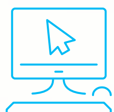
E-News from KPMG's EU Tax Centre

Key Insights of E-News Issue 207

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:

- *CJEU:* CJEU finds that the Belgian 'fairness tax' was compatible with EU law
- *Council of the EU:* February 2025 update of the EU list of non-cooperative jurisdictions
- *EU Commission:* 2025 work program released
- *European Parliament:* FISC Subcommittee on Tax Matters - Exchange of views with Commissioner Hoekstra
- *Belgium:* Federal coalition agreement published including several direct tax measures
- *Denmark:* Proposed amendments to Pillar Two law
- *France:* Pillar Two amendments in the 2025 French Finance Act
- *Poland:* Proposed amendments to Polish mandatory disclosure rules for potentially aggressive tax arrangements
- *Poland:* Updated list of jurisdictions with harmful tax regimes published
- *United Arab Emirates:* Legislation implementing Pillar Two rules released



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Key Insights

- CJEU finds that the Belgian 'fairness tax' was compatible with EU law

CJEU

CJEU finds that the Belgian 'fairness tax' was compatible with EU law

On December 19, 2024, the Court of Justice of the European Union (CJEU or the Court) rendered its decision in case C-436/23. The case concerns the compatibility of the Belgian 'fairness tax 'with EU law.

In 2013, Belgium introduced a 'fairness tax' that applied as a separate liability from corporate income tax, where the distributing company's profits were wholly or partially reduced through certain tax deductions. The taxable amount for the purposes of the 'fairness tax' was the positive difference between the gross dividends distributed and the distributing company's final taxable profits in the same taxable period, subject to certain adjustments. In 2018, the Belgian Constitutional Court annulled the 'fairness tax' but maintained the effects of the annulled provisions for the period 2014 to 2018.

The plaintiff was a Belgian subsidiary of a multinational group, which was subject to the Belgian 'fairness tax' in 2015 and 2016. The plaintiff challenged the tax liability and, following several proceedings, the case was brought in front of the Ghent Court of Appeal. The Court took the view that, as a result of the Belgian Constitutional Court's decision, the 'fairness tax' remained applicable only to the subsidiaries of non-resident companies conducting business operations in Belgium. On the other hand, the tax was not applicable to non-resident companies that operated in Belgium through a permanent establishment (PE) or branch. The Court of Appeal raised concerns on whether this difference in treatment was compatible with EU law and referred the matter to the CJEU for a preliminary ruling – see E-News Issue 188.

The CJEU first acknowledged Belgium's plea that, contrary to the facts referred by the Court of Appeal, the 'fairness tax' applied both to resident companies and PEs of foreign companies. Nevertheless, the CJEU held that it was for the referring court to interpret the Belgian law and that the CJEU had to rule in accordance with this interpretation. Therefore, the starting point of the analysis was the assumption that the fairness tax only applied to subsidiaries.

The CJEU further noted that this difference in treatment could render less attractive for foreign companies to operate in Belgium through a subsidiary, which constitutes a restriction on the freedom of establishment. Under the CJEU's settled case-law, such a restriction is only compatible with EU law if it involves situations that are not objectively comparable or can be justified by an overriding reason in the public interest. For the purpose of the comparability analysis, the CJEU recalled that the entities to be compared should be identified based on the jurisdiction of the company's registered office, as this element serves as the connecting factor with the legal system of a state. Therefore, the comparison should be made between the tax treatment applicable to a resident company – including subsidiaries of non-resident companies, and that applicable to PEs or branches of non-resident companies. In this context, the Court noted that Belgium chose not to exercise its taxing powers with respect to 'fairness tax' on PEs of non-resident companies. Consequently, in the Court's view, non-resident companies with PEs were not in a comparable situation to resident subsidiaries.

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Based on the above, the CJEU ruled that imposing a fairness tax on Belgian resident subsidiaries of non-resident companies, whilst exempting PEs of non-resident companies from such tax, does not constitute a breach of the freedom of establishment.

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EU Institutions

Key Insights

- Council of the EU agrees to remove Costa Rica and Curaçao from Annex II of the EU list of non-cooperative jurisdictions and to add Brunei Darussalam to same
- European Commission releases 2025 work program
- European Parliament Subcommittee on Tax Matters (FISC) holds exchange of views with Commissioner Hoekstra
- Members of the European Parliament adopt resolution approving the Commission's DAC9 proposal

Council of the EU

February 2025 update of the EU list of non-cooperative jurisdictions

On February 18, 2025, the Council of the EU adopted conclusions on the EU list of non-cooperative jurisdictions (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II – so called "grey list").

Whilst no changes were made to Annex I, the ECOFIN Council adopted the following conclusions with respect to Annex II:

- Costa Rica and Curaçao were both removed from section 1.1[1] of Annex II (and therefore removed completely from the grey list) following the improved rating in the 2024 peer review update of the Automatic Exchange of Financial Account Information (AEOI), which was released on November 26, 2024. Both countries had previously failed to achieve the required minimum rating "in place, but needs improvement" in the AEOI peer review.
- Brunei Darussalam was added to section 2.1[2] of Annex II following its commitment to amend or abolish its foreign-source income exemption regime before December 31, 2025. Note that the jurisdiction was added to the geographical

[1] *Automatic exchange of information (AEOI – criterion 1.1)* – Initially, this criterion was considered fulfilled when a jurisdiction had the arrangements in place to automatically exchange information on financial accounts with all EU Member States. This could be achieved either by signing up to the OECD Common Reporting Standard (CRS), or through bilateral arrangements. In addition, the CoCG decided to take into account the Global Forum's peer review assessments of jurisdictions' legal framework to implement the AEOI determinations in its listing process, asking jurisdictions to make a commitment to address these determinations when they were negative ('not in place'). Jurisdictions that do not make or do not fulfil the commitment are then proposed for inclusion on the list. In the future, the group also plans to take into account the peer review ratings that the Global Forum will issue on the effectiveness of the exchanges under the CRS.

