of this distinction concerns the right to offset a tax sparing credit ("TSC"): in the case of dividend, the TSC is 25%, while in the case of interest, the TSC is 20%.

In both rulings (ECLI:NL:RBDHA:2024:6858 and ECLI:NL:RBDHA:2024:6857), the court concluded that the ambiguity of the treaty text should be borne by the Contracting States, and in case of reasonable doubt, it should not be interpreted to the detriment of the taxpayer. Therefore, the court designates IoNE as dividend for the purpose of the treaty, and not as interest. As a result, the TSC is 25% instead of 20%.

EU Gateway observation: The court rulings are in line with the similar ruling of 1 May 2023 of the Zeeland-West-Brabant Court of First Instance. We refer you to the EU Gateway newsletter - Issue 2023, no. 7 in that regard. The rulings support taxpayers' argument to utilize the 25% tax sparing credit instead of the 20%. While this does not pertain to a Supreme Court case, it could assist taxpayers in bolstering their stance to assert the TSC calculated at the higher tax rate. The Dutch tax authorities cannot accept the 25% because their formal position remains that it should be qualified as an interest payment under the treaty. Therefore, a Supreme Court decision will likely have the final saying on this matter.

Dutch Supreme Court: German Fund with Dutch Real Estate Not Subject to Corporate Income Tax

Under Dutch Corporate Income Tax Law, specific foreign legal entities, partnerships, and special-purpose funds ("doelvermogens") may be subject to Dutch corporate income tax on Dutch source income, such as income from Dutch real estate, as foreign taxpayers. The Dutch Supreme Court needed to determine whether a German Immobilien-Sondervermögen (hereinafter: German fund), comparable to a Dutch mutual fund, qualifies as a non-resident taxpayer in the Netherlands based on its legal form.

The Court ruled that the German fund is not considered a so-called "doelvermogen" because the equity of the German fund belongs to the holders of the participation rights issued by the fund. Since the German fund does not qualify as a corporation or partnership either, it does not qualify as a non-resident taxpayer for Dutch CIT purposes. The Supreme Court therefore did not address the question whether the refusal to apply the FBI regime is contrary to EU law. See here for more information about the judgment.

EU Gateway observation: This judgment is significant for foreign mutual funds investing in Dutch real estate. The Supreme Court has clarified the circumstances under which these funds are liable for corporate income tax under current legislation (up to and including 2024). However, its practical importance is limited in the future. As of 1 January 2025, the CITA 1969 will be amended, making such funds subject to Dutch corporate income tax. Additionally, from 1 January 2025, the so-called FBI regime will no longer apply to Dutch and foreign funds that invest directly in Dutch real estate.

German Supreme Tax Court: No application of loss forfeiture rules for losses allocated from partnerships: The loss forfeiture rules of Section 8c of the German Corporation Tax Act in the version valid for 2014 are not applicable to deductible losses which are allocated to a corporation as partner of a limited partnership pursuant to Section 15a Income Tax Act. With this decision, the Supreme Tax Court contradicts the view of the tax administration. See here for more information.

Tax Treaty Developments

Colombia and Luxembourg conclude tax treaty

EU highlights

1. American Free Enterprise Chamber of Commerce Requests the Annulment of Belgian UTPR Pillar Two rules With the Belgian Constitutional Court

The American Free Enterprise Chamber of Commerce (hereinafter: "AmFree'') issued a press release informing that it submitted a request to annul the UTPR rules of the Belgian Pillar Two Rules with the Belgian Constitutional Court on 1 July 2024. The case has been registered at the Court's register; however, details on the request and the claims for annulment have not been revealed. After reviewing AmFree's legal action, the Belgian Court can refer the case to the Court of Justice of the European Union (CJEU) to determine the validity of Pillar Two with EU law.

