



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre
Issue 67 – July 14, 2017

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.

E-News provides you with EU tax news that is current and relevant to your business. KPMG's EU Tax Centre compiles a regular update of EU tax developments that can have both a domestic and a cross-border impact. CJEU cases can have implications for your country.

[Latest CJEU, EFTA and ECHR](#)

CJEU decision in the X v Ministerraad case

On May 17, 2017, the Court of Justice of the European Union ('CJEU', or 'Court') rendered its decision in the *X v Ministerraad* case ([C-68/15](#)). The case concerned the compatibility of the Belgian 'fairness tax' with the freedom of establishment as provided for under the Treaty on the Functioning of the European Union (TFEU) and with the EU Parent-Subsidiary Directive ("Directive"). The 'fairness tax' is an additional tax imposed in respect of certain corporate profit distributions. The CJEU ruled that it is for the referring court to ascertain whether the method of determining the taxable amount of

'fairness tax' puts a non-resident company in a less advantageous position than a resident company, thereby violating the freedom of establishment. The CJEU further noted that the disputed tax does not qualify as a withholding tax within the meaning of the Directive but nevertheless found that, to the extent that the parent company redistributes dividends received from non-resident subsidiaries, it is precluded by Article 4 of that Directive.

For more information, please refer to KPMG's [Euro Tax Flash 325](#).

CJEU decision in the *Association française des entreprises privées (AFEP) and Others* case

On May 17, 2017, the Court of Justice of the CJEU rendered its decisions in the *AFEP* case ([C-365/16](#)). The case concerned the compatibility with the Parent-Subsidiary Directive of Article 235 ter ZCA of the French General Tax Code, which provides for an additional contribution to corporate income tax ('additional contribution') imposed in respect of profits distributed by a resident company. As in the *X* case ([C-68/15](#)), *AFEP* and *Others* argued that the contribution infringed Article 4 of the Parent-Subsidiary Directive and, in the alternative, that it should be regarded as a withholding tax within the meaning of that Directive and was therefore precluded by its provisions. The CJEU found that the contribution did infringe Article 4 of the Parent-Subsidiary Directive where the parent company redistributes dividends received from non-resident subsidiaries. The Court noted that there is no need to rule on whether the contribution has the characteristics of a withholding tax within the meaning of that Directive.

For more information, please refer to KPMG's [Euro Tax Flash 325](#).

CJEU decision in the *Van der Weegen and Others* case

On June 8, 2017, the CJEU rendered its decision in the *Van der Weegen and Others* case ([C-580/15](#)). This case concerned the refusal by Belgium to grant a tax exemption on income received from saving deposits held with banking institutions located in another Member State. The Belgian authorities argued that none of those institutions could demonstrate that the saving deposits complied with conditions similar to those applicable to regulated Belgian saving deposits.

The Court ruled that a national tax exemption system that imposes conditions for access to the local banking market on service providers established in other EEA Member States violates the freedom to provide services. It is for the referring court to verify whether the disputed Belgian legislation imposes such conditions, although the Court pointed out that this may be the case where a benefit is in principle open to all without distinction, but which is subject to criteria that are de facto specific to the local market and cannot be satisfied by non-residents.

For more information, please refer to KPMG's [Euro Tax Flash 329](#).

CJEU decision in the *Bechtel* case

On June 22, 2017 the CJEU rendered its decision in the *Wolfram Bechtel and Marie-Laure Bechtel v. Finanzamt Offenburg* case ([C-20/16](#)). The case concerned the refusal by Germany to allow a German resident working in France to deduct the contributions to the French social security system – unlike contributions to the German social security system - for the purposes of calculating the German income tax rate where the employment income is tax exempt under the German-French double taxation treaty and only increases the income used to calculate the German tax rate. The Court ruled that Article 45 TFEU must be interpreted to the effect that it precludes the German legislation in question.

For our previous report on the referral, please refer to KPMG's [E-News 59](#).

State aid

CJEU decision in the *Congregación de Escuelas Pías Provincia Betania* case

On June 27, 2017, the CJEU rendered its decision in the *Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe* case ([C-74/16](#)). The case concerned the qualification as a State aid measure of the exemption granted to the Catholic Church from the Spanish tax on constructions, installations and works, where the exemption relates to work on buildings intended to be used for economic activities that do not have a strictly religious purpose.

The Court ruled that the exemption from the tax on constructions, installations and works to which the Catholic Church is entitled does not contravene the prohibition on State aid under Article 107(1) TFEU, where it affects a school building used by the Catholic Church, for the provision of education services in the context of its social, cultural and educational mission and not for the commercial provision of educational services even if those services did not have a strictly religious purpose.

EU Institutions

EUROPEAN COUNCIL

Meeting on Financial Transaction Tax indefinitely postponed

On May 22, 2017 Finance ministers were supposed to discuss the proposal for a Financial Transaction Tax but the meeting was postponed indefinitely. One of the reasons could be the potential economic impact of the tax with respect to Brexit. Although nine of the 10 countries still taking part in the process have accepted the latest compromise proposal, the position of Belgium, which has called for an exemption regarding pension funds, is still undecided.

Conclusions of the Economic and Financial Affairs Council (ECOFIN) meeting on May 23, 2017

At its meeting on May 23, 2017, the Economic and Financial Affairs Council of the EU (ECOFIN) reached an agreement on the proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the EU. A policy debate on the European Commission's proposals for a Council Directive on a Common Corporate Tax Base (CCTB) was also held in the margins of the meeting.