[2] *Preferential tax regimes (criterion 2.1)* – The screening of jurisdictions' preferential tax regimes is carried out in coordination with the OECD Forum on Harmful Tax Practices (FHTP), which performs a very similar exercise. Unlike the FHTP, the Code of Conduct Group (CoCG) also subjects regimes that cover manufacturing activities, regimes that exempt incomes from a foreign source from taxation and regimes that provide for notional interest deductions to a screening to determine whether these regimes have any harmful features. If either the CoCG or the FHTP finds a regime of a jurisdiction to be harmful, that jurisdiction is then asked to make a commitment to amend the regime's harmful aspects or to abolish the regime. Jurisdictions that do not make or do not fulfil the commitment are then proposed for inclusion on the EU list.

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scope of the EU listing exercise only recently and has been subject to the Code of Conduct Group screening process since December 2023.

Following the revision, Annex II (the grey list) now includes the following eight jurisdictions: Antigua and Barbuda, Belize, the British Virgin Islands, Brunei Darussalam, Eswatini, the Seychelles, Türkiye and Vietnam.

No changes were made to Annex I of the EU list of non-cooperative jurisdictions, which continues to include the following eleven jurisdictions: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

The revision will take effect from the day of publication in the Official Journal of the European Union. The next update of the EU list of non-cooperative jurisdictions is expected to take place in October 2025.

For more information, please refer to the Council press release and our previous coverage in E-News Issue 201.

European Commission

Work program 2025 released

On February 11, 2025, the European Commission published its work program 2025 outlining its ambition to boost competitiveness, enhance security, and bolster economic resilience in the EU.

From a direct tax perspective, key takeaways include:

- announcement of a so-called “Omnibus simplification packages” aiming to reduce reporting burdens by 25 percent for all companies and by 35 percent for SMEs;
- announcement of a proposal for a so-called "28th legal regime," which would allow innovative companies to operate across the EU under a single set of rules, simplifying corporate law, insolvency, labor law, and also taxation;
- finalization of the ATAD evaluation is expected in the fourth quarter of 2025;
- previous Directive proposals including DAC 9, BEFIT, Transfer Pricing Directive, DEBRA, Unshell, Digital Services Tax proposal, Significant Digital Presence proposal, and the Financial Transaction Tax continue to be listed as pending files.

For more information, please refer to Euro Tax Flash Issue 555.

Public consultation on DAC7 Implementing Regulation

On February 4, 2025, the European Commission launched a public consultation on a draft implementing regulation, amending Implementing Regulation (EU) 2015/2378 to the Council Directive (EU) 2021/514 (DAC7). The draft implementing regulation aims to provide standard forms and computerized formats to be used in relation to DAC7. The draft regulation especially aims to specify:

- that Member States have to submit statistical data in relation to information reported by digital platform operators before April 1 each year;
- the types of statistics to be provided in relation to joint audit such as: statistics on forms of administrative cooperation, including on joint audits, simultaneous controls, the number of requests for notification sent and received, the number of requests for feedback sent and received and the number of feedback sent and received.

The consultation runs until March 4, 2025. It is stated that the Commissions’ adoption is scheduled for the first quarter of 2025.

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European Parliament

FISC Subcommittee on Tax Matters - Exchange of views with Commissioner Hoekstra

On February 6, 2025, the European Parliament's Subcommittee on Tax Matters (FISC) held a public exchange of views with the Commissioner for Climate, Net-Zero and Clean Growth, Mr. Wopke Hoekstra.

Key takeaways from the discussion include:

- *Pillar Two:* Commissioner Hoekstra expressed his regrets in respect of the US position on the global Pillar Two agreement that was issued as part of a memorandum in January 2025.[3] The Commissioner assured the FISC that the EU will not withdraw from the global Pillar Two agreement and will stick to its commitments. Nevertheless, he noted that the European Commission is willing to explore possible responses at the level of the OECD Inclusive Framework and to proactively engage with EU Member States with a view to avoid uncertainty for businesses operating in the EU.

- *Pillar One and Digital Services Tax:* Commissioner Hoekstra also reaffirmed the EC's commitment to reaching a global agreement on Pillar One with a view to ensure a fair contribution of the digital economy. However, the Commissioner noted that he cannot predict at this stage whether such businesses will eventually be brought into the scope of taxation as a result of an international agreement, whether there is sufficient room to agree on such measure at European level, or whether EU Member States will in the end apply "roughly similar" unilateral Digital Services Tax regimes "with differences because of national ramifications".

- *Transfer Pricing Directive:* Commissioner Hoekstra noted that the proposal has been blocked at the level of the Council. However, the Commissioner noted that he is not prepared to give up on the proposal as he considers this to offer added value for the EU. At the same time, he confirmed that the Commission is working with EU Member States on an alternative "soft law" solution in form of a new EU Transfer Pricing Platform.

- *Existing and pending tax files:* Commissioner Hoekstra indicated the Commission's aim to streamline the Anti-Avoidance Directive (ATAD) and improve the exchange of information for tax purposes with a view to tackle complexity and red tape. The Commissioner further noted that the Commission will continue its work on current legislative proposal including the BEFIT initiative, which he considers to be an initiative that would enhance the EU's competitiveness.

- *Competitiveness Compass and Clean Industrial Deal initiative:* Commissioner Hoekstra referred to the recent Competitiveness Compass release by the European Commission identifying measures to boost competitiveness – see E-News Issue 206. He noted that the Commission will present its Clean Industrial Deal initiative by end of February 2025 with the aim to boost industrial competitiveness and strengthen decarbonization. According to the Commissioner, this will likely include recommendations on immediate expensing and accelerated depreciation incentives with a view to encourage businesses to invest in clean tech production. He further noted that the Clean Industrial Deal initiative will consider updating the State aid Framework to ensure that it is fit for purpose.

For more information, please refer to the European Parliament press release and Commissioner Hoekstra's introductory speech.