EU Gateway observation: AmFree argues that U.S. companies should not be forced to adhere to foreign accounting standards or disclose their tax payments to foreign jurisdictions. However, for any parts of the Pillar Two Directive to be annulled by EU law, the Directive itself must violate EU regulations, not U.S. sovereignty. The potential compatibility of the UTPR with EU law has been discussed in academic circles, with many suggesting that conflicts with EU law are unlikely due to the structure of the Pillar Two Directive. Yet, questions remain about whether the Directive might clash with rights enshrined in the EU Charter, which also protects legal entities where relevant. As the UTPR is set to be implemented in most jurisdictions next year, any ruling from the Belgian Court—and potentially from the Court of Justice of the European Union—could take more time.

2. European Commission Initiates Infringement Procedure Against The Netherlands On Taxation Of Foreign Investment Funds

The European Commission has initiated an infringement procedure against the Netherlands for failing to extend the Dutch dividend withholding tax reduction scheme to foreign investment funds which are comparable to Dutch investment funds. The European Commission considers that the relevant remittance reduction scheme (the so-called "afdrachtsvermindering'') restricts the free movement of capital as it discriminates foreign funds compared to domestic ones. Under Dutch law, qualifying investment funds can reduce their tax burden on dividends received from equity investments in the Netherlands and abroad. This reduction is implemented by offsetting the paid source taxes with the Dutch dividend tax due on redistribution of dividends to participants. However, this beneficial remittance reduction scheme is currently exclusively available to Dutch investment funds.

EU Gateway observation: We note that the Dutch Supreme Court has ruled that the remittance reduction scheme is not the same as a refund, and therefore cannot lead to a refund. This applies if the foreign fund is comparable to a Dutch fund based on what the CJEU ruled in the Deka judgment (C-156/17) (a case relating to the old system of the refund of tax withheld on dividend).

This infringement procedure is crucial for foreign investment funds seeking refunds of Dutch dividend tax. The Netherlands has 2 months to respond to the European Commission's concerns. If unresolved, the European Commission may issue a reasoned opinion, a formal compliance request under EU law. Continued non-compliance could lead to escalation to the CJEU, though most cases are resolved before this.

Foreign funds should consider filing protective claims for withholding tax for 2021-2023, as the statute of limitations has not expired for these years. The way that we read the announcement of the formal notice is however that the European Commission deems the Dutch system discriminatory only if a foreign fund is comparable to a Dutch investment fund. Therefore, only foreign funds meeting the shareholder and distribution requirements may be eligible for a refund, per the Deka judgment.

3. EU Court Of Justice Upholds DAC6: DAC6 Terms Are Sufficiently Clear

The Court of Justice of the EU (CJEU) has ruled that the EU Directive on cross-border tax arrangements (DAC6) does not violate the Charter of Fundamental Rights of the European Union or general principles of EU law (Belgian Association of Tax Lawyers, C-623/22). DAC6 imposes mandatory disclosure requirements for certain arrangements with an EU cross-border element. Where such an arrangement falls within certain "hallmarks" mentioned in the Directive and in certain instances where the main or expected benefit of the arrangement is a tax advantage, the arrangement should be reported.

The Court found that the Directive's broad reporting obligations, extending beyond corporate taxes, do not breach principles of equal treatment and non-discrimination. Additionally, the terminology used in the Directive is sufficiently precise and clear, upholding the principles of legal certainty and legality in criminal matters, although worded in broad terms. Furthermore, the exemption from the reporting obligation due to legal professional privilege applies only to lawyers (professionals mentioned in Article 1(2)(a) of Directive 98/5), and does not extend to other professionals (like university professors), even if they are authorized to provide legal representation by some EU Member States. Finally, the CJEU ruled that the limitations on the freedom of taxpayers and intermediaries to organize their personal, professional, and business activities, introduced through DAC6's reporting obligations, is justifiable.

4. Tax implications of recent elections in Europe: Recent elections in Europe have concluded and the implications for tax policy are becoming slightly clearer. See PwC Tax Policy alert for more information!

