



# E-News from KPMG's EU Tax Centre



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**E-News from the EU Tax Centre  
Issue 65 – April 26, 2017**

KPMG's EU Tax Centre compiles a regular update on European Union (EU) direct tax developments that can have both a domestic and a cross-border impact. E-News provides you with EU tax news that is current and relevant to your business including Court of Justice of the European Union (CJEU) case-law that can have domestic implications.

KPMG's EU Tax Centre helps you understand the complexities of EU tax law and how this can impact your business, enabling you to better predict how rules will develop and how to leverage opportunities and minimize risks arising from EU tax law.

**[Latest CJEU, EFTA and ECHR](#)**

**CJEU decision in the case of *Eschenbrenner* (C-496/15)**

On March 2, 2017, the CJEU delivered its decision in the *Eschenbrenner* case regarding the free movement of workers under the Treaty on the Functioning of the European Union (TFEU) in the case of an insolvency benefit paid by Germany to a frontier worker, who worked in Germany but resided in France. The referring court

asked whether the amount of the said insolvency benefit may be determined by deducting a notional income tax, as applicable in Germany, from the remuneration used to calculate that benefit, with the result that the frontier worker, unlike persons working and residing in Germany, does not receive a benefit corresponding to his previous net remuneration. The Court concluded that, even though the frontier worker did not receive a corresponding insolvency benefit, the unfavorable consequence stemmed solely from the differences between the tax rules in Germany and those applicable in France, which was not precluded by the free movement of workers under the TFEU.

#### **CJEU decision in the case of *Wereldhave Belgium and Others* (C-448/15)**

On March 8, 2017, the CJEU rendered its decision in the *Belgische Staat v. Comm. VA Wereldhave Belgium* case, which concerned the applicability of the EU Parent-Subsidiary Directive ('Directive') to a withholding tax imposed by Belgium on dividends paid by a Belgian subsidiary to its Dutch UCITS parent companies. The Court ruled that an investment fund, like the Dutch UCITS in question, does not qualify as a 'company of a Member State' for the purpose of the Directive since, although formally subject to corporate income tax, it is effectively not taxed if all of its profits are distributed to its shareholders. Therefore, the Directive does not preclude Belgium from taxing the dividends.

For more information, please refer to KPMG's [Euro Tax Flash 319](#).

#### **CJEU decision in the case of *Société Euro Park Service* (C-14/16)**

On March 8, 2017, the CJEU rendered its decision in the *Société Euro Park Service* case, which concerned both the freedom of establishment under the TFEU and the EU Merger Directive ('Directive'). In particular, the referring court queried the compatibility of a French provision which subjects the deferral of taxation of capital gains in the case of a cross-border merger within the EU to a process of prior approval, under which the taxpayer must show that the merger concerned is justified by valid commercial reasons and is not carried out for the purposes of tax evasion or avoidance. The French provision in question was adopted to transpose the derogation provided for in Article 11(1)(a) of the Directive, which enables Member States to disallow the tax deferral under the Directive in cases of tax evasion or tax avoidance. The Court ruled that the derogation, being an exception to the general rule, should be interpreted restrictively and that the French provision at issue went beyond what is necessary to prevent tax evasion and tax avoidance and is therefore not compliant with the freedom of establishment and the Directive.

For more information, please refer to KPMG's [Euro Tax Flash 320](#).

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### **Referrals to the CJEU & Infringement procedures**

#### **Referrals to CJEU**

##### **Denmark**

On December 30, 2016, reference was made to the CJEU for a preliminary ruling in the *BEI ApS v Skatteministeriet* case (C-682/16). One of the Danish High Courts, *Vestre*

*Landsret*, asked the CJEU whether the concept of 'beneficial owner', within the meaning of the Interest and Royalties Directive, should be interpreted in accordance with the corresponding concept in the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention and if so, how relevant the 2003 OECD Commentaries regarding 'conduit companies' and the 2014 OECD Commentaries regarding 'contractual or legal obligation' would be.

On December 19, 2016, reference was made to the CJEU by the *Østre Landsret* High Court (Denmark) for a preliminary ruling in the case of *A/S Bevola, Jens W. Trock ApS v Skatteministeriet* ([C-650/16](#)). The CJEU was asked to determine the compatibility of a national taxation measure with the freedom of establishment provision under TFEU. Under the said measure, deductions for losses in branches situated in Member States other than the taxpayer's Member State of residence are not allowed, unless the group has elected for international joint taxation. However, it is possible to make a deduction for losses in domestic branches, with or without the joint taxation scheme.