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[3] The US memorandum from January 20, 2025 stated that any commitments made by the prior administration on behalf of the US on the global Pillar Two agreement does not have an effect in the US, absent an act by Congress. The memorandum also instructs the Treasury Secretary to investigate whether any foreign countries are not in compliance with any tax treaty with the United States or have any tax rules in place or are likely to put tax rules in place that are extraterritorial or disproportionately affect American companies.

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European Parliament adopts position on DAC9 proposal

On February 12, 2025, Members of the European Parliament (MEPs) adopted a resolution on the proposal for a Council Directive to amend Directive 2011/16/EU on administrative cooperation in the field of taxation to establish a framework for the exchange of information under the EU Minimum Tax Directive (DAC9).

The resolution approves the Commission proposal and calls on the Council to notify the Parliament if it intends to depart from the text as approved by the Parliament.

Note that resolutions adopted by the European Parliament with regard to proposals based on Article 115 of the Treaty on the Functioning of the European Union (TFEU) do not have a binding effect on the Council. However, European Parliament resolutions must be taken into account by the European Commission and Member States when proposing or agreeing to new rules.

For more information on DAC9, please refer to Euro Tax Flash Issue 551.

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OECD and other International Organisations

Key Insights

- OECD: Results of BEPS Action 5 (harmful tax practices) peer reviews issued
- United Nations: Organisational session in respect of the UN's Framework Convention on International Tax Cooperation.

OECD

Results of BEPS Action 5 (harmful tax practices) peer reviews issued

On February 5, 2025, the OECD published new conclusions reached by the Forum on Harmful Tax Practices (FHTP), as part of their on-going review of the implementation of the BEPS Action 5 minimum standard on harmful tax practices.

The update includes the following assessments:

- Preferential regimes in Barbados, Croatia, Fiji, Hong Kong (SAR, China) and Trinidad and Tobago were found as 'not harmful'.
- The original income communication technology business investment incentives in Fiji and the digital tax incentives in Malaysia remain under FHTP review.
- The free trade zones regime in Trinidad and Tobago was abolished with a grandfathering period that ended on December 31, 2024.

In addition, the FHTP concluded its fourth annual monitoring process for the effectiveness in practice of the substantial activities requirements in no or only nominal tax jurisdictions. The results published also include the FHTP's review of legislation, regulations and guidance issued since the June 2019.

According to the release, the number of regimes reviewed by the FHTP has now reached 332 with more than 40 percent of reviewed regimes currently being phased out or abolished.

For previous coverage, please refer to E-News Issue 201.

United Nations

UN International Tax Cooperation – Organisational session of the Intergovernmental Negotiating Committee

On February 3 to 6, 2025, the Intergovernmental Negotiating Committee held an organisational session in respect of the UN's Framework Convention on International Tax Cooperation.

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In accordance with the terms of reference (ToR) for a framework convention on international tax cooperation – as adopted by the UN General Assembly on December 24, 2024 - the session aimed to conclude organizational matters, including decision-making rules of the Committee, and decide on the subject of the second early protocol.

Key takeaways include:

- *Decision-making process:* it was agreed that efforts are to be made to make decisions by consensus. Where consensus is not possible, decisions on substantive matters within the protocols will require a two-thirds majority, while matters within the broader convention will be subject to majority voting.
- *Priority areas:* it was agreed by consensus to select "prevention and resolution of tax disputes" as the area of focus for the second early protocol. In parallel, a protocol to address taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy will be drafted, which had already been agreed on in the ToR. The other areas under consideration (i.e., taxation of the digital economy, measures against illicit financial flows, and taxation of high-net-worth individuals) remain on the agenda for future protocols.

In the beginning of the session, the United States announced its withdrawal from the negotiation process on the UN Framework Convention. In addition, EU countries reiterated their view that agreement on substantive matters should be made by consensus and a consensus-based decision-making process should be adopted. According to the statement of the Polish Council Presidency on behalf of the EU Member States, a simple majority decision-making process might have affected EU Member States willingness to participate in the future convention.

For previous coverage, please refer to E-News Issue 204.

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Local Law and Regulations

Key Insights

- United Arab Emirates releases legislation implementing Pillar Two rules
- Denmark and France propose amendments to their Pillar Two legislation
- Ireland publishes updated guidance on Pillar Two
- Belgium publishes federal coalition agreement including several direct tax measures
- Danish government and other parties agree on green investment window
- France publishes Finance Act 2025
- Germany publishes statistics on exchange of tax information between countries
- Lithuania publishes guidance on dividend taxation
- The Netherlands publishes clarifications on the revaluation obligation on asset transfers within a fiscal unity
- Poland proposes amendments to Polish mandatory disclosure rules for potentially aggressive tax arrangements and publishes updated list of jurisdictions with harmful tax regimes
- Slovakian government approves draft bill implementing DAC8 and Slovakian Parliament approves second amendment to financial transaction tax act

Belgium

Federal coalition agreement published including several direct tax measures

On January 31, 2025, the new Belgian federal government published its Federal Coalition Agreement 2025-2029. From a direct tax perspective, key takeaways include:

- *Group contribution regime* – Extension of the group contribution regime (i.e., a regime that allows qualifying entities to transfer taxable profits to a loss-making group entity) to take into account also indirect participations for the assessment whether the 90 percent participation requirement is met. Furthermore, although not further clarified, it is stated that new companies will no longer be excluded from the regime – note that currently a five-year holding requirement applies.

- *Participation exemption* – The dividends-received deduction regime (DBI-regime) will be changed into a participation exemption. Under the current DBI regime, dividend income is first included in the taxable profit, and – provided all requirements are met, 100 percent of the dividend income may be deducted from the taxable profit. Further, under the current rules the dividends should result from a participation of at least 10 percent or EUR 2.5 million of the capital that is held for at least 12 months. Although the exact details of the proposed participation exemption regime are not clarified yet, it is stated that the minimum participation condition of 10 percent remains unchanged under the new exemption regime. Moreover, the alternative participation condition on the minimum acquisition value of EUR 2.5 million is increased to EUR 4 million and will be accompanied by a requirement that the participation must constitute a financial fixed asset.