Domestic Highlights

1. Luxembourg To Reduce CIT Rate By 1% As Of 2025

On 17 July 2024, the Luxembourg Minister of Finance has submitted a bill on various tax amendments to the Parliament, including among others a reduction of the corporate income tax ("CIT'') rate by 1% (17% to 16% for companies with a taxable income above EUR 200,000, and 15% to 14% for companies with a taxable income below EUR 175,000). Businesses with taxable income between EUR 175,000 and EUR 200,000 will be subject to CIT calculated as follows: EUR 24,500 plus 30% for income exceeding EUR 175,000 (previously: EUR 26,250 plus 31%). As a result of the rate reduction, effective 1 January 2025, the aggregate corporate tax rate (including the solidarity surcharge and the municipal business tax) for a company established in Luxembourg City is expected to decrease from 24.94% to 23.87%. Please see this news item from PwC Luxembourg for more information on the tax rate decrease as well as other tax measures proposed. In addition, the bill introduces a group ratio for the EBITDA rule, retroactive to 1 January 2024.

EU Gateway observation: Most of the tax measures were already part of the 2023-2028 coalition agreement, and aim to provide relief for companies operating in Luxembourg. The CIT reduction in Luxembourg had been announced in June 2024 by the Luxembourg Prime Minister and the new tax rate seems to be leaning towards the lowest in Europe; nonetheless, when for instance municipal taxes and solidarity surcharges are taken into account, the aggregate rate remains relatively high.

2. From Belgium to Slovakia: Pillar Two Developments in EU27

With the Pillar Two legislation currently being applicable in most of the EU Member States, we decided to provide you with a selection of Pillar Two developments in July 2024:

- **Belgium** : the Belgian Tax Authorities published an administrative tolerance for multinational and large-scale domestic groups that will not (intend to) carry out advance payments in 2024 for the domestic top -up tax ("DMTT") or the Income Inclusion Rule ("IIR"). These groups may submit their notification for registration in the Crossroads Bank for Enterprises until 16 September 2024 (included). This administrative tolerance does not apply to MNE groups and large -scale domestic groups who (wish to) carry out advance payments in 2024. For those groups, the deadline to submit the form remains within 30 days after the first day of the first fiscal year in scope of Pillar 2 (for groups with a fiscal year starting on or before 14 June 2024, this remains 15 July 2024). For more information we refer you to the tax article published by PwC Belgium.
- **Cyprus** : Ministry of Finance announces full consent for Pillar Two Safe Harbour rules, including the Transitional CbCR Safe Harbour, Transitional UTPR Safe Harbour, QDMTT Safe Harbour and Simplified Calculations Safe Harbour.
- **Italy** : The Minister of Economy and Finance has published a domestic minimum top-up tax (DMTT) Decree which outlines provisions for recognizing a qualified

DMTT (QDMTT) and the QDMTT Safe Harbour. For more information we refer you to the tax article published by PwC Italy.

- **Luxembourg** : The Council of Ministers adopted a draft Grand-Ducal regulation on the treatment of tax credits and qualified holdings under the Pillar Two Bill. The draft Grand-Ducal aims to determine the rules relating to tax credits and qualified holdings for applying Pillar Two in Luxembourg.
- **Portugal** : The Government has launched a public consultation on a draft bill transposing the Pillar Two Directive in Portuguese Law. The legislative proposal is in line with the Pillar Two Directive and includes an Income Inclusion Rule (IIR), set to become effective from 1 January 2024, an Undertaxed Profits Rule (UTPR), set to become effective from 1 January 2025, and a domestic minimum top-up tax, intended to be a Qualified Domestic Top-up Tax (QDMTT), also proposed to apply from 1 January 2024. The draft bill also includes the transitional UTPR Safe Harbour and the QDMTT Safe Harbour.
- **Slovakia** : The Ministry of Finance has submitted a draft bill for consultation to incorporate adjustments from the OECD/G20 Inclusive Framework's 2023 administrative guidance into Slovakia's Pillar Two legislation. Currently, Slovakia only applies QDMTT, effective 31 December 2023.

EU Gateway observation: Among recent developments, the Portuguese implementation of Pillar Two stands out, as Portugal is one of the last EU Member States to take steps in enacting these laws. The European Commission's formal notice likely pressured Portugal to issue Pillar Two legislation, which was delayed due to elections. Additionally, following the issuance of the Italian Decree on DMTT, both Italian companies and permanent establishments of foreign entities in Italy must carefully analyze the tax impacts of the national minimum tax and manage the related compliance obligations, with further guidance expected in a forthcoming decree. Finally, we observe that the administrative tolerance in Belgium underscores the compliance challenges that companies under Pillar Two rules face in various jurisdictions.