### Germany

On January 10, 2017, a request for a preliminary ruling to the CJEU was made by the Cologne Tax Court in the case of *Juhler Holding A/S v Bundeszentralamt für Steuern* ([C-613/16](#)). The CJEU was asked whether a German anti-abuse provision was compatible with the freedom of establishment under the TFEU and the anti-abuse provisions set out under Article 1(2) of the Parent-Subsidiary Directive. The said German provision denies a withholding tax refund or exemption on profit distributions to a non-resident parent company, within a group of undertakings actively trading in the Member State in which the parent company is established. It applies to the extent that a) the non-resident parent company's shareholders would not be directly entitled to relief, b) there are no economic or other substantial reasons for its involvement, c) it does not earn more than 10% from its own economic activity and d) it does not participate in general economic commerce with a business establishment suitably equipped for its business purpose.

### Netherlands

On March 3, 2017, the Dutch Supreme Court referred questions to the CJEU for a preliminary ruling in two cases, both of which concern foreign investment funds requesting a refused refund of Dutch withholding tax. The questions regard the compatibility with the free movement of capital under the TFEU of the Dutch provisions under which a non-resident investment fund cannot benefit from a refund of Dutch tax withheld on dividends received from Dutch resident companies, whilst a Dutch resident fiscal investment institution that annually distributes its investment profits to its shareholders would be entitled to a refund. Meijburg & Co acted as legal counsel for the taxpayer in both cases.

For more information, please refer to KPMG's [Euro Tax Flash 317](#).

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## State Aid

### The 2016 State Aid Scoreboard published

On March 15, 2017, the Commission published the [State Aid Scoreboard 2016](#), which comprises aid expenditure falling under the scope of EU state aid rules made by Member States before December 31, 2015. The Scoreboard evidences the benefits of

the State Aid Modernisation package, in particular the new General Block Exemption Regulation, which simplifies aid granting procedures for investment, economic growth and job creation. In addition, according to the Scoreboard, measures that might seriously harm competition or fragment the Single Market are subject to more careful scrutiny, in particular, by requiring the Member States to publish the name of the beneficiary and the amount of aid for each state aid award above EUR 500,000.

### **Action by Hungary to annul Commission decision**

On January 16, 2017, an application was made to the General Court in the case of *Hungary v Commission* ([T-20/17](#)). Hungary asked the court to annul the European Commission decision of November 4, 2016, in which the Commission decided that a legislative act implemented by Hungary, which introduced a new special tax on turnover derived from the publication of advertisements in Hungary, constituted state aid. The Commission is of the opinion that the applied progressive tax rates differentiate between undertakings with high advertisement revenues and those with low advertisement revenues, and grant a selective advantage to the latter based on their size.

### **Luxembourg to support Ireland's appeal over the Apple tax ruling**

On March 28, 2017, it was reported that Luxembourg planned to make an intervention in support of Ireland in its appeal against the Commission's decision on unlawful State Aid concerning the Apple group ([T-778/16](#)). Besides Ireland, the Apple group also lodged an action for annulling the Commission's decision ([T-892/16](#)).

For more information, please refer to KPMG's [Euro Tax Flash 307](#).

### **Commission Decision on Starbucks case published**

The Commission's [decision](#) of October 21, 2015 in the Starbucks case was published on March 29, 2017 in the Official Journal of the European Union. The Commission had ruled that the transfer pricing rulings granted by the Netherlands to companies in the Starbucks group constituted illegal state aid.

For more information on the Starbucks tax ruling, please refer to KPMG's [Euro Tax Flash 262](#).

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## **EU Institutions**

### **EUROPEAN COUNCIL**

#### **Financial Transaction Tax: exemption for pension funds**

On March 20, 2017, a meeting was convened by the Finance Ministers of the 10 EU Member States (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) negotiating the possible introduction of a financial transaction tax. They discussed a possible exemption for pension funds in light of Belgium's and Slovakia's concerns over the impact of the FTT. Three options were considered, namely to keep pension funds within the scope of FTT, to only exempt them from FTT or to have a wide exemption for pension funds, life insurance companies and undertakings for collective investments in transferable securities. A

decision on whether the 10 EU Member States will be moving ahead with the FTT will be made in May 2017.

For more information on FTT, please refer to KPMG's [Euro Tax Flash 306](#).