- *Investment deduction* – The investment deduction, which allows taxpayers to deduct a percentage of the acquisition value of the investment (on top of the annual depreciation), will be extended as follows:
  - The thematic deduction for assets related to energy, mobility and the environment will be increased from 30 percent to 40 percent for large companies (already the case for small companies). For more information on the investment deduction please refer to E-News Issue 205.

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- It is intended that the unused investment deductions could be carried forward indefinitely (i.e., where a taxpayer has insufficient taxable income in a period to offset against the entire available investment deduction).

- *Accelerated depreciation* – the possibility for companies to accelerate the depreciation of certain investments, for example in research and development, defense, and the energy transition is envisaged. For large companies, this involves a temporary system where 40 percent of the acquisition value can be depreciated in the first year. For SMEs, the option to apply degressive depreciation will be reintroduced.

- *Research and development* – The regional attestation requirement for the R&D investments deduction (an attestation from the competent authority had to be added to the tax return in order to benefit from the regime), will be eliminated. In addition, companies will be given the opportunity to be recognized as a research center, providing them certainty on a stable fiscal framework in the long term.

- *Sanction regime* – It is stated that taxpayers in good faith should be able to correct their returns without penalties, fines or interest. Moreover, currently in case a tax return is not filed, not filed on time or not correctly filed, both a tax increase and a prohibition to settle taxable profits with certain deductions, such as tax losses, could be imposed by the Belgian tax authorities. It is proposed that the prohibition to apply deductions in case of non-compliance will only be applied in case of repeated infractions provided a tax increase of at least 10 percent is effectively applied. The sanction will further not apply in case of infractions in good faith or administrative omissions.

- *Exit tax* – The emigration of a legal entity will be treated as a deemed liquidation of the legal entity for tax purposes.

- *Digital services tax* – The coalition will introduce a digital service tax at the latest by 2027, unilaterally or in an EU context. As such, large multinationals providing digital services in Belgium will be taxable even where they do noy have a physical presence in Belgium.

The proposed direct tax measures would apply as from January 1, 2026, unless indicated otherwise.

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

Denmark

Public consultation on various tax measures

On February 3, 2025, the Danish Ministry of Taxation launched a public consultation on a proposed new tax bill, which aims to introduce new rules and amend several existing tax provisions.

Key measures include:

- *Amount B (Pillar One):* The introduction of new rules aimed at aligning Denmark's domestic law with the Pillar One Amount B initiative to simplify and streamline the application of the arm's length principle to baseline marketing and distribution activities. Most notably, the bill would not incorporate the Pillar One Amount B rules directly into law. Instead, it suggests deviating from the general arm's length principle when Danish companies engage in controlled transactions with qualified distributors in countries that have a double taxation treaty with Denmark and have opted for the simplified approach under Pillar One Amount B. For more information on Amount B, please refer to a report by KPMG International.

- *Anti-hybrid mismatch rules:* Changes on the reclassification of transparent entities to independent taxpayers, to prevent the use of transparent entities to achieve hybrid mismatches with the aim that the entity's income is not taxed in any country (i.e., double non-taxation). These changes are proposed to align with the 2015 OECD BEPS Action 2 Report: Neutralising the Effects of Hybrid Mismatch Arrangements.

- *List of non-cooperative jurisdictions:* the bill proposes to align the list of jurisdictions subject to the Danish defensive tax measure with the October 2024 revision of Annex I of the EU list of non-cooperative jurisdictions – see E-News Issue 201. Subject to the adoption of the bill, the following eleven jurisdictions would be included on the Danish list with effect from July 1, 2025: Anguilla, American Samoa, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu. For more details on the EU listing exercise, please refer to KPMG's summary of defensive measures applied by EU Member States against non-cooperative jurisdictions.

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Proposed amendments to Pillar Two law

The new tax bill also includes amendments to the Danish Pillar Two law to incorporate new elements from the OECD Administrative Guidance and to further clarify the Pillar Two rules.

Key highlights include:

- *Incorporation of the OECD* January 2025 *Administrative Guidance*: The bill incorporates additional guidance on the application of article 9.1. of the OECD Model Rules, as provided in the OECD January 2025 Administrative Guidance, including related amendments to the transitional CbyC Reporting Safe Harbour and QDMTT Safe Harbour.
- *Incorporation of the OECD* June 2024 *Administrative Guidance*: The bill also incorporates elements from the OECD June 2024 Administrative Guidance, including rules on allocating cross-border current and deferred tax expenses, as well as the updated guidance on DTL recapture rules.
- *Administration*: The current law requires top-up taxes to be paid within 16 months after the last day of the reporting year (19 months for the transitional year). The draft law would extend these payment deadlines by one month, i.e., top-up tax payments would be due within 17 months after the last day of the reporting year (20 months for the transitional year).

Comments are due by March 3, 2025. The amendments would enter into force on July 1, 2025, and would apply to fiscal years starting on or after December 31, 2023.

For previous coverage on Danish registration and notification requirements under Pillar Two, please refer to E-News Issue 206.

Government and other parties agree on green investment window

On January 31, 2025, the Danish government announced that it, together with other political parties, reached agreement on the design of a so-called ‘green investment window’, which introduces a tax allowance for green investments. The green investment window aims to accelerate the green transition and create more green jobs. Key takeaways include:

- Based on the agreement, the depreciation basis for eligible green investments will be increased by 8 percent. The increased depreciation base means that a company can deduct 108 percent of the cost of the investment over a number of years.
- The investment window applies retroactively to investments made in the period January 1, 2025 up to and including December 31, 2026, in new operating assets that are used exclusively for business purposes.
- Expenses for the acquisition of machinery powered by fossil fuels, as well as expenses for the acquisition of passenger cars, ships and software are not covered by the increased depreciation base.

The content of the agreement will be transposed into draft legislation, which will be subject to approval by the Danish Parliament. However, due to the nature of the agreement (a voting agreement) it is expected that all parties to the agreement will vote in favor of the relevant legislation.