For more information, please refer to KPMG's [Euro Tax Flash 326](#).

Council adopted new anti-hybrid rules at meeting of May 29, 2017

At a meeting of the Competitiveness Council on May 29, 2017, the Council of the EU unanimously adopted, without discussion, a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, referred to as Anti-Tax Avoidance Directive 2, or "ATAD2"). This follows an agreement reached by the ECOFIN Council at a meeting on February 21, 2017 (see [ETF 314](#)), and an [opinion](#) rendered by the European Parliament on April 27, 2017.

For more information, please refer to KPMG's [Euro Tax Flash 327](#).

Taxation of digital economy and tax fraud topics discussed during G7

In the G7 Finance Ministers and Central Bank Governors' [meeting](#) held in May 2017, ministers stressed the need to carry on with OECD BEPS implementation and recognized the need to develop "policy options" in order to tax the digital economy. They also issued a [statement](#) on tax fraud highlighting the importance of BEPS Action 12 in detecting potential circumvention attempts of the Common Reporting Standard.

18-month Program of the next three Council Presidencies published

On June 2, 2017, the [18-month Program](#) of the Council (July 1, 2017 – December 31, 2018) was published, highlighting the coordinated priorities for the three presidencies of Estonia, Bulgaria and Austria. This program states that the fight against tax fraud and ensuring fair and efficient taxation will be high on the agenda for the coming 18 months. It refers to the Common Consolidated Corporate Tax Base (CCCTB), disclosure rules for intermediaries, the definitive VAT regime as well as VAT on e-commerce as areas where the three Presidencies intend to push for progress. The Estonian presidency's [program](#) also refers to the EU blacklist of non-cooperative jurisdictions.

ECOFIN Report to the European Council on tax issues under the Maltese Presidency

At the ECOFIN meeting of June 16, 2017, the ECOFIN endorsed a six-monthly [report](#) to the European Council on tax issues, which provides an overview of the progress achieved by the Council during the term of the Maltese Presidency, as well as the state of play of the most important dossiers under negotiations in the area of taxation.

Report encompassing the work of the Code of Conduct Group (Business Taxation) under the Maltese Presidency

The ECOFIN adopted its [conclusions](#) on the Code of Conduct (Business Taxation) at its meeting held on June 16, 2017. The progress achieved by the Code of Conduct Group during the Maltese Presidency in 2017 has been set out in its [report](#) to the Council. In its conclusions, the Council particularly asks the following: continue monitoring standstill and the implementation of the rollback and its work under the Work Package 2015; identify the progress made on the alignment of the patent box regimes with the agreed nexus approach and continue to monitor and report on this process, including request Member States whose patent box regimes are not compliant with the modified nexus approach to put these regimes in line as soon as possible; assess the progress achieved by the Group in its ongoing work on the establishment of the EU list of non-cooperative jurisdictions for tax purposes, and to continue this work.

EUROPEAN COMMISSION

European Commission proposal on disclosure requirements for intermediaries

On June 21, 2017, the European Commission published its [proposal](#) for mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The proposal comes in the form of an amendment to the Directive on Administrative Cooperation in the field of taxation (the DAC) and introduces an obligation on intermediaries to disclose potentially aggressive tax planning arrangements and also the means for tax administrations to exchange information on these structures.

For more information, please refer to KPMG's [Euro Tax Flash 330](#).

Annual country-specific recommendations issued by the Commission

On May 22, 2017, the Commission issued its annual [country-specific recommendations](#). These recommendations were published in the context of the European Semester which is an annual cycle of economic policy coordination. They set out economic policy guidance for each Member States for the next 12 to 18 months. Based on the 2016 recommendations, the Commission noted that Member States have made progress in the area of tax policy and tax governance.

Belgium urged by the European Commission to comply with EU law on inheritance tax on immovable property

A formal [letter](#) was recently sent by the European Commission to Belgium requesting a change in the rules on inheritance tax in Wallonia. The domestic law provides an exemption from inheritance tax when the deceased individual was residing in Belgium but not when they were residing in another country belonging to the EEA. According to the Commission, this rule is contrary to Article 45, 49 and 63 of TFEU.

Report on effectiveness of tax incentives for venture capital and business angels to foster investment of SMEs and start-ups published

Recently a report entitled "[Effectiveness of tax incentives for venture capital and business angels to foster the investment of SMEs and start-ups](#)" was published by the European Commission. The report noticed that venture capital and business angels' investments are important for small and medium-sized enterprises (SME) and that taxation (e.g. tax incentives) plays a role in supporting or blocking this type of investment within the EU as well as in some other OECD countries.

Brexit negotiations kicked off on June 19, 2017

Michel Barnier, the European Commission's Chief Negotiator, and David Davis, Secretary of State for Exiting the European Union launched the Brexit negotiations on June 19, 2017 in Brussels. Both sides stressed goodwill in the negotiations but also the huge complexity and tight deadline. An agreement has been reached on the priorities for the negotiations, which include the issues regarding the rights of citizens, the financial settlement and the border in Ireland. Discussion on the future relationship between UK and the EU will not start until agreements are achieved on the priorities.

EUROPEAN PARLIAMENT

PANA Committee investigations - update

The European Parliament's Committee of inquiry to investigate alleged contraventions and maladministration in the application to Union law in relation to money laundering, tax avoidance and tax evasion ('PANA Committee') published its [Newsletter Issue 6](#) (April/May 2017) on May 22, 2017. The Committee outlined the updates and the progress the PANA Committee has made in the months of April and May and its plans expected in the months to come.