### **State of play of proposed AMLD5**

The Joint EP Committee Report on the 5th Anti-Money Laundering Directive ('AMLD5') proposal was published on March 9, 2017 and tabled at the European Parliament on the same day. The resulting trilogue was kicked off in the ECOFIN's March 21, 2017 meeting, with an orientation debate on the beneficial ownership registers, new obliged entities, the definition of virtual currency and cooperation among financial intelligence units. The second round took place on April 4, 2017. It is expected that a political agreement will be reached at the end of June 2017.

## **EUROPEAN PARLIAMENT**

### **Draft Report on dispute resolution directive proposal discussed**

On March 23, 2017, the European Parliament's Committee on Economic and Monetary Affairs ('ECON Committee') discussed the [Draft Report](#) on the proposal for a Council directive on a Double Taxation Resolution Mechanism in the EU. [Amendments](#) were also tabled for consideration. A vote on the Draft Report and Amendments by the ECON Committee is scheduled for June 8, 2017.

### **ECON Committee adopted the Report on ATAD2**

On March 27, 2017, the ECON Committee approved its [Report](#) on the proposal for a Council directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ('ATAD2'). The European Parliament will vote on the Report in its plenary session to be held on April 27, 2017. The ECOFIN already reached political agreement on the ATAD2 on February 21, 2017; the Directive can however only be adopted after the parliamentary vote.

### **Work in Progress table of ECON Committee**

The ECON Committee published its [work-in-progress table](#) on March 24, 2017. It provides an overview of its recent progress and plan.

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## **OECD**

### **Recent developments in mutual administrative assistance and exchange of information**

The OECD [announced](#) a number of developments in international tax cooperation on March 16, 2017.

The [Global Forum](#) on Transparency and Exchange of Information for Tax Purposes is monitoring the implementation of internationally agreed standards of tax transparency and exchange of information by its 139 members. Its [Progress Report](#) published in March provides an overview of the status of automatic exchange of information (AEOI) commitments and the peer review process of exchange of information on request (EOIR).

The OECD also announced that Panama has deposited its instrument of ratification for the Convention on Mutual Administrative Assistance in Tax Matters,

putting in place a precondition for fulfilling its commitment to start exchanging common reporting standard (CRS) information in 2018.

### **Publication of the OECD Secretary-General Report to G20 Finance Ministers**

On March 18, 2017 the OECD published a [two-part report to G20 Finance Ministers](#). The first part concerns the International Tax Agenda and includes the joint OECD/International Monetary Fund (IMF) Report on Tax Certainty, dealing with BEPS implementation, tax transparency and tax and development. The second part is the Progress Report by the Global Forum on Transparency and Exchange of Information for Tax Purposes. This part concerns tax uncertainty and analyses its sources and effects on business decisions. It also makes proposals to help policymakers and tax administrations.

### **OECD Tax Talks**

An OECD Tax Talk was held on [March 28, 2017](#) by the OECD's Centre for Tax Policy and Administration (CTPA), giving updates on the implementation of the BEPS package, including the Multilateral Instrument, and on recent developments with respect to tax transparency and tax certainty.

### **KPMG summary report on country by country reporting**

Updated weekly, this [KPMG summary report](#) offers a snapshot of implementation of Country-by-Country reporting and master file / local file documentation requirements around the world.

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## **Local Law and Regulations**

### **Belgium**

#### **Bill on innovation income deduction published**

On February 20, 2017 the bill on a new innovation income deduction was published. The Act applies retroactively from July 1, 2016. The old regime remains applicable from July 1, 2016 until June 30, 2021 as regards patents for which a request was filed before July 1, 2016 or approved patents/licenses acquired before July 1, 2016.

#### **Multilateral Competent Authority Agreement (MCAA) on automatic exchange of information (AEI) approved by Council of Ministers**

On March 23, 2017 the Belgian government announced in a press release that the Council of Ministers approved a bill implementing the OECD Automatic Exchange of Financial Account Information Agreement. The bill will now to be submitted to Parliament.

#### **Extension of the stock exchange tax on foreign transactions to June 30, 2017**

On February 27, 2017 the Belgian Minister of Finance announced an extension of the stock exchange tax on foreign transactions to June 30, 2017. This tax applies to transactions carried out by intermediaries established abroad and is payable on the last business day of the second month following the month in which the transaction

occurred or was executed.

For more information, please refer to [KPMG's Taxnewsflash](#).