France

2025 French Finance Act published

On February 15, 2025, the 2025 French Finance Act was published in the Official Gazette. The law is closely aligned with the previous government's proposed 2025 Finance Bill (for previous coverage, please refer to E-News Issue 201), which had been introduced in October but was subsequently delayed following the resignation of the former Prime Minister.

Key highlights include:

- introduction of an exceptional surtax on corporate income tax on large companies with sales revenues of EUR 1 billion or more. The surtax applies at a rate of 20.6 percent for companies whose turnover is less than EUR 3 billion for two

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consecutive years (i.e., the financial year with respect to which the surtax is due and the preceding financial year), and a rate of 41.2 percent for companies with a turnover of EUR 3 billion or more in the tested financial years);

- introduction of a special contribution at a 12 percent rate on large shipping companies applying the tonnage tax regime, with sales revenues of EUR 1 billion or more, for the first financial year ending on or after December 31, 2025. The special contribution will be calculated based on the average operating profits the company made during the current and previous fiscal years;
- the introduction of a tax on capital reductions resulting from share buy-backs, which will be taxed at a rate of 8 percent;
- an increase of the financial transaction tax rate from 0.3 percent to 0.4 percent;
- transposition of the Council Directive (EU) 2023/2226 on the automatic and mandatory exchange of tax information concerning digital assets (DAC8) into domestic law.

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

2025 French Finance Act amends anti-abuse provisions on income distributed from France to non-residents

The 2025 French Finance Act introduced several amendments to Article 119 bis 2 of the French Tax Code that provides for a French withholding tax (WHT) on income distributed from France to non-residents.

The term of 'beneficiary' was replaced with 'beneficial owner'

With regards to the applicability of WHT on income distributed to non-residents, the term 'beneficiary' was replaced with 'beneficial owner.' The use of this term stems from rulings issued by the French tax authorities, which were later annulled by the French Supreme Court. The latter had held at that time that the French tax authorities can not apply a concept that is not explicitly codified it the law (*Conseil d'État, 8 December 2025, n°472587*). However, neither the law, Parliamentary discussions, nor related case law provide a clear definition of 'beneficial owner.' The change applies starting February 16, 2025.

Extension of the anti-abuse rule applicable to dividend arbitrage

Article 119 bis A of the French Tax Code has also been amended to expand the anti-abuse rule applicable to dividend arbitrage and extend the scope of the related withholding tax.

Prior to the 2025 French Finance Act, the article treated manufactured dividend payments made to any non-resident by a French resident or entity established in France under stock lending arrangements (and certain similar transactions) as dividend payments where the temporary transfer of securities lasted less than 45 days.

The revised article extends the application of French WHT to any payment ('versement') or vested transfer of value derived from shares made by a French resident or entity established in France to a non-resident. The law now applies to "an agreement or financial instrument that, directly or indirectly, provides the non-resident with an economic effect similar to the holding of the said shares or units." Notably, the previous duration requirement has been removed. In line with the ruling issued by the French Supreme Court, WHT is due "when the payment is made in the case of a single payment, or when an agreement on the object and price of all transactions resulting in the transfer of value (...) has been reached". A claim can be filed by the recipient if the latter can demonstrate that the main purpose of the transaction was not to avoid the WHT. The change applies starting February 16, 2025.

The new law also creates an exception with respect to the relief at source available under double tax treaties (DTTs): when the instalment or vested transfer of value is made to a recipient benefiting from a zero rate under a DTT, the relief at source should not be available. The recipient should be able to file a claim to get the refund of the WHT if it can demonstrate that all the conditions of the double tax treaty are met. The exception applies as from January 1, 2026.

Pillar Two amendments in the 2025 French Finance Act

The 2025 French Finance Act (FFA) also includes several amendments to the French Pillar Two legislation (which has been in force since 2024), most notably to implement the OECD December 2023 Administrative Guidance into French domestic law.

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Key takeaways include:

- *DMTT:* The act amends the current domestic minimum top-up tax (DMTT) rules with a view to aligning them with the OECD QDMTT guidance. As a result, cross-border taxes, such as CFC taxes that would be allocated to domestic Constituent Entities under the regular GloBE rules, would need to be excluded for DMTT purposes. In this context, the FFA also removes the option to choose the accounting standard for purposes of calculating the DMTT. Instead, the DMTT needs to be calculated using the accounting standard of the UPE, except where it is not reasonably practicable to use such accounts (in accordance with Articles 3.1.2 and 3.1.3 of the Model Rules).
- *QDMTT Safe Harbour:* the current legislation provides for a QDMTT Safe Harbour designed in line with article 11(2) of the EU Minimum Tax Directive. The act replaces the existing rules with a QDMTT Safe Harbour as per the OECD July 2023 Administrative Guidance, including a reference to the outcomes of the OECD Inclusive Framework peer review process.
- *Other Safe Harbours:* the act includes amendments to the Transitional CbyC Reporting Safe Harbour to align it with the OECD December 2023 Administrative Guidance (including anti-hybrid arbitrage rules that apply to transactions entered into after December 15, 2022). The act also introduces the Simplified Calculation Safe Harbour for Non-Material Constituent Entities.
- *Administration:* the act introduces a joint and several liability for the top-up tax due between the Constituent Entities subject to the DMTT and the designated constituent entity liable to pay the tax.

The amendments would apply to financial years ending on or after December 31, 2024.

For previous coverage on French notification and filing requirements under Pillar Two, please refer to E-News Issue 206.