Among other things, in its meeting held on May 30, 2017, Commission President, Jean-Claude Juncker was asked about ongoing and upcoming Commission initiatives in the fight against money laundering, tax avoidance and tax evasion and also about Luxembourg practices of (non-)cooperation with the EU and Member States. [Replies to](#)

[written questions](#) from President Jean-Claude Juncker are available. A hearing with Fernando Rocha Andrade, Portuguese Secretary of State For Tax Affairs was organized on the same day, before the PANA Committee's fact-finding mission to Portugal was held on 22 and 23 June, 2017.

On June 7, 2017, the Greens-EFA Group of the European Parliament published a report entitled "[Panama Papers investigation: obstruction and lack of cooperation hinder progress](#)" to mark one year since the Panama Papers. It mentions that the work of the PANA Committee has been seriously obstructed by factors including lack of cooperation from the Council. In their report, they stressed that serious money laundering allegations were made with respect to Malta, which was at the same time holder of the Council presidency.

It is expected that the PANA Committee will for the first time consider their [draft report](#) on the inquiry on money laundering, tax avoidance and tax evasion, and [draft recommendation](#) to the Council and the Commission on July 10, 2017. Vote on the report in PANA Committee is scheduled for October 18, 2017.

European Parliament Report on the public Country-by-Country Reporting proposal

At the plenary sitting held on July 4, 2017, Members of the European Parliament (MEPs) debated and voted on the [report](#) on the European Commission's Proposal amending Directive 2013/34/EU as regards Disclosure of Income Tax Information by Certain Undertakings and Branches ('public CbCR'). Before that, the report had been adopted at the Committee level at June 12, 2017. MEPs approved the report by 534 votes to 98 votes, with 62 abstentions as a result of the plenary sitting and agreed to send the report back to the responsible Committees to start interinstitutional negotiations with the Council and the Commission. Since the initiative is an amendment to the Accounting Directive based on the ordinary legislative procedure under Article 50, paragraph 1 TFEU, it will have to be approved by both Member States' finance ministers in the ECOFIN Council as well as by the European Parliament.

For more information, please refer to KPMG's [Euro Tax Flash 331](#).

European Parliament Report on the proposal on Double Taxation Dispute Resolution Mechanism

At the plenary sitting held on July 6, 2017, the European Parliament adopted its [report](#) on the proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the EU, setting out its non-binding opinion on the proposal to the Council. Previously, the Council reached an agreement on the compromised text of the proposal (see [ETF 326](#)). The Directive is subject to formal adoption by the Council and publication in the Official Journal of the European Union.

For more information, please refer to KPMG's [Euro Tax Flash 331](#).

Parliamentary questions addressed to the Chair of the Single Supervisory Mechanism on the Supervision of the use of tax havens by European banks

On June 1, 2017, [questions](#) for written answers to the Chair of the Single Supervisory Mechanism Board by MEP Pervenche Beres were published on the supervision of the use of tax havens by European banks.

These questions are based on a [report](#) entitled "*opening the vaults: the use of tax havens by Europe's biggest banks*", alleging that most of them register unjustified profits in low tax jurisdictions compared to the level of real economic activity in the latter. Questions can be read as follows:

- How do you ensure efficient supervision of these practices in third countries by the EU banks?
- Which additional useful information can you provide us in this file?
- What are the risks of such practices for the financial stability of the Banking Union?
- Which measures do you intend to take to address these risks?
- Would you conclude that further action by the legislator needs to be undertaken? In which fields?

Commission's reply on taxation of European ports

[Questions](#) on the taxation of ports were sent by the European Parliament to the Commission in March 2017. The Commission was asked whether in its state aid investigations on corporate tax exemption for the ports of the Netherlands, France and Belgium, it has considered the characteristics of the European ports, which sometimes are used for public missions (e.g. waterway police operations, custom controls, security). In the oral answer given by Pierre Moscovici on behalf of the Commission at the plenary sitting held on June 14, 2017, Pierre Moscovici confirmed that the Commission was fully aware that the state aid rules only apply to aid which distorts competition in internal market, but he stressed that the exemption granted by these countries to ports were not targeted at specific public activities and were not transparent enough. Rather, he was concerned that the tax exemption to ports may distort competition by aiding certain economic activities. The Commission will inform the Parliament once it has completed the investigations.

Council's answer on EU list of tax havens

On May 31, 2017, the Council answered the question asked by several members of the European Parliament on the EU list of tax havens and how a zero percent corporate tax rate regime would be dealt with under it. The Council noted that in order to identify a non-cooperative jurisdiction, the criterion is that this jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits that do not reflect real economic activity in the jurisdiction. However, the Code of Conduct Group and the Council agreed that a zero percent corporate tax cannot alone be a reason for concluding that a jurisdiction does not meet the above criterion.

For more information, please refer to the Council's [reply](#).

European Commission's reply regarding double taxation in the EU

On June 2, 2017, Pierre Moscovici, on behalf of the European Commission, replied to an MEP who asked what data the Commission used when assessing the importance of double taxation in the EU and the inadequacy of the mechanisms currently in place to address the issue. Regarding the size of the problem of double taxation within the EU, the assessment was made by reference to statistical data on the number of pending cases under the EU Arbitration Convention, according to the Commission. The amount of double taxation was estimated on the basis of a consultation of the Member States in May 2016. Finally, with respect to the shortcomings of the existing mechanisms, data on the duration, costs, lack of enforceability and non-conclusiveness of the procedures has been collected by the Commission since 2012 and published in the statistics on pending Mutual Agreement Procedures under the EU Arbitration Convention.