#### [Details available on Protocol to treaty between Belgium and Luxembourg](#)

On March 29, 2017 a third amending protocol to the Income and Capital Tax Treaty between Belgium and Luxembourg (1970) was signed, which implements the 2015 mutual agreement into the treaty. The protocol provides that, from January 1, 2015, if a frontier worker spends less than 25 days outside the state where they usually work, this state will be authorized to tax the salary earned during those days.

#### [Law on ultimate beneficial ownership register adopted by Council of Ministers](#)

On March 31, 2017 a legislative proposal on the introduction of an ultimate beneficial ownership register was adopted by the Belgian Council of Ministers. The goal of the proposal is to implement the requirements stipulated in the Anti-Money Laundering Directive of May 20, 2015. It would thus require trusts, foundations and resident companies to share information about their beneficial owners.

### **Czech Republic**

#### [Publication in the Official Gazette of Amendment on automatic exchange of rulings and pricing arrangements](#)

On March 30, 2017 an amendment to the law on International Cooperation in Tax Administration was published in the Official Gazette. The amendment aims to implement provisions contained in the Council Directive relating to the automatic exchange of advance cross-border rulings and advance pricing arrangements ("DAC3"). The changes apply from April 1, 2017.

### **Estonia**

#### [Amendments to the Tax Information Exchange Act and Law on Taxation](#)

On March 15, 2017 amendments to the Tax Information Exchange Act and Law on Taxation were adopted by the parliament. They will enter into force on April 1, 2017.

### **Finland**

#### [Updating of guidance on EU Savings Directive](#)

On March 2, 2017 an update of the [guidance](#) on the EU Savings Directive was issued by the Finnish tax administration since, although this Directive was repealed, some of its provisions remained applicable. The exchange of information on interest income is now covered by Directive 2014/107/UE on mandatory automatic exchange of information in the field of taxation.



## Germany

### [Draft bill amending laws to implement Fourth EU Anti-Money Laundering Directive and EU Money Transfer Regulation approved by the Federal Cabinet](#)

On February 22, 2017 a draft bill amending laws to implement the Fourth EU Anti-Money Laundering Directive and EU Money Transfer Regulation into domestic law was approved by the Federal Cabinet.

### [Guidance on application of OECD's Common Reporting Standard \(CRS\) issued by Ministry of Finance](#)

On March 3, 2017 guidance on the application of the OECD's Common Reporting Standards ('CRS') regarding automatic exchange of information was issued by the Ministry of Finance. It explains what information clients are obliged to provide to financial institutions. It also provides financial institutions with details on their reporting duties needed for being compliant with the CRS.

### [Mutual agreement between Germany and Switzerland on conducting arbitration procedures published](#)

On March 7, 2017 a mutual agreement on conducting arbitration procedures under the Income and Capital Tax Treaty (1971) between Germany and Switzerland, signed on December 21, 2016, was published by the German Ministry of Finance.

### [Publication of guidance on tax refund and exemption procedure for withholding tax on dividends and other profit distributions received by non-residents](#)

On March 28, 2017 guidance on the tax refund and exemption procedure for the 26.38% withholding tax on dividends and other profit distributions received by non-residents was published by the tax administration. Companies and individuals can obtain a refund of the excess dividend withholding tax by using a form within four years after the year in which payments are received. As regards the exemption procedure, the payer of dividends may apply a treaty rate if the recipient presents a certificate of partial exemption issued by the Federal Tax Office.

### [Recommendation on implementing a public register of the beneficial ownership voted by the Bundesrat](#)

On March 31, 2017 the German Bundesrat voted to recommend implementing a public register of the beneficial ownership of companies and trusts. The bill now needs to be considered by the Bundestag before it is sent for a final approval by the Bundesrat.

## Greece

### [List of non-cooperative States for 2016 published by the Ministry of Finance](#)

On February 20, 2017 the list of non-cooperative states for 2016 was published by the Greek Ministry of Finance.

The list includes: Andorra, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Brunei, Cook Islands, Dominica, Grenada, Guatemala, Hong Kong, Lebanon, Liberia, Liechtenstein, Former Yugoslav Republic of Macedonia (FYROM), Malaysia,



Marshall Islands, Monaco, Nauru, Niue, Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Uruguay, US Virgin Islands and Vanuatu.

#### [Publication of guidelines on the application of mutual agreement procedure under tax treaties](#)

On March 31, 2017 [guidelines](#) were published by the Public Revenue Authority on the application of the mutual agreement procedure regarding the tax treaties concluded between Greece and other countries.