Germany

Statistics on exchange of tax information between countries

On February 17, 2025, as part of a response to parliamentary questions, the German government published statistics on the information exchange of tax information between Germany and other jurisdictions. Key takeaways include:

- *Country-by-Country Reporting (DAC4):* the response shows that, since October 26, 2021, Germany transmitted to other EU countries a total of 17,356 datasets containing CbyC information, with the highest amount of CbyC datasets being transmitted to Austria, France, Italy, the Netherlands, Poland and Spain (approximately 1,100 datasets each). In the same period, Germany received in total 3,875 datasets from other EU countries. The response clarifies that the number of transmitted CbyC reports is higher than the number of datasets received as the former takes into account multiple transmissions with respect to the same CbyC report (given that the CbyC information is shared with other countries on a separate and individual basis).
- *Reporting of cross-border arrangements (DAC6):* the response shows that, between October 26, 2021, and January 30, 2025, Germany transmitted to the EU Central Register 19,814 datasets on cross-border arrangements. In the same period, Germany received 1,275 datasets from the EU Central Register that were filed in other EU countries. The response further clarifies that 15,018 disclosures of cross-border arrangements have been subject to a legal policy evaluation in Germany. According to the government, this has led to the identification and closure of loopholes in the tax laws. The response notes that the German government does not have knowledge of the number of initiated tax audits, the amount of penalties imposed, or the amount of additional tax revenue generated as a result of the DAC6 reporting obligation in Germany.
- *Reporting rules for digital platform operators (DAC7):* the response shows that, in 2024, Germany transmitted to other EU countries in total 44,376 datasets of seller information collected from digital platform operators. The highest amounts of datasets were transmitted to Italy (12,385), Spain (9,790) and France (7,896). In the same period, Germany received in total 448 datasets from other EU countries. According to the response, a total of 14 digital platform operators have been audited with respect to their compliance with the reporting obligations. The government further clarifies that no violations have been reported to the Federal Tax Office department for fines and criminal matters. The response also notes that the German government does not have knowledge of the amount of additional tax revenue generated as a result of the DAC7 reporting obligation in Germany.

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For previous coverage on tax reporting statistics in Germany, please refer to E-News Issue 178.

Ireland

Updated Pillar Two guidance

On February 17, 2025, the Irish Revenue published updated guidance on the application of the Irish minimum taxation rules (Pillar Two) to reflect certain amendments introduced by the Finance Act 2024. Key changes were made to the sections covering:

- the application of certain provisions relating to deferred taxes;
- the allocation of certain covered taxes to hybrid and reverse hybrid entities;
- the application of the transitional CbyC Reporting Safe Harbour (including anti-hybrid arbitrage rules);
- the application of the permanent Simplified Calculations Safe Harbour for Non-Material Constituent Entities;
- the exemption of standalone investment undertakings for DMTT purposes;
- the treatment of securitisation entities for DMTT purposes.

For previous coverage, please refer to E-News Issue 204 and Issue 200.

Guidance on charges on income for corporate tax purposes updated

On January 31, 2025, the Irish Revenue published updates to the tax and duty manual on charges on income for corporate tax purposes. Charges on income are deductions on income paid by a company against its total profits.

In the event that certain interest costs are not deductible from trading profits based on Irish tax law, the interest charges may qualify for the relief as a charge on income. In that case, provided all requirements are met, the interest costs may be deducted from the total profit of the company.

For more information, please refer to Irish Revenue's eBrief 030/25.

Lithuania

Guidance on dividend taxation published

The corporate income tax rate in Lithuania increased from 15 percent to 16 percent from January 1, 2025, as part of a new defense fund package (please refer to E-News Issue 199 for more information). The CIT rate increase also affected the standard rate for dividend taxation. These changes to the dividend taxation have been further clarified by recent guidance published by Lithuania's State Tax Inspectorate.

Key takeaways include:

- Dividends paid by Lithuanian entities to Lithuanian or foreign shareholders are subject to a withholding tax (WHT) rate of 16 percent rate as from January 1, 2025 (before 15 percent). The obligation to withhold and pay this tax to the tax authorities lies with the Lithuanian entity paying the dividends. The WHT on dividends must be paid no later than the 15th day of the month following the month in which the dividends were paid.
- Foreign shareholders that are entitled to relief from withholding tax under a tax treaty between Lithuania and their jurisdiction of tax residency may benefit from the reduced rates available by filing an application form for the reduction of the WHT (the DAS-1 form) with the dividend paying entity. Where the DAS-1 application form was not initially provided, the foreign shareholder can apply for a refund of the excess WHT using the DAS-2 application form.
- Lithuanian entities receiving dividends from foreign entities will also be subject to the 16 percent CIT rate as from January 1, 2025 (before 15 percent). The obligation to pay corporate income tax to the tax authorities by the 15th day

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of the following month lies with the Lithuanian entity receiving the dividends. The guidance also clarifies that double taxation on foreign-sourced dividends can be mitigated in case a tax treaty exists between Lithuania and the jurisdiction of the dividend paying entity. As such, the foreign dividend tax (at the maximum tax rate applicable under the tax treaty) may be deducted from the Lithuanian corporate income tax. If no tax treaty exists, a reduction may be claimed according to domestic law, provided the relevant conditions are met.

- If dividends are received from controlled foreign companies (CFCs), only the amount of dividend income exceeding the CFC income already subject to CFC taxation at the level of the Lithuanian entity will be subject to 16 percent corporate income tax.
- Dividends declared in 2024, but not actually paid before December 31, 2024, will be subject to the increased 16 percent rate. This applies to both Lithuanian and foreign entities receiving dividends.

Netherlands

Clarifications on the revaluation obligation on asset transfers within a fiscal unity published

On February 5, 2025, the Dutch Ministry of Finance published clarifications on the application of the hardship clause (based on which an exception to the provisions laid down by law can be provided by the tax authorities) in the situation of asset transfers in the context of a liquidation of a company within a fiscal unity.

In principle, a transfer of assets between members of a fiscal unity is not subject to tax. However, Dutch tax law includes a revaluation obligation for assets transferred within a fiscal unity where the fair market value of the assets at the time of the transfer exceeds the book value, while the transferor and/or transferee are excluded from the fiscal unity a relatively short period after the transfer.

The clarifications include the example of a fiscal unity between a parent entity, a subsidiary and a sub-subsidiary. Upon the dissolution and liquidation of the sub-subsidiary, assets were transferred to the intermediary within the fiscal unity (the revaluation obligation was not triggered here based on Dutch tax law). Subsequently, the fiscal unity between the parent entity and the intermediary ended due to the parent entity no longer meeting the relevant requirements, which would normally trigger the revaluation obligation.