Other Domestic Developments

Austria implements the public CbCR Directive. Penalties depend on the size classification of the company and range between (up to) 8k and (up to) 10k EUR. If the public CbCR report is still not submitted after the first penalty, a second penalty depending on size classification and importance to the public can be issued. Penalties can be up to 100k EUR. See here PwC's public CbCR implementation tracker.

Belgium issues Decree on treatment of advance payments under Pillar Two.

Belgium: the Belgian administration has published adjusted transfer pricing documentation forms and guidance. See here for more information.

Estonia: New government proposes to introduce a corporate income tax rate of 2% - Estonia currently applies a distribution tax system on dividends instead of corporate income tax.

Greece enacts a tax deductible 33% solidarity contribution on profits of energy and mining companies.

Hungary raises extra profit tax of financial institutions, the financial transaction tax and the extra profit tax of oil producers.

Judicial Developments

The Polish Constitutional Tribunal considers the obligation of tax advisors to report potentially aggressive tax schemes to violate professional secrecy and as such, is unconstitutional: The Tribunal determined that imposing the reporting obligation on tax advisors bound by professional secrecy violates the principle of proportionality. The judgment relates only to legal law privilege, which means that reporting requirements for tax schemes remain fully applicable and, according to Polish rules, include also beneficiaries and supporters

Tax Treaty Developments

No significant tax treaty developments in this month pwc

EU Gateway newsletter

An initiative of PwC the Netherlands
September 2024

EU highlights

1. Possible Refund Request for Foreign Funds in Sweden: CJEU Rules That Swedish Withholding Tax on Dividends to Foreign Public Pension Institutions Is Contrary to EU Law
On 29 July 2024, the Court of Justice of the European Union (CJEU) ruled that EU law precludes the legislation of a Member State under which dividends distributed by resident companies to non-resident pension institutions governed by public law are subject to a withholding tax, while dividends distributed to resident pension funds governed by public law are exempt from such tax. This decision was made in the case of *Keva, Landskapet Ålands pensionsfond, and Kyrks Centralfondan versus Skatteverket* (C-39/23). The case focused on the Swedish withholding tax treatment of dividends distributed by Swedish companies to Finnish pension funds governed by public law. Since no Swedish tax is levied on dividends to Swedish pension funds governed by public law (as being part of the Swedish state), the question was whether this was compatible with the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU). The CJEU concluded that the Swedish legislation was in conflict with EU law. For more detailed information about the case and the relevant arguments presented, you can refer to the EUDTG newsalert.
EU Gateway observation: Following the CJEU judgment, it is reasonable to expect that Sweden will make its legislation EU compatible. Meanwhile, foreign pension funds governed by public law and other state and municipal investors could consider applying for a withholding tax refund based on the principles established by the CJEU's judgment. The statute of limitations for withholding tax reclaims is five years following the year when the withholding tax was paid. Therefore, withholding tax paid in 2019 must be reclaimed no later than 31 December 2024.

2. European Commission Launches ATAD Evaluation
On 31 July 2024, the European Commission (EC) launched an evaluation of the Anti-Tax Avoidance Directive (ATAD). The Directive lays down minimum standard rules to address the most common forms of aggressive tax planning and tax avoidance practices that directly affect the functioning of the internal market. The Directive is currently implemented by all EU Member States and the EU Gateway team has prepared an overview of how the rules have been implemented in each EU Member State.
EU Gateway observation: The European Commission's evaluation of the Anti-Tax Avoidance Directive (ATAD) will focus on three main themes:

- 1. Implementation of ATAD in EU Member States: This includes examining the policy choices made by Member States where the Directive allowed for flexibility. Due to the different options provided in its minimum standard rules, there is some discrepancy between the rules of the Member States in certain instances.