### **Hungary**

#### [Release of draft law on Country-by-Country Reporting](#)

On March 10, 2017 a draft law on Country-by-Country (CbC) reporting was released by the Hungarian government in order to implement EU Directive 2016/881 which introduces CbC Reporting obligations for all EU Member States. If the law is adopted, Hungarian tax resident entities, which are part of multinational group that derives annual consolidated income of at least EUR 750 million, will need to comply with the Country-by-Country reporting requirements.

### **Iceland**

#### [Updating of the Country-by-Country Reporting Regulation](#)

On March 24, 2017 Regulation No. 245/2017 was issued by the Ministry of Finance and Economic Affairs which amends Regulation No. 1166/2016 on Country-by-Country Reporting. It now conforms with the wording of Article 4 of the Model Legislation Related to Country-by-Country Reporting under OECD Base Erosion and Profit Shifting (BEPS) Action 13.

### **Italy**

#### [Exchange of information treaty between Italy and Monaco](#)

On February 4, 2017 a treaty between Italy and Monaco on exchange of information entered into force, which will apply retroactively from March 2, 2015.

#### [Implementation of the Directive on automatic exchange of information in relation to advance tax rulings](#)

On March 23, 2017 the Legislative Decree No.32 of March 15, 2017 was published and entered into force. Its new measures take effect from January 1, 2017.

The purpose of this Legislative Decree is to implement the EU Directive on automatic exchange of information in relation to advance tax rulings of December 8, 2015 (Directive 2015/2376/EU) which amends the EU Mutual Assistance Directive. Following the implementation of the Decree, information on qualifying advance cross-border rulings and advance pricing agreements will be exchanged with other EU Member States.

#### [The Parliament enacted amendments to regional tax credits](#)

On February 28, 2017 Law No. 18 of February 27, 2017 was published in the Official

Gazette, thus enacting Decree-law No. 243 of December 29, 2016. The Decree-law amends the regional tax credit introduced by Law No. 208 of December 28, 2015, which concerns the amount of tax credit available and the relevant calculation method, as well as the maximum amount of qualifying costs. Furthermore, firms investing in some regions in the south of Italy will be entitled to a tax credit on certain business assets purchased until December 31, 2019.

#### [Publication of the Ministerial Decree on Country-by-Country Reporting](#)

On March 8, 2017 the Ministerial Decree of February 23, 2017 was published in the Official Gazette. The Ministerial Decree introduces CbC Reporting obligations in accordance with BEPS Action 13. It also transposes Council Directive of May 25, 2016 as regards mandatory automatic exchange of information.

#### [Publication of the resolution on the patent box regime](#)

On March 9, 2017 Resolution No. 28/E was published by the Italian tax authorities, providing clarifications on the patent box regime; for instance, it has been clarified that qualifying Research & Development activities include the implementation, update, personalization and customization of software protected by copyright. It also provides that qualifying R&D activities do not include activities connected to the use of the qualifying intellectual property.

#### [Italian white list amended](#)

On April 3, 2017 a Ministerial Decree issued by the Ministry of Economy and Finance was published, amending the list of jurisdictions that allow an adequate exchange of information with Italy (the so-called 'white list') as set out in the Ministerial Decree of September 4, 1996.

### **Latvia**

#### [The Latvia – Singapore competent authority agreement on automatic exchange of information entered into force](#)

On February 27, 2017 the Competent Authority Agreement on automatic exchange of information between Latvia and Singapore entered into force. The goal of this agreement is to ensure that the automatic exchange of financial account information as regards taxable periods or charges to taxes from January 1, 2017 will start in 2018.

### **Luxembourg**

#### [Clarification on withholding tax under tax treaties](#)

On March 17, 2017 the Administration for Direct Taxes published clarifications on withholding taxes under tax treaties. This clarification notably concerns dividends, interest and royalties and management fees.

#### [Various tax measures for Luxembourg recommended by the International Monetary Fund](#)

On March 7, 2017 the Staff Concluding Statement of the 2017 Article IV mission was published by the IMF. The Statement provides recommendations to sustain the

Luxembourg economy, including fiscal reforms. The IMF proposes that Luxembourg: lowers its corporate income tax rate, implements the Anti-Tax Avoidance Directive (2016) and broadens its tax base by aligning special tax regimes and transfer pricing arrangements with international standards.