It is clarified that, based on the hardship clause, the revaluation obligation for transferred assets does not apply in case of the termination of the fiscal unity where the subsidiary previously received assets as a consequence of a liquidation of a sub-subsidiary within the fiscal unity. It is stated that applying the sanction in this context does not align with the aim and purpose of the regulation.

Poland

Proposed amendments to Polish mandatory disclosure rules for potentially aggressive tax arrangements

On February 17, 2025, the Polish Ministry of Finance proposed amendments to the Administrative Tax Code (Ordynacja Podatkowa) including changes to the mandatory disclosure rules for potentially aggressive tax arrangement (MDR).

Note that while the MDR provisions introduced in Poland incorporate the requirements of EU Directive 2018/822 (DAC6) into Polish law, the legislation extends beyond the minimum requirements imposed by DAC6 to cover a wider scope of potentially reportable arrangements (i.e., including reporting requirements for domestic arrangements).

Key proposed amendments include:

- *Legal professional privilege:* the proposal includes changes in respect of the requirement for intermediaries, who are subject to legal professional privilege, to report arrangements to the Polish tax authorities and to notify other intermediaries of their reporting obligation under DAC6 (in accordance with the CJEU decision of December 8, 2022 and the respective amendments included in the EU Directive 2023/2226 (DAC8). It is proposed that legal counsels, attorneys, tax advisers and patent attorneys should be exempt from the obligation to report arrangements and therefore only be required to inform their clients of their reporting obligation under DAC6.

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- *Regulations:* the amendments would empower the Ministry of Finance to issue regulations on the scope of the reporting obligations including exemptions for certain domestic arrangements.
- *Filing:* the amendments propose the removal of the obligation to report MDR-2 notifications (i.e., simplified report submitted by promoters and supporters in cases of doubt or in cases where legal professional privilege applies). In addition, the amendments propose to limit the requirement to submit the MDR-3 form (i.e., disclosure of how often a reportable arrangement was used by the taxpayer and the tax benefit amount resulting from the reportable arrangement) and allow submission of same by a proxy.
- *Penalties:* the amendments would reduce the applicable fines from 720 to 240 daily rates for non-compliance with the MDR reporting obligations (i.e., failure to submit or late submission of MDR information). The amendments further propose the removal of sanctions for not providing arrangement details to the reporting entity and for failures to request a written statement confirming that an arrangement does not constitute a reportable arrangement.

The government is expected to adopt the proposal in the second quarter of 2025.

Updated list of jurisdictions with harmful tax regimes published

On December 24, 2024, the Polish Ministry of Finance published the updated list of jurisdictions with harmful tax regimes. This follows the previous public consultation on the draft bill, for our previous coverage, please refer to E-News Issue 204.

In comparison to the previous update in 2019, Andorra has been removed. As a result, the list includes the following 26 jurisdictions with effects from January 1, 2025:

Anguilla, Antigua and Barbuda, Bahrain, the British Virgin Islands, the Cook Islands, Curaçao, Dominica, Grenada, Hong Kong (SAR, China), Liberia, Macau, the Maldives, the Marshall Islands, Mauritius, Monaco, Nauru, Niue, Panama, Saint Lucia, Samoa, Sark, Seychelles, Sint Maarten, Tonga, the US Virgin Islands and Vanuatu.

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

For more details on defensive measures adopted by EU Member States against non-cooperative jurisdictions, please refer to the dedicated report from KPMG's EU Tax Centre.

Slovakia

Government approves draft bill implementing DAC8

On January 31, 2025, the Slovakian government approved the draft bill to transpose Council Directive (EU) 2023/2226 (DAC8) into domestic law. This follows the previous public consultation on the draft bill, which ended on December 13, 2024.

Amongst others, the bill introduces rules on due diligence procedures and reporting requirements for crypto-asset service providers. The rules should generally apply to reporting periods starting from January 1, 2026.

For our previous coverage, please refer to E-News Issue 204.

Parliament approves second amendment to financial transaction tax act

On February 5, 2025, the Slovakian Parliament approved a second amendment to the Financial Transaction Tax (FTT). The amendment applies from January 1, 2025. Key takeaways include:

- Extension of the scope of exemptions from the scope of the FTT (e.g., the healthcare supervision authority, certain diplomatic missions and consular offices, certain schools and school facilities).
- Extension of the scope of financial transactions excluded from the FTT (e.g., certain payments made by attorneys).
- The provisions with regard to the recharge of costs are further specified. Recharged costs related to the execution of financial transactions are also subject to the financial transaction tax. It is now clarified that the taxpayer may deduct

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the financial transaction tax already paid by the person recharging the costs, when calculating the transaction tax from recharged cost.

For more information, please refer to a report prepared by KPMG in Slovakia and our previous coverage in E-News Issue 205.

United Arab Emirates

Legislation implementing Pillar Two rules released

On February 8, 2025, the UAE released Cabinet Decision No. 142 of 2024 providing detailed legislative provisions for the implementation of a Domestic Minimum Top-up Tax (DMTT) under Pillar Two.

Key highlights of the new law include:

- *DMTT*: The legislation closely aligns with the OECD Model Rules and introduces a DMTT for fiscal years starting from January 1, 2025. The IIR and UTPR are not included in the legislation.
- *OECD Administrative Guidance*: The legislation incorporates elements from the OECD Administrative Guidance released in February 2023, July 2023, and December 2023. This includes guidance on sovereign wealth funds, the treatment of debt releases, currency conversion rules, and guidance on the substance-based income exclusion.
- *Safe Harbours:* The legislation introduces the transitional CbyC Reporting Safe Harbour and the permanent Simplified Calculation Safe Harbour for non-material constituent entities, as per the OECD December 2023 Administrative Guidance. This also includes the anti-hybrid arbitrage rules that apply to transactions entered into after December 15, 2022.
- *Administration:* Entities within scope and domestic designated entities are required to register with the Federal Tax Authority. The deadline for registration has not yet been determined. The legislation also requires the filing of a DMTT top-up tax information return and a GloBE Information Return within 15 months after the end of the reporting fiscal year (18 months for the transitional year). The DMTT liability must be paid within the same deadline. Further details are expected to be released, describing the format and process for filing and payment.