For more information, please refer to European Commission's [reply](#).

Commission's answer regarding the impact of Brexit on the structural funds

On June 1, 2017 the European Commission replied to an MEP asking whether or not the Commission intended to review how the EU budget is financed after Brexit. The Commission answered that revenue from the common consolidated corporate tax base (CCCTB) has been identified as a possible future source of financing.

For more information, please refer to European Commission's [reply](#).

Parliamentary questions on advance pricing agreements and advance tax rulings in the Netherlands

On June 6, 2017, the Commission replied to a question asked by an MEP regarding a memorandum recently published by the Dutch Ministry of Finance on the Dutch practice of advance pricing agreements (APAs) and advance tax rulings (ATRs) revealing the fiscal treatment applied to multinational companies in the Netherlands. The MEP asked: whether these practices offer potentially illegal selective advantages to large multinational companies; if the Commission plans to investigate these practices and also where necessary consider whether these practices are contrary to EC law?

Pierre Moscovici, on behalf of the European Commission, replied that it is a general memorandum that does not permit any conclusions as to potentially illegal state aid and that this can only be assessed on a case-by-case basis. The European Commission is analyzing the ruling practice and examples of individual rulings issued by Member States including the Netherlands. In October 2016, the Code of Conduct on Business Taxation Group adopted [guidelines](#) on the requirements and rules for the issuance of tax rulings in order to avoid harmful tax practices and it will monitor compliance with the guidelines by the Member States. In addition, in 2016, the Council endorsed the amendment to the directive on Administration Cooperation to provide for the automatic exchange of information on cross-border rulings (see [ETF 242](#)).

For more information, please refer to European Commission's [answer](#).

Commission's reply on tax evasion in developing countries

On June 8, 2017, the European Commission replied to a question asked by an MEP criticizing the Commission for not doing enough to tackle tax evasion in Africa and specifically asked why the Commission does not take extraterritoriality into account when publishing country-specific data and what further steps the Commission is planning to take in this context. The Commission noted that the proposal for a directive on public country-by-country reporting has taken into account the extraterritoriality issue since it covers all multinational companies operating within the EU, whether they are established in the EU or in a third country and listed a number of measures aimed at combating tax avoidance and evasion in Africa.

For more information, please refer to European Commission's [answer](#).

Commission's answer on the Hungarian system of corporate income tax support

On March 20, 2017, an MEP asked the European Commission whether it is investigating the market-distorting impact of the Hungarian system that allows corporations to write off 100% donations made to sporting organizations against their tax due (TAO).

On June 12, 2017, the European Commission replied that this aid scheme "Supporting the Hungarian sport sector via tax benefit scheme" (Case SA.31722) had been notified by the Hungarian authorities on April 29, 2011 and declared compatible with Article 107(3)(c) of the Treaty.

For more information, please refer to the European Commission's [answer](#).

Commission's reply on European tax haven

On April 5, 2017, an MEP asked the European Commission to explain what it was doing to prevent harmful tax competition between Member States, in particular to discourage companies relocating from high tax to low tax jurisdictions.

On June 13, 2017, the European Commission replied that companies should pay taxes where their economic activities take place. For this reason in particular, the Commission presented its Action Plan for fair and efficient corporate taxation in the EU of June 17, 2015 including concrete measures to prevent aggressive tax planning, to boost tax transparency and to create an equitable situation for all businesses in the EU and then, its proposal for an Anti-Tax Avoidance Directive on January 28, 2016, which was adopted by the Council on July 12, 2016.

In addition, in October 2016 the Commission presented a major corporate tax reform including a proposal for a Common Consolidated Corporate Tax Base (CCCTB) in order to ensure that companies pay tax where their economic activity takes place.

The Commission also commented on steps being taken to extend similar measures, i.e. the field of tax transparency, unfair tax competition and BEPS to third countries.

For more information, please refer to European Commission's [answer](#).

OECD

The signing of Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

On June 7, 2017, at a ceremony held by OECD, ministers and other high-level representatives of 67 countries representing 68 jurisdictions signed the [Multilateral Convention](#) (MLI) to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BELPS), while eight jurisdictions expressed their intention to become signatories of the MLI. Prior to the signing ceremony, each signatory submitted a list of tax treaties intended to be covered as well as a [document](#) setting out their preliminary positions and reservations with respect to each provision of the MLI. The MLI [Matching Database](#) has been launched by OECD, which makes projections on how the MLI modifies a specific tax treaty covered by the MLI.

For more information, please refer to KPMG's [Euro Tax Flash 328](#).

Discussion draft on implementation guidance concerning hard-to-value intangibles (HTVI) under Actions 8 to 10 published

On May 23, 2017, a discussion draft on the implementation guidance on HTVI was issued by OECD. Until June 30, 2017, interested parties are invited to comment on the proposed guidance contained in the discussion draft by e-mail to TransferPricing@oecd.org. The discussion draft lays down the principles of the implementation of the approach to HTVI and provides examples to illustrate the application of this approach. In addition, it addresses the interaction between the approach to HTVI and the mutual agreement procedure under applicable treaty.