#### [Law on ultimate beneficial ownership register adopted by Council of Ministers](#)

On March 31, 2017 a legislative proposal on the introduction of an ultimate beneficial ownership register was adopted by the Council of Ministers in Luxembourg, implementing Article 30 of the Anti-Money Laundering Directive of May 20, 2015. As a result, trusts, foundations and resident companies will be required to share information on their beneficial owners.

### **Netherlands**

#### [Netherlands Decree on application of participation exemption updated and published](#)

On February 23, 2017 Decree No. BLKB2016/803M of January 20, 2017 on the application of the participation exemption was published in the Official Gazette. The Decree updates and replaces a former decree. It has retroactive effect from January 20, 2017. This new Decree clarifies and amends the treatment of currency gains and losses (Section 13(7) of the Corporate Income Tax Act ("CITA")), the conversion of written-down debt into equity (Section 13ba CITA), loss evaporation in situations where a foreign permanent establishment is converted into a subsidiary/participation (former Section 13c CITA), liquidation losses (Section 13d(10) CITA) and legal mergers and the deemed acquisition price of shares (Section 13k(2) CITA).

#### [Memorandum of Understanding \(MoU\) between Iceland and Netherlands regarding exchange of information in tax matters entered into force](#)

On March 8, 2017 Decree No. 2017-21453 of February 13, 2017 was published, which contains the MoU between Iceland and Netherlands. The MoU entered into force on February 13, 2017 and will be applicable for the first time on information regarding the calendar year 2016.

#### [Explanation on dividend withholding tax exemption for exempt companies issued by the Tax and Customs Administration](#)

On March 30, 2017 a clarification was issued by the Dutch Tax and Customs Administration under which, starting from 2018, domestic and foreign entities that are entitled to relief from corporate income tax will have the option to apply for exemption from dividend withholding tax rather than requesting a refund of the dividend withholding tax.

### **Norway**

#### [New corporate residence rules discussed](#)

On March 16, 2017 a public [consultation](#) on the corporate tax residence rules was opened by the Norwegian Ministry of Finance, with the objective of amending local tax residence rules. The consultation is open until June 16, 2017.

Norwegian tax law doesn't define the term "residence". In theory, residence depends on the location of the central management and control of the firm (where central business decisions are taken). In practice, however, a firm is deemed to be a resident if it is incorporated under Norwegian law. The consultation proposes that the

term “residence” should include these two definitions, but it would not include companies resident in another country under an applicable tax treaty.

If approved, these modifications would take effect as of fiscal year 2018.

## Poland

### [The Bill on Exchange of Information in Tax Matters with Other Countries signed into law](#)

On March 20, 2017, the President signed into law the Bill on the Exchange of Information in Tax Matters with Other Countries (*Ustawa o wymianie informacji podatkowych z innymi państwami*), which, among other things, implements [Council Directive 2014/107](#) as regards mandatory automatic exchange of information in the field of taxation.

## Spain

### [Subcommittee to combat tax fraud and tax havens](#)

On February 15, 2017, it was agreed by the Finance Commission of the Parliament to create a subcommittee in charge of monitoring the implementation of international and European tax harmonization and coordination measures to combat tax fraud and tax havens.

## Sweden

### [Implementation of CbCR and automatic exchange of information in the field of taxation](#)

On March 3, 2017, the proposed law (Prop. 2016/17:47) implementing OECD Country-by-Country reporting (‘CbCR’) and transposing EU Directive 2016/881 as regards the mandatory automatic exchange of information on tax matters into national legislation, was adopted by the Swedish Parliament. On March 14, 2017, the regulation on the automatic exchange of CbCR was also published in the Official Gazette. The legislative proposal and the regulation are effective from April 1, 2017.

## Switzerland

### [Federal Department of Finance to draw up a new tax reform proposal](#)

Following the rejection of the third series of corporate tax reforms in the referendum held on February 12, 2017, the Federal Council, in its meeting of February 22, 2017, urged the Federal Department of Finance to submit substantial parameters for a new tax proposal by mid-2017 at the latest. The objective of the new tax proposal is to strengthen Switzerland’s competitiveness and safeguard the tax receipts of the Confederation, cantons and communes.

## United Kingdom

### Brexit: Article 50 has been triggered

On March 29 2017, the UK invoked Article 50 of the Treaty of the EU. UK Prime Minister Theresa May's letter of notification was handed over to Donald Tusk, President of the European Council, by Ambassador Tim Barrow, which serves as a formal notification of the UK's intent to withdraw from the EU. Following the UK's invoking of Article 50, the UK and the EU have two years to negotiate a withdrawal agreement setting out the arrangements for how the UK will leave the EU, and another agreement on the framework of the future relations with the EU.