- 2. Functioning of ATAD: This involves a qualitative and quantitative assessment of the effectiveness of ATAD's measures as a minimum standard in addressing aggressive tax planning. The evaluation will also examine how policy choices might affect a measure's effectiveness in achieving its aims and to what extent the results achieved by ATAD bring added value compared to what Member States could have achieved on their own.
- 3. Future-proofing of the measures: This will consider the fitness for purpose and continued relevance of the measures, especially in light of the introduction of the Pillar Two Directive. The consultation does not shed more light on which direction the European Commission will take or whether new rules will be proposed to complement the Pillar Two rules in the EU. What we see, however, is that states have already taken unilateral measures dealing, for example, with the credit of the QDMTT in the CFC state against the Corporate Income Tax levied in the EU Member States as a result of the CFC rules applicable there, for the avoidance of economic double taxation. Given that the EU27's CFC rules are currently the result of the implementation of the ATAD or amended after the ATAD, it could be reasonable for the European Commission to propose rules avoiding an overlap between Pillar Two and CFC rules.

3. European Commission Consults On Template and electronic formats for public CbC reports

On 1 August 2024, the European Commission released a draft Implementing Regulation to standardise the presentation of income tax information for public country-by-country reporting (pCbCR). The draft Act introduces a common template and electronic formats for public Country-by-Country reports in the form of detailed Extensible Business Reporting Language (XBRL) specifications for financial data, requirements for report filing, and a taxonomy defining the reportable data. The proposed Implementing Regulation, which would come into effect for financial years commencing on or after 1 January 2025, emphasises the use of Extensible Hypertext Markup Language (XHTML) and Inline XBRL to enhance the accessibility and precision of financial reporting.

EU Gateway observation: EU pCbCR is a tax transparency initiative which aims to give stakeholders a clearer view of MNEs' EU tax contributions and economic activities and is designed to foster corporate responsibility in the EU. It requires large MNEs to publicly disclose key financial data for each tax jurisdiction in which they operate publicly, enhancing the public's ability to scrutinise corporate tax metrics. A reporting obligation arises for multinational groups with a consolidated net turnover of at least EUR 750 million in each of the last two consecutive financial years if the group's ultimate parent is either headquartered in the EU or *headquartered in a third country* and operates in the EU through a qualifying subsidiary or branch. PwC maintains a dedicated pCbCR website and a tracker that you can use to monitor the implementation of pCbCR across the EU.

Domestic Highlights

Luxembourg Administrative Court Ruling On Abusive Use of The Domestic Participation Exemption Regime: Special Anti-Abuse Rule of the European Union Parent Subsidiary Directive (EU PSD GAAR) invoked

On 31 July 2024, the Luxembourg Administrative Court ruled on the abusive use of the domestic participation exemption regime. A Luxembourg company, A Sàrl, granted a profit participating facility (PPF) to its Belgian subsidiary, B SA. From a Luxembourg tax perspective, the PPF was qualifying as an equity instrument so that any income derived by A Sàrl under the PPF was tax-exempt in accordance with Luxembourg participation exemption regime before its modification by the Council Directive 2014/86/EU and (EU) 2015/121 (i.e., the inclusion of a common anti-hybrid rule and of a GAAR in the Directive 2011/96/EU). In Belgium, such PPF was treated as a debt instrument.

In 2018, B SA repaid the PPF in kind by assigning US-dollar-denominated receivables at nominal value (whereas their market value was higher) to A Sàrl. B SA did not realise any gain in Belgium from the transfer of the receivables and, therefore, did not recognise any interest on the PPF in 2018 . A Sàrl then transferred the receivables so received from B SA at market value to a Swiss related entity and considered that the gain arising from the transfer was inherent to the non-arm's length transfer which previously took place from B SA. In other words, A Sàrl considered that the difference between the nominal value and the market value of the receivables was a deemed dividend distribution from B SA, which would be eligible for the domestic participation exemption regime.