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

Third meeting of the Inclusive Framework on BEPS delivers results

The first monitoring report has been approved and it will be submitted to G20 Leaders for their summit to be held on July 7-8, 2017 in Hamburg. The report outlines the progress achieved since the Inclusive Framework first met in Kyoto in June 2016.

Moreover, the release of discussion drafts on Attribution of Profits to Permanent Establishments and Transactional Profit Splits was also approved during this meeting (see next item).

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

OECD releases BEPS discussion drafts on attribution of profits to permanent establishments and transactional profit splits

The OECD has released discussion drafts on Attribution of Profits to Permanent Establishments arising in part of Action 7 of the BEPS Action Plan and on Profit Splits arising from Actions 8-10 of the BEPS Action Plan. The discussion drafts replace drafts issued in July 2016. The OECD intends to hold public consultations on both drafts in November 2017.

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

KPMG report on potential ripple effects of BEPS reforms

Implementation of BEPS reforms affect companies. For this reason, KPMG LLP has produced a white paper in order to assist businesses: to understand the potential knock-on effects of BEPS reforms beyond tax issues and to take the measures to respond to and manage the new BEPS environment.

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

Peer review document for assessment of the BEPS Action 6 minimum standard released

On May 29, 2017, the OECD released a document that has been approved by the Inclusive Framework on BEPS which will form the basis of the peer review of the Action 6 minimum standard on preventing the granting of treaty benefits in inappropriate circumstances. The peer review is intended to ensure timely and accurate implementation of the four BEPS minimum standards.

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

Taxpayers' input on Dispute Resolution currently gathered by OECD

On June 9, 2017, the OECD announced it was gathering input for "mutual agreement procedure" (MAP) peer reviews under Action 14 of the base erosion and profit shifting (BEPS) project. The peer review is divided into two stages: under stage 1, implementation of the BEPS Action 14 minimum standard is evaluated for "inclusive framework" members, according to the [schedule of review](#) (i.e. from December 2016 to April 2019); under stage 2, the recommendations resulting from jurisdictions' stage 1 report are monitored. The OECD announced it was gathering input for stage 1 and invited taxpayers to submit input until July 7, 2017.

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

Local Law and Regulations

Belgium

Updated Country-by-Country Reporting (CbCR) and form guidance published by the Federal Public Service

On May 19, 2017, the Federal Public Service for Finance published an updated guidance for taxpayers required to file CbC reports under OECD BEPS Action 13 and updated forms for CbC local files and master files. For 2016, reports have to be filed by December 31, 2016. However, an extension has been granted by the administration until December 31, 2017. Penalties will be imposed on submitted reports that are not in line with the new guidance, unless the multinational groups send a clarification.

Decree listing countries with which Belgium will automatically exchange bank account information – published

On June 19, 2017, a Decree dated June 14, 2017 listing the countries with which Belgium will automatically exchange bank account information was published in the Official Gazette.

In 2017, bank account information relating to 2016 will, for the first time, be exchanged with: Argentina, BES Islands, Colombia, Faroe Islands, Gibraltar, Greenland, Guernsey, Iceland, India, Isle of Man, Jersey, Korea (Rep.), Liechtenstein, Mexico, Norway, San Marino, Seychelles and South Africa.

As of 2018, bank account information relating to 2017 will, for the first time, be exchanged with additional countries listed in the Decree.

Bulgaria

Guidance on publication of annual financial statements with respect to new Accountancy Act issued by Ministry of Finance

On June 6, 2017, the Ministry of Finance issued guidance on how to publish annual financial statements under the Accountancy Act. The Accountancy Act has been in force since 2016 and implements Directives 2013/34/EU and 2014/95/EU. The guideline notably outlines individual financial statement requirements for Bulgarian undertakings as well as consolidated financial statements requirements for parent companies. The document also contains information on the fees for publishing with the Registry Agency and on the penalties in case of late or non-submission. Bulgarian undertakings subject to reporting obligations have to publish their annual financial statements under the new Accountancy Act by June 30, 2017.

Cyprus

CbC reporting – new decree issued

On May 26, 2017, the Ministry of Finance issued a new decree relating to country-by-country (CbC) reporting, replacing the previous decree issued in December 2016 providing clarifications with respect to reporting entities of qualifying multinational groups and related reporting deadlines in line with the requirements included in the OECD BEPS report on Action 13.

In particular, the main amendments are as follows: for FYs beginning on or after January 1, 2017, a constituent entity residing in Cyprus and which is not the ultimate parent entity or the substitute parent entity of the qualifying multinational group, may be required to file a CbC report in Cyprus; a constituent entity of a qualifying multinational group must submit a notification once a year in order to confirm the reporting entity's identity and tax residence; and for FYs beginning on or after

January 1, 2017, a constituent entity residing in Cyprus and which has not received from its ultimate parent entity sufficient information to file a complete CbC report, is required to file a partial CbC report.

Reporting entities must provide the Cypriot tax authorities with supporting books and records for a period of six years; if so requested.

Denmark

Clarification on tax merger date for companies in case of cross-border merger

On May 8, 2017, a binding answer regarding the tax merger date in the case of cross-border merger was published by the Tax Board. According to the decision, the merger date to take into account for tax purpose in the case of a Danish firm ceasing to exist following a cross-border merger will be the date of commencement of the acquiring company's financial year.