[Draft Guidelines](#) for the Brexit negotiations prepared by President Donald Tusk have been published. It is expected that the EU Council will adopt the Guidelines on [April 29, 2017](#). In the meantime, the European Parliament adopted a [Resolution](#) on April 5, 2017, setting out the European Parliament's key principles and conditions for the approval of any withdrawal agreement with the UK.

### Brexit negotiations consequences for Gibraltar, Guernsey, the Isle of Man and Jersey

The UK House of Lords European Union Committee has published reports on the consequences of the forthcoming Brexit negotiations for [Gibraltar](#) and the [Crown Dependencies](#) (Guernsey, the Isle of Man and Jersey). The report with respect to Gibraltar considered the economic impact of Brexit on Gibraltar and the frontier issue with Spain, while the report concerning the Crown Dependencies discussed the future relationship between the EU and the UK.

### Spring Budget 2017-18 relating to business taxation

On March 8, 2017, [the Spring Budget](#) 2017-18 was presented to Parliament by the Chancellor of the Exchequer. According to the Budget, the rate of corporation tax would be reduced to 19% from April 2017 and to 17% from April 2020. In addition, in order to bolster the UK's competitiveness in a post-Brexit world, some tax incentives and anti-avoidance measures are announced in the Budget, including an exemption from withholding tax for interest on debt traded on a Multilateral Trading Facility and to strengthen tax avoidance sanctions and deterrents.

### Corporation Tax Amendment Regulations made

The [Corporation Tax Act 2010 Regulations](#) amending the [Corporation Tax Act 2010 c. 4](#) provisions on the 45% tax on specific restitution interest payments entered into force on March 14, 2017.

On March 22, 2017 the [Regulations](#) setting out the changes to the Shadow Advance Corporation Tax rules as a consequence of the abolition of the dividend tax credit were also issued with effect from April 12, 2017.

### The Scottish Parliament voted in favor of a second independence referendum

On March 28, 2017, on the eve of the UK triggering Article 50, the Scottish Parliament voted to back the First Minister's call to trigger Section 30 of the Scotland

Act for a second independence referendum. Prime Minister Theresa May has already refused to grant permission before Brexit.

#### Publication of the Finance Bill (No.2)

On March 20, 2017, [the Finance Bill \(No.2\)](#) was published together with [explanatory notes](#) and guidance. The Bill includes new provisions, notably the introduction of a penalty for those who authorize the use of tax avoidance that are later defeated by Her Majesty's Revenue and Customs (HMRC) and the introduction of a deterrence on those who transfer their pension abroad to gain an unfair tax advantage or the prevention of the use of disguised remuneration schemes to help people avoid tax.

For more information, please refer to [KPMG's TaxNewsFlash](#).

#### Bank Tax Treaty replaced by EU Directive

On March 16, 2017 Her Majesty's Revenue & Customs (HMRC) [announced](#) that the Bank Tax Treaty between Germany and the United Kingdom, which entered into force in 2011, was terminated on February 20, 2017 and replaced by EU Directive 2014/59, with effect from January 1, 2015.

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## Local Courts

### Belgium

The Constitutional Court ruled that the exchange of bank data under FATCA agreement was constitutional

On March 8, 2017, the Belgian Constitutional Court (*Cour Constitutionnelle/ Grondwettelijk Hof*) issued its judgment in *X. v. the Tax Administration* (No. 32/2017) regarding the constitutionality of exchange of information under [the Belgium - United States FATCA Model 1A Agreement \(2014\)](#). The Court ruled that although the gathering of data by the tax authorities for the purpose of exchange of information with the United States did entail an interference with the right of respect for private and family life as enshrined in Article 22 of the Belgian Constitution, it however served the purpose of combating international tax avoidance and evasion and did so in a relevant and balanced way, and was therefore constitutional.

### France

The Constitutional Court: safe harbor of CFC rules extended to foreign entities outside EU

The Constitutional Court (*Conseil Constitutionnel*) gave its decision in case [No. 2016-614 QPC](#) on the constitutionality of the safe harbor rule for the controlled foreign companies (CFC) rules on March 1, 2017. Under the CFC rules, resident individuals owning 10% or more share capital in a foreign entity established in a low-tax jurisdiction, the assets of which are mainly financial assets, are taxed on the income realized by the foreign entity corresponding to their share of participation. But according to the safe harbor rule, the CFC rules are not applied to foreign entities that are located in an EU Member State, unless the participation by the individual is part of an artificial arrangement aimed at circumventing French legislation. The Court

decided that the safe harbor rule should also be extended to qualifying entities located outside the EU, in line with the constitutional principle of equality.