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

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Local courts

Key Insights

- French Court of Appeal denies tax losses carry back after business transformation
- UK FTT dismisses cross-border group relief appeal on ‘main purpose’ grounds

France

Court of Appeal denies tax losses carry back after business transformation

On November 14, 2024, the Administrative Court of Appeal of Toulouse (the Court) issued a decision on the possibility to carry back tax losses after a business transformation. The plaintiff was a French company that, in November 2012, sold its business activity, changed its name and shifted its activity from manufacturing to real estate. Subsequently, the plaintiff sought to offset a tax loss incurred in 2013 against its 2012 taxable income. The French tax authorities challenged the use of the loss on the grounds that the plaintiff underwent a substantial change in business operations.

The Court took the view that, despite the fact that the plaintiff retained its legal form and business register identification number, the plaintiff could not be considered the same entity before and after the transformation. Consequently, the Court denied the carry back of tax losses.

United Kingdom

Cross-border group relief appeal dismissed

On January 20, 2025, the UK First-tier Tribunal (FTT) issued a decision on the applicability of cross-border group relief with respect to losses incurred by an Irish subsidiary of an UK group.

The plaintiff was a UK banking group that, during the 2008–2009 global financial crisis, acquired a bank operating in Ireland as part of a larger acquisition. The Irish bank had extensive exposure to the Irish property sector and incurred substantial losses, partly due to this exposure. In 2010, the UK banking group exited the Irish market through a cross-border merger between one of its UK subsidiaries and the Irish bank. The plaintiff then claimed cross-border group relief for the period ending December 31, 2010. HMRC denied the claim on several grounds, including that one of the qualifying conditions for cross-border relief was not met – specifically, that the ‘main purpose or one of the main purposes’ of structuring the merger was to take advantage of the Irish bank’s tax losses.

The FTT performed an extensive analysis of the facts in relation to the application of the main purpose test. On the facts as found, the FTT held that the main purpose or one of the main purposes of the arrangements for the plaintiff’s exit from Ireland by way of cross-border merger was to claim cross-border relief for the losses incurred by the Irish bank. The factors based on which the FTT made its decision included:

- *Timing of the merger:* whilst both HMRC and the FTT accepted the fact that the plaintiff had valid commercial reasons to exit Ireland, the FTT noted that the December 31, 2010, deadline to exit Ireland was determined by the potential tax benefits.

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- *Alternative options and choice of selecting the merger:* the FTT took the view that the mechanism for exiting Ireland and the rejection of alternative options was driven by the potential tax benefits provided by the cross-border merger solution.
- *Structure of the merger:* The FTT took the view that the structure of the merger was designed to avoid any risk of the Irish subsidiary being deemed to have a permanent presence for tax and regulatory purposes in Ireland following the transfer of all assets and liabilities as part of the merger. The design was made in order to ensure that the Irish losses qualified as 'final' – i.e., they could no longer be used in Ireland and would therefore be eligible for cross-border relief.
- *Tax planning and advice:* The FTT took the view that extensive tax planning and legal advice were taken by the group, with references to tax planning and benefits being removed or downplayed in final documents and discussions were held face-to-face or via telephone to avoid written references to tax.

Based on the above, the FTT concluded that the plaintiff failed the 'main purpose' test, and rejected the claims for cross-border group relief.

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

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EU Financial Services Tax Perspectives Webcast – February 25, 2025

The European Commission is set to launch their new work program on February 11, where a number of new initiatives could be announced/clarified. Throughout 2025 we are expecting significant tax policy change from both the US and Germany and France's tax policies may need to adapt to political realities. Pillar Two is now 1 year old and the international landscape continues to evolve. So what implication might these developments have for financial services institutions? How best can they navigate the challenges in the year ahead?

On February 25, 2025, a panel of KPMG tax specialists will share their insights with respect to some of the latest proposals that are likely to impact asset managers, banks and insurers, including a closer look at:

- Status of key tax initiatives including FASTER – practical issues and insights from EU Commission working group.
- Latest developments impacting Financial Services institutions across Europe with a spotlight on the US, France and Germany.
- Pillar 2 ... 1 year on – key priorities and predictions for 2025.

Please access the event page to register.

Recent Pillar Two releases by the Inclusive Framework on BEPS

On January 15, 2025, the Inclusive Framework on BEPS released a series of documents on the application of the GloBE Rules. The primary focus is compliance and reporting obligations, though there was also some limited additional Administrative Guidance that amends certain aspects of the Commentary to the GloBE Model Rules.

The release covered five items:

- Revised GIR including Administrative Guidance on Articles 8.1.4 and 8.1.5, covering the rules that should be relied upon to complete the GIR.
- GIR Multilateral Competent Authority Agreement ("GIR MCAA") which will provide a framework for jurisdictions that are signatories to the Convention on Mutual Administrative Assistance in Tax Matters to automatically exchange the GIR.
- GIR XML Schema and User Guide for Tax Administrations, which has been designed to facilitate the exchanges of GIR information between tax administrations but can also be used for domestic GIR filings where permitted by tax administrations.
- Central Record of Legislation with Transitional Qualified Status listing the jurisdictions that have Qualified Income Inclusion Rules (QIIR), Qualified Domestic Minimum Top-up Taxes (QDMTT), or QDMTT Safe Harbours that apply for financial years beginning in 2024.
- Additional Administrative Guidance on Article 9.1 of the Model Rules.

For more information, please refer to the KPMG Tax Policy webpage.

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Recent developments in international tax rules

Recently Grant Wardell-Johnson, Global Tax Policy Leader, KPMG International and Michael Lennard, Chief of the International Tax Corporation Unit of the Financing for Sustainable Development Office, United Nations met to discuss the most recent developments in international tax rules with a focus on the progress made at UN level in respect of international tax cooperation.

Please access the KPMG Tax Policy webpage for a recording of the discussion.

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.

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