Adoption by the Parliament of measures to fight international tax evasion

On May 17, 2017, measures to fight international tax evasion were adopted by the Danish Parliament. These measures in particular provide for: the creation of a new department to improve exchange of information and to identify new schemes of tax evasion; the monitoring of tax havens; the implementation of all recommendations of the OECD BEPS project as well as the Anti-Tax Avoidance Directive in combination with stronger controlled foreign company (CFC) legislation and the establishment of a beneficial ownership register.

Beneficial ownership register adopted by Parliament

Danish Parliament has recently approved the introduction of the ultimate beneficial ownership register in order to combat international tax evasion. From December 1, 2017, all legal entities will have to disclose information. An exemption is however provided for listed entities and branches. The disclosure has to be done electronically and must contain: the direct ownership of the shares held by the UBO, their name and address but also the date from when the individual becomes a UBO. Entities have to disclose information on the identity of the UBO if they control or own, directly or indirectly, 25% or more of the shares.

Finland

Government position on tax evasion, aggressive tax planning and tax information reporting issued

On May 9, 2017, the Press Release [No. 221/2017](#) explaining the government position on tax evasion, aggressive tax planning and tax information reporting was published.

As regards tax avoidance and aggressive tax planning, the government stresses the importance of international cooperation with the EU and the OECD in particular. According to the government, tax avoidance and aggressive tax planning should be fought with the use of legislation.

With respect to tax information reporting, the government argues that a company's profit should be taxed where it is created and that this could be guaranteed with good tax information reporting.

France

Publication in the Official Journal of OECD Multilateral Competent Authority Agreement on Automatic Exchange of country-by-country (CbC) reports

On April 30, 2017, the OECD Automatic Exchange of Information Agreement on CbC Reporting through Decree No. 2017-672 was published in the Official Journal. It entered into force on April 14, 2017.

Decree on ultimate beneficial owners issued

On June 12, 2017, French government issued a decree that clarifies the scope of the new requirements regarding disclosure of ultimate beneficial owners, including which entities have to comply, the definition of beneficial owner information to be collected, and the penalty regime.

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

Publication of guidance on CRS implementation and extension of reporting deadlines

On June 14, 2017, a complete set of guidance on the common reporting standard (CRS) implementation for French Reporting Financial Institutions (FRFIs) was issued. In addition, the reporting deadlines have been extended from July 31, 2017 to September 8, 2017.

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

Germany

Anti-patent box legislation adopted by Bundestag

On April 27, 2017, the Bundestag adopted a new legal provision in the Income Tax Act of Germany, under which gains from a waiver of debt in connection with corporate restructurings will be tax exempt, subject to certain conditions. The exemption provided in the new legislation is a reaction to the Federal Tax Court decision from November 28, 2016 which ruled that the prior tax privileges for restructuring profits violates the constitutional principle of legality of administrative actions.

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

Bill on non-deductibility for preferentially taxed intra-group royalties approved by Bundesrat

On June 2, 2017, the bill on partial or entire non-deductibility for preferentially taxed intra-group royalties was approved by the Bundesrat.

Bill amending laws to implement the Fourth EU Anti-Money Laundering Directive approved by Bundesrat

On June 2, 2017, a bill amending laws to implement the Fourth EU Anti-Money Laundering Directive was approved by the Bundesrat. The bill has previously been approved by the Bundestag.

Greece

Bill amending Income Tax Code issued

On May 19, 2017, the bill amending the Income Tax Code was issued in the Official Government Gazette (Law 4472/2017). With respect to tax rates, for undertakings the rate will be reduced from 29 percent to 26 percent from January 1, 2019; the rate for credit institutions will not be reduced.

[Bill implementing Directive on Automatic Exchange of Information with respect to advance tax rulings adopted](#)

On June 6, 2017, the draft bill implementing the Directive of December 8, 2015 on automatic exchange of information regarding advance tax rulings was adopted.

Hungary

[Law on Country-by-Country Reporting enters in effect](#)

On May 15, 2017, the law on CbC reporting obligations of qualifying entities entered into effect. Hence, for the 2016 reporting financial year, taxpayers will have until December 31, 2017 to report to the tax authorities the status and basic data of the qualifying entities, but also to file the CbC report if they are corporations qualified as ultimate parent companies or have been appointed as parent companies by the ultimate parent. For the 2017 reporting financial year, taxpayers will have until December 31, 2018 to file the CbC report.

Ireland

[International Monetary Fund suggests Ireland to expand its tax base](#)

The International Monetary Fund recently suggested that Ireland broaden its tax base. According to the IMF, the uncertainty surrounding EU tax reform (e.g. the CCCTB proposal) and US tax reform could make Ireland a less attractive location for future foreign direct investment and could affect tax Ireland's revenue.

For more information, please refer to IMF's [Staff Report](#).

[Release of a new manual on tax treatment of certain dividends](#)

On June 12, 2017, the Irish tax authorities issued eBrief No. [64/17](#) which announced that a [new manual](#) on the tax treatment of certain dividends has been issued. It notably concerns some foreign dividends derived from trading profits which may be subject to the standard 12.5 percent rate instead of the 25 percent rate.

Italy

[Ratification of the treaty between Italy and Romania](#)

On May 16, 2017, the Income Tax Treaty between Italy and Romania was ratified by way of law No. 78 and published in Official Gazette No. 132 dated June 9, 2017 by Italy. Once in force it will replace the Income and Capital Tax Treaty (1977).