#### [Exemption from the 3% contribution on profit distributions within tax consolidated groups found contrary to European Convention on Human Rights](#)

On March 29, 2017, the Administrative Supreme Court (*Conseil d'État*) in its decision No. 399506 ruled that the former provisions, as they read before January 1, 2017, on the exemption from the 3% contribution for profit distributions made within tax consolidated groups was incompatible with the European Convention on Human Rights (ECHR). The said provisions had been ruled contrary to the constitution in a decision issued by the Constitutional Court on September 30, 2016, but it did not have any impact on the 3% contribution paid with respect to distributions made before January 1, 2017. The March 29, 2017 decision extends the findings of the Constitutional Court to distributions made before January 1, 2017 on the basis of the ECHR.

### **Germany**

#### [“Restructuring decree” of Federal Ministry of Finance rejected by Federal Tax Court](#)

The Grand Senate of the Federal Tax Court (BFH) in its decision of November 28, 2016 rejected the Restructuring Decree issued by the Federal Ministry of Finance (BMF). The Restructuring Decree allows an exemption from income tax payable on restructuring profits, which arise from a waiver of debt claims by a creditor against a distressed business entity for the purposes of restructuring, under certain conditions. The Court, however, ruled that the tax privileges provided for in the Restructuring Decree violate the constitutional principle of legality of administrative actions.

For more information, please refer to the German Tax Monthly [KPMG Report](#) of March 2017.

### **Italy**

#### [The Supreme Court's guidance on the 'beneficial ownership' concept in tax treaties](#)

On December 28, 2016, the Italian Supreme Court issued its Decision no. 27113/2016, providing important guidance on the 'beneficial ownership' concept in tax treaties. The case concerned a tax credit claim under the Italy-France tax treaty by a French company that received dividends from its Italian subsidiary and redistributed to its French shareholders. The Supreme Court, in deciding whether the French company was the beneficial owner of the dividends, ruled that the lack of economic substance does not in itself prevent a holding or sub-holding company from qualifying as the beneficial owner of dividends. The beneficial ownership condition should, instead, be assessed only by considering whether the (sub) holding company i) was created only to benefit from a tax relief, ii) has the effective power to manage and control its subsidiaries and iii) has the legal and the economic right to use the dividends. In view of these, the Court found that none of the facts would lead to the conclusion that the French company was not the beneficial owner for the purpose of the treaty.

For more information, please refer to [KPMG Italy's report](#) of March 2017.



## Sweden

### Swedish court rulings regarding dividend withholding tax reclaims of foreign pension funds

On February 22, 2017, the Swedish Supreme Administrative Court ('SAC') issued its decisions in the *Pensioenfond Metaal en Techniek* ('PMT') and the *Pensionsförsäkringsaktiebolaget Veritas* ('Veritas') cases. These two cases concern claims by foreign pension funds to recover Swedish withholding tax based on discrimination under EU law. The SAC rejected the repayment claims on the grounds of non-comparability with Swedish pension foundations, but at the same time stated that there is a possibility to deduct certain expenses related to the receipt of dividend income.

For more information, please refer to KPMG's [Euro Tax Flash 318](#).

## Switzerland

### Request for information based on stolen data denied by Swiss Supreme Court

On March 17, 2017, the Swiss Supreme Court denied a request for information from the French tax authorities as regards details of bank accounts held by French residents in the Geneva branch of a financial institution, because the request was based on stolen information obtained by the French tax authorities from a former employee of the Geneva branch. The Court's decision was in line with the international principle of good faith.

## United Kingdom

### Appeal in Supreme Court granted in Prudential case

The Supreme Court has granted HMRC the authority to appeal the Court of Appeal's judgment in the *Prudential Assurance Company Ltd v HM Revenue and Customs* (2016) case. This is a test case in the CFC and Dividend Group Litigation, which concerns the tax treatment of dividends received from overseas portfolio holdings. A decision will be issued by the Supreme Court before the end of 2017. A parallel is also made with the *FII GLO* case which concerns the tax treatment of EU sourced dividends received from group subsidiaries.

For more information, please refer to [KPMG's TaxNewsFlash](#).

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