The Luxembourg tax authorities denied the exemption of the alleged deemed dividend distribution arguing the transaction was abusive under paragraph 6 of the Tax Adaptation Law (Steueranpassungsgesetz, TAL) AND article 166(2bis) of the Luxembourg Income Tax Law (LITL). The latter states that dividend income becomes taxable if it is tax deductible in another EU Member State (i.e., the EU PSD non-hybrid rule) or if the principal aim of a transaction is achieving a tax advantage that contradicts the object or purpose of the Luxembourg participation exemption regime, as transposed from the EU PSD. Paragraph 6 of the TAL is a more general anti-abuse rule aligned with the GAAR of the first Anti-Tax Avoidance Directive's (ATAD 1's GAAR).

The Court overturned the first instance Tribunal and tax authorities' methodology with respect to the abuse of law analysis on the basis of the general principle according to which specific rules override general rules and confirmed the existence of an abuse of law on the ground of article 166(2bis) LITL only.

According to the Court, the transfer of the receivables from the Belgian to the Luxembourg entity at nominal value, and their subsequent transfer to a related entity at market value, without taxation in Belgium or Luxembourg, contradicts the aim of the EU PSD. More particularly, the Court considered that the transaction depicted above was not genuine and motivated by commercial reasons, but by the sole intention of avoiding taxation of the difference of value in Luxembourg or in Belgium.

The Court observed that a direct transfer of the receivables from the Belgian entity to the Swiss group entity at market value would have been a realistic alternative, but was of the view that the taxpayer avoided it to save taxes on the resulting gain in Belgium. In this respect, the Court, following the first instance Tribunal approach, considered that the transfer of the receivable at nominal value by B SA to A Sàrl was not the most suitable economic approach, but that a market value transfer would have been expected, in line with the liquidity and solvability situation of the group and restructuring needs. The market value transfer would have triggered a taxation at the level of A Sàrl as a result of a variable interest to be received on the PPF for an amount corresponding to the gain resulting for B SA from such transfer, which was in the case at hand avoided by A Sàrl with a nominal value transaction.

EU Gateway observation: The judgment of the Luxembourg Administrative Court reminds the importance of having sound business motives to support the taxpayers' transactions. In this respect, a case by case analysis is required. One may also note the confirmation of the Court as to the potential application of the more general ATAD 1's GAAR in situations where the EU PSD GAAR would not be relevant in the context of an abuse of law analysis.

And let's not forget that ATAD 1's GAAR and EU PSD GAAR are part of the law of all EU Member States and they form an important anti-abuse set of rules. Even recently, the European Commission asked the Netherlands to incorporate a written GAAR into its laws (as an unwritten one might not suffice and may not provide enough legal certainty).

Other Domestic Developments

Germany: Ministry of Finance issues Draft Bill Amending Pillar Two rules, mainly concerning the CbCR safe harbour.

Finland: Tax authorities update guidance on eliminating International Double Taxation of legal entities, covering situations where a company resident in Finland receives income from abroad.

Greece: Government enacts special levy on electricity producers for August 2024.

Slovakia: Tax authorities clarify on the conditions for the granting of the capital gains exemption of shares and ownership interest.

Slovakia proposes to extend solidarity contribution on surplus profits through 2025

Ireland: Irish Government publishes Second Feedback Statement on introduction of participation Exemption into Irish tax system

Italy: Tax authorities clarify on the tax treatment qualifying capital gains of non-resident entities: with effect from 1 January 2024, capital gains realized by non-resident entities on the disposal of substantial participations in Italian entities are exempt from tax for 95% of their amount, under the participation exemption regime. The non-resident entity shall be a resident in an EU Member State or an EEA country allowing an adequate exchange of information with Italy and be subject to corporate income tax therein.

Judicial Developments

Germany's Federal Fiscal Court (the Supreme Court for tax cases) decided that the exclusion of foreign investment funds, which are comparable to German investment funds, from the tax exemption under the German Investment Tax Act 2004 violates the EU free movement of capital. Foreign investment funds can, therefore, claim a refund of dividend withholding tax if they are comparable to a domestic investment fund. See here for more information. Given that claims for the relevant years may have been filed several years ago, claimants of such withholding refunds should consider starting to prepare the required documentation as soon as possible as deadlines set by the tax authorities can be tight.

Tax Treaty Developments

No interesting tax treaty developments in this month

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