[Implementation of the Fourth Anti-Money Laundering Directive](#)

On June 19, 2017, Legislative Decree No. 90 of May 25, 2017 was published in Official Gazette No. 40. The purpose of this legislative decree is to implement the Fourth Anti-Money Laundering Directive. It will enter into force on July 4, 2017. There will thus be a requirement to identify and assess risks regarding money laundering but also to report information on suspicious transactions: credit and financial institutions, professionals, providers of gambling services and other qualifying persons.

[Treaty between Andorra and Italy entered into force](#)

On June 9, 2017, the Italian tax authorities published an update which provides for the Exchange of Information Agreement between Andorra and Italy to enter into force on June 8, 2017 and not on March 27, 2017. The agreement generally applies from June 8, 2017 for criminal tax matters and from January 1, 2018 for all other tax subjects.

Malta

[KPMG Malta's response to the 'Malta Files'](#)

Malta has recently been attacked in a series of articles published in the local and international press as regards the files referring to data obtained both from publically available information, as well as leaked documents. According to KPMG in Malta, the data is being used to incorrectly qualify Malta as an offshore jurisdiction or a tax haven due to its imputation tax system. In this paper, it appears that several allegations are based on incorrect statements and assumptions.

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

Netherlands

[Consultation on introduction of dividend withholding tax obligation for holding cooperatives](#)

On May 16, 2017, a public consultation was launched by the Ministry of Finance on a legislative proposal that introduces a withholding tax obligation for holding cooperatives in order to align the tax treatment on dividend distribution of such cooperatives with BVs and NVs. Moreover, the draft bill suggests to broaden the withholding exemption on dividends to third countries and to put the Dutch anti-abuse provision in line with the EU law and treaty anti-abuse provisions.

The consultation was closed on June 13, 2017.

For more information, please refer to KPMG Meijburg & Co's [News](#).

[CCCTB proposal not supported by the Netherlands](#)

On May 16, 2017, letter No. 160541.02u was sent to the Parliament, stating that the Netherlands does not support the re-launch of the CCCTB proposal for it is incompatible with the subsidiarity principle.

[Amending decree on fiscal administrative law gazette](#)

On May 23, 2017, decree No. 2017-1209 of May 9, 2017 amending a decree on fiscal administrative law was published. With regard to the requests for prior consultation on cross-border rulings and advance pricing agreements that must be exchanged with other countries, from now on they will only be taken into account if the request is accompanied by a standard form for the exchange of cross-border tax rulings. In addition, a new provision on confidentiality, which includes guidelines in the fields of criminal and civil law on different topics, has been added.

[Bill on Country-by-Country reporting published](#)

On June 2, 2017, the bill implementing Council Directive (EU) 2016/881 of May 25, 2016 which amends Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in the context of country-by-country reporting was

published in the Official Gazette No. 215. The bill entered into force on June 5, 2017 with retroactive effect to January 1, 2016.

Poland

Countries removed from the list of low tax jurisdictions

On May 23, 2017, regulations amending the list of low tax jurisdictions came into effect. The regulation regarding CIT has been published in the Official Journal 997/2017. In order to decide whether a jurisdiction enters within the scope of the list, the Minister of Finance takes three criteria into account: 1. Existing basis for the exchange of tax information with the country; 2. Positive assessment of this country by the OECD; 3. Existing cooperation in the field of exchange of tax information with this country. Hence, countries that have been removed from the list are the Bahamas, Barbados, Lichtenstein, Saint Kitts and Nevis and Saint Vincent and the Grenadines.

Romania

Law on Romania's participation as BEPS associate published

On June 6, 2017, Law No. 124/2017 was published in the Official Gazette. This law approves Romania's participation as a BEPS associate. As a BEPS associate, Romania will have to work with the OECD and G20 countries to implement the BEPS package.

Emergency Ordinance 42/2017 – EU Directive on automatic exchange of information 2016/881/EU

On May 24, 2017, a draft law was published in order to transpose the provisions of EU Directive 2016/881 on the mandatory automatic exchange of information on taxation in the context of country-by-country reporting, which had to be implemented into the national legislation of Member States from June 5, 2017. On June 9, 2017, Emergency Ordinance No. 42/2017 was issued to put into effect the measures included in a follow-up to the recommendations of BEPS Action 13 set out in the previous draft law.

Spain

Publication of information related to tax havens

Recently, draft order on Form 232 was published by the State Tax Agency. According to the text, taxpayers will have to separately report transactions made between related parties that are connected to countries/territories seen as tax havens. The filing deadline for taxpayers will be in May. Information related to all transactions with the same related party will have to be disclosed if the total amount of the transactions exceeds EUR 250,000 at arm's length value, regardless of the amount of the individual transaction. In addition, if the taxpayer entered into the same type of transactions in a given tax period with the same party or related entity using the same valuation method and involving a combined amount in excess of EUR 100,000, information on these transactions must also be reported.

Minister of Finance proposes law against tax amnesties

On June 21, 2017, the Minister of Finance proposed to introduce a law in order to prohibit any future tax amnesties. This proposal was drawn up quickly following the recent Constitutional Court decision, which declared that the 2012 tax amnesty was unconstitutional.

Sweden

Clarification on foreign transaction reporting obligations issued by Tax agency

On May 9, 2017, a clarification was issued by the tax agency on foreign transaction reporting obligations. According to the clarification, transactions made by individuals or corporations from or to Sweden that exceed SEK 150,000 have to be reported by all intermediaries. There is, however, an exemption for inter-bank payments. This reporting obligation must include information such as: the amount and the date of the payment, the currency code, the reason and specification of the payment, but also the countries concerned with the operation.

Clarification on compulsory and spontaneous exchange of information of rulings and advance pricing agreement by Tax authority

On May 19, 2017, a clarification (131 219052-17/111) was published by the tax authorities on the compulsory and spontaneous exchange of information as regards rulings and APAs. The aim is to reflect BEPS Action 5. The clarification provides information on following matters: which rulings must be exchanged; which information will be provided; with which countries rulings will be exchanged and that the country rulings will be exchanged within three months of the issuing date.

Memorandum proposing corporate tax cuts and new interest deduction limitation released

On June 20, 2017, the proposed changes to corporate income tax were opened for public consultation until September 26, 2017 with the intention that they become effective from January 1, 2018.

The proposals notably include a reduction in the CIT rate from 22% to 20%; the introduction of an interest deduction limitation based on EBIT or EBITDA at 35% or 25% respectively; the introduction of provisions concerning the deduction of interest in cross-border situations (hybrid rules) and the scope of the rules to limit the interest deductions for certain intra-group loans will be amended. By means of these proposals, Sweden puts its legislation regarding interest deductions in line with the EU Anti Tax Avoidance Directive of July 12, 2016.

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

Switzerland

New proposal for corporate tax reform

Following the Swiss rejection of the Corporate Tax Reform III on February 12, 2017 (see [E-news 65](#)), the Steering Committee with federal and cantonal representatives on June 1, 2017 issued its recommendations to the Swiss Federal Council on corporate tax reform, referred to as 'tax proposal 17'. The Federal Council discussed and adopted the parameters for tax proposal 17. The new proposal can be seen as a complete balanced package covering areas such as: patent box; research and development deductions but also taxation of dividends. The Federal Council instructed the Federal Department of Finance to prepare a consultation draft by September.

Federal Council adopts dispatch on automatic exchange of information with 41 states and territories

On June 16, 2017, the regulations on automatic exchange of financial account information (AEOI) with 41 states and territories was adopted by the Federal Council. It should be implemented for 2018 and the first information should be exchanged in

2019. Switzerland extends its AEOI network to most of the G20 and OECD countries as well as other States with important financial centers.

United Kingdom

[HMRC guidance on Worldwide Disclosure Facility updated](#)

On June 15, 2017, HMRC's guidance on Worldwide Disclosure Facility was updated. This update is available for disclosure of a UK tax liability that relates to offshore issues. In particular, it provides for an additional 90 days to be allowed for complex cases and requires any tax credit claims to be included in the disclosure. HMRC previously updated its guidance to reflect the tax years for which a disclosure is possible.



Local Courts

Germany

[Change-in-ownership rules declared unconstitutional](#)

On May 12, 2017, the decision (2 BvL 6/11) rendered by the Federal Constitutional Court on March 29, 2017 was published. According to the Court, the denial of offsetting of previous years' losses in the context of change in ownership violates the principle of equality and the principle of consistence in taxation provided for in the Constitution.

The Court ruled that the legislator has to amend the unconstitutional provision retroactively with effect from the period between January 1, 2008 and December 31, 2015 by December 31, 2018. If the legislator fails to amend the provision within the determined time limit, it will be deemed void on January 2019 with retroactive effect from January 2018.

Norway

[Ruling on dividend withholding tax issued by the Tax Agency](#)

On May 4, 2017, a decision (BFU 2/17) from the Tax Agency rendered on March 29, 2017 was published concerning the assessment of substance requirement in order to grant a dividend withholding tax exemption to an Irish holding company. According to the Tax Agency, the establishment of the holding company was not artificial and the company had enough substance and carried on economic activities. Hence, the Irish holding company could benefit from the withholding tax exemption on dividends paid by resident companies to shareholders resident within the EEA. In its decision, the Tax Agency referred to the decision of the Court of Justice of the European Union (CJEU) in the Cadbury Schweppes and Cadbury Schweppes and Overseas case (C-196/04).

Spain

[Tax amnesty declared unconstitutional](#)

On June 8, 2017, the Constitutional Court rendered its decision No. 3856-2012 on the constitutionality of the tax amnesty provided for in Royal Decree-Law No. 12/2012. The tax amnesty foresaw the possibility for corporates, individuals and non-residents to regularize their undeclared rights and assets

by paying a special tax at a 10% rate. The Constitutional Court ruled that the tax amnesty was unconstitutional. However, in order to preserve legal certainty, no retroactive effect has been attached to the decision.

Switzerland

Federal Supreme Court decision on tax credit granted on dividend withholding taxes

On May 22, 2017, the Federal Supreme Court rendered a combined decision in cases (2C_573/2016; 2C_574/2016). The cases concerned whether the Swiss Tax Administration, by calculating the tax credit for dividends subject to German withholding taxes on the basis of the net dividend after deduction of the Swiss taxpayer's debt interest, rather than on the basis of the gross dividend, complies with provisions in the Germany-Switzerland Tax Treaty (1971).

The Court recalled that the Germany-Switzerland Tax Treaty provides for an ordinary tax credit for taxes paid in Germany, instead of a full credit. Credit granted by Switzerland therefore will not exceed that part of Swiss tax, which is appropriate to the dividends subject to tax in Germany. The fact that the taxpayer did not receive full credit is because of the discrepancy between the German tax calculated on the gross dividend and the Swiss tax calculated on the net dividend according to Swiss tax law, which is in accordance with the treaty provisions.



Robert van der Jagt

Chairman, KPMG's EU Tax Centre